



REGISTER

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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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
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13	Labor	Electrical Contractors	18
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16	Public Education	Geologists	21
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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
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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
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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.

**EXECUTIVE ORDER NO. 27
PROCLAMATION OF STATE DISASTER FOR THE
CITY OF CHERRYVILLE, CITY OF SHELBY AND THE
CLEVELAND COUNTY SANITARY DISTRICT,
EXCLUDING THE CITY OF KINGS MOUNTAIN**

WHEREAS, I have determined that a State of Disaster and State of Emergency, as defined in N.C.G.S. §§ 166A-4(1) and 14.288.1(10), exists in the State of North Carolina, specifically in the City of Cherryville, the City of Shelby and the Cleveland County Sanitary District, excluding the City of Kings Mountain, as a result of severe drought conditions.

WHEREAS, on 18 June 2002, the City of Cherryville proclaimed a local State of Emergency; and

WHEREAS, on 15 August 2002, the County of Cleveland, excluding the City of Kings Mountain, and the City of Shelby proclaimed a local State of Emergency; and

WHEREAS, pursuant to N.C.G.S. § 166A-6, the criteria for a Type I disaster are met including the following: 1) Receipt of the preliminary damage assessment from the Secretary of Crime Control and Public Safety; 2), the City of Cherryville, the City of Shelby and the Cleveland County, excluding the City of Kings Mountain, each declared a local state of emergency pursuant to N.C.G.S. § 166A-8 and N.C.G.S. §§ 14-288.12, 14-288.13, and 14-288.14 and forwarded a written copy of the declaration to the Governor; 3) The preliminary damage assessment meets or exceeds the criteria established for the Small Business Disaster Loan Program pursuant to 13 C.F.R. Part 123 or meets or exceeds the State infrastructure criteria set out in N.C.G.S. § 166A-6.01(b)(2)a.; and 4) A major disaster declaration by the President of the United States pursuant to the Stafford Act has not been declared; and

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. Pursuant to N.C.G.S. §§ 166A-6 and 14-288.15, a State of Disaster and State of Emergency is hereby declared for the City of Cherryville, the City of Shelby and the Cleveland County Sanitary District, excluding the City of Kings Mountain.

Section 2. All state and local government entities and agencies are hereby ordered to cooperate in the implementation of the provisions of this proclamation and the provisions of the North Carolina Emergency Operations Plan.

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety, and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A, and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the above-referenced counties.

Section 4. Further, Bryan E. Beatty, Secretary of Crime Control and Public Safety, as chief coordinating officer for the State of North Carolina, shall exercise the powers prescribed in N.C.G.S. 143B-476.

Section 5. I authorize this proclamation: (a) to be distributed to the news media and other organizations calculated to bring its contents to the attention of the general public; (b) unless the circumstances of the state of disaster prevent or impede, to be promptly filed with the Secretary of Crime Control and Public Safety, the Secretary of State, and the clerks of superior court in the counties to which it applies; and, (c) to be distributed to others as necessary to assure proper implementation of this proclamation.

Section 6. The Type I disaster declaration shall expire 30 days after the issuance of the state of disaster and state of emergency and Type I disaster proclamation for the City of Cherryville, the City of Shelby and the Cleveland County Sanitary District, excluding the City of Kings Mountain, issued on August 30, 2002 unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date for first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

Done in the Capital City of Raleigh, North Carolina, this the 30th day of August 2002.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE MARSHALL
SECRETARY OF STATE

**EXECUTIVE ORDER NO. 28
ENSURING NEEDS OF SCHOOL CHILDREN ARE MET
GIVEN INCREASE IN STUDENT ENROLLMENT,
BUDGET DEVELOPMENTS, AND SCHOOL OPENINGS**

In September 2001, the General Assembly ratified and I, as Governor, signed a budget for the State of North Carolina that allocated funds to pay for the expected increase in the kindergarten-12th grade (K-12) student population during the 2002-03 fiscal period.

The increase in school children for '02-'03 made in 2001, calculated by tallying local school administrative units' Average Daily Membership (ADM), was underestimated. As a result, in the budget adjustments I submitted to the General Assembly for the '02-'03 period, I recommended additional funding for the public schools in order to meet the costs associated with the actual ADM increase. Both the state Senate and state House agreed with my recommendation as to the amount of additional funding needed to meet the actual ADM

EXECUTIVE ORDERS

increase. Each house's agreement is reflected in the budget bills passed in June and August, respectively.

As of today, the budget adjustment legislation which will include the ADM funding increase has not been finally ratified by the General Assembly and signed into law by me. However, public school classes have begun across the state. And school systems and communities are being forced to meet the greater needs posed by the increase in student enrollment. In addition, state court monitoring of North Carolina's effort to ensure a sound, basic education for every student continues.

NOW THEREFORE, in light of the factual circumstances set forth above, and under the legal authority vested in me as Governor by, among other provisions, Article I, section 15 (which states that "[t]he people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right") and Article III of the Constitution of North Carolina, and N.C.G.S. § 143-23, I hereby AUTHORIZE and INSTRUCT:

The State Budget Officer, working with the Superintendent of Public Instruction and local school systems, to provide monies sufficient to cover the costs associated with the increased number of children in grades K-12 now attending North Carolina's public schools.

This Executive Order is effective August 29th, 2002.

Done in the Capital City of Raleigh, North Carolina, this 29th day of August 2002.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

**EXECUTIVE ORDER NO. 29
EMERGENCY RELIEF FOR LIVESTOCK PRODUCERS
AFFECTED BY HAY SHORTAGES DUE TO DROUGHT**

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes and empowers the Governor to make, amend or rescind the necessary orders, rules and regulations within the limits of the authority conferred upon him, with due consideration of the policies of the federal government;

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes and empowers the Governor to deliver materials or perform services for disaster purposes on such terms and conditions as may be prescribed by any existing law; and

WHEREAS, the North Carolina Emergency Management Act (Chapter 166A of the North Carolina General Statutes) authorizes the Governor to take such action and give such directions to State and local law-enforcement officers and agencies as may be reasonable and necessary; and

WHEREAS, the United States Department of Agriculture has declared seventy-three (73) North Carolina counties as agricultural disaster areas due to drought conditions; and

WHEREAS, there is a severe shortage of hay for feeding livestock; and

WHEREAS, large bales of hay are available and could be transported if certain load width limitations were waived;

WHEREAS, the North Carolina General Statutes 20-115 and 20-116 limit the width of a vehicle or vehicle combination to 102”.

NOW, THEREFORE, pursuant to the authority vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Section 1. That for a period of 90 days, beginning August 30, 2002, until November 30, 2002, the State of North Carolina under the supervision and direction of the Department of Transportation and Division of Motor Vehicles will waive width restrictions on vehicles transporting hay to farmers located in the seventy-three (73) declared drought stricken counties.

Section 2. Notwithstanding the waiver set forth above, the size restrictions and penalties have not been waived for vehicles operating with an overall width exceeding ten (10) feet.

This order does not exempt compliance with any posted road or bridge weight limitations.

Section 3. This executive order will be effective September 3, 2002, and shall remain in effect until December 2, 2002.

Done in the Capital City of Raleigh, North Carolina, this the 3rd day of September, 2002.

Michael F. Easley
Governor

Elaine F. Marshall
Secretary of State

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

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

HILLSBOROUGH VENTURES, LLC

Pursuant to N.C.G.S. " 130A-310.34, Hillsborough Ventures, LLC ("Prospective Developer"), has filed a Notice of Intent to Redevelop a Brownfields Property ("Notice of Intent") with the North Carolina Department of Environment and Natural Resources ("DENR"). The property which is the subject of the Notice of Intent ("Property") is located in Raleigh, Wake County, North Carolina, and consists of 3.799 acres at the following street addresses: 3 Concord Street, 24 McKnight Avenue and 3101 Stanhope Avenue. Prospective Developer intends to redevelop the Property as a mixed-use retail and residential complex. Environmental contamination exists on the Property in soil and groundwater. In light of previous investigation and remediation activities conducted on the Property, additional remediation activities and land use restrictions embodied in the proposed Notice of Brownfields Property referenced below are sufficient to protect public health and the environment. The Notice of Intent includes: (1) a proposed Amendment to Brownfields Agreement between DENR and Prospective Developer, which in turn includes: (a) a copy of the Brownfields Agreement for properties located at 3011-3027 Hillsborough Street, 6, 8-9 McKnight Street, and 110 Friendly Drive in Raleigh, Wake County, North Carolina, made and entered into by Hillsborough Ventures and DENR on May 1, 2001, (b) a legal description of the Property, (c) a map showing the location of the Property, (d) a description of the contaminants involved and their concentrations in the media of the Property, (e) the above-stated description of the intended future use of the Property, and (f) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919)733-2801, ext. 328. Written public comments and written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests, and/or requests to view the full Notice of Intent, should be addressed as follows:

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

U.S. Department of Justice

Civil Rights Division

JDR:MJP:SMC:par
DJ 166-012-3
2002-3938

*Voting Section - NWB
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530*

August 20, 2002

David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, NC 27835-7207

Dear Mr. Holec:

This refers to the three annexations (Ordinance Nos. 02-51 through 02-53) and their designation to districts of the City of Greenville in Pitt 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 submission on July 18, 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 changes. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Chief, Voting Section

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

Notice of Rule-making Proceedings is hereby given by the North Carolina 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 10 - 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: Hunting, Fishing, Gamelands, Water Safety, Access Areas, Licensing, Conservation, Motorboat Safety, Endangered, Threatened and Special Concern Species, Regulated Activities and Hunter Safety Rules.

Reason for Proposed Action: To set seasons and bag limits and to manage and protect Wildlife Resources. The NC Wildlife Resources Commission is also considering adopting temporary amendments to 15A NCAC 10B, 10F and 10H on October 4, 2002.

Comment Procedures: Comments from the public shall be directed to Joan Troy, WRC, 1701 Mail Service Center, Raleigh, NC 27699-1701.

TITLE 25 – OFFICE OF STATE PERSONNEL

CHAPTER 01 – OFFICE OF STATE PERSONNEL

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

Citation to Existing Rule Affected by this Rule-making: 25 NCAC 01C .0602; 01D .0517, .1006, .1924; 01J .0701-.0703 -

Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 126-12; 7 CFR 271.1(g); 20 CFR 1902.3(h); 45 CFR 14.5(b)(3)(i); 45 CFR 220.49(e); 45 CFR 401.12; 45 CFR 402.7; 29 USC 35 (a)(6); 29 USC 42 1(c)(5); 29 USC 49d(b); 42 USC 135(a)(5)(A); 42 USC 246(a)(2)(f); 42 USC 246(d)(2)(f); 42 USC 291d(a)(8); 42 USC 302(a)(5)(A); 42 USC 503(a)(1); 42 USC 602 (a)(5)(A); 42 USC 705(a)(3)(A); 42 USC 1202(a)(5)(A); 42 USC 1382(a)(5)(A); 42 USC 1396a(a)(A); 42 USC 2674(b)(7); 42 USC 2684(a)(6); 87 Stat. 41; 86 Stat. 92; 42 USC 4573(a)(5); 50 USC app. 2286(a)(4); BLS Grant Application Kit, May 1, 1973, Supplemental Assurance No. 15A

Statement of the Subject Matter:
25 NCAC 01C .0602 – Positions Under Competitive Service
25 NCAC 01D .0517 – Vacation and sick leave
25 NCAC 01D .1006 – This Rule explains when benefits may be reinstated.
25 NCAC 01D .1924 – All employees must be paid not less than the Federal Minimum Wage.
25 NCAC 01J .0701-.0703 – Wellness Improvement for State Employees Program for the promotion of optimal health and enhancement of overall quality of life conducive to optimal health.

Reason for Proposed Action:
25 NCAC 01C .0602 – This Rule is proposed to be repealed in order to correct a rule that is out of date. The rules regarding competitive service were repealed several years ago. This Rule should have been repealed also.
25 NAC 01D .0517 – This Rule is proposed to be amended in order to comply with the amendment that was made previously to the rules regarding reinstatement of sick leave.
25 NCAC 01D .1006 – This Rule is proposed to be amended in order to incorporate the changes made to the military leave rules based on the provisions of the Uniformed Services and Reemployment Act of 1994.
25 NCAC 01D .1924 – This Rule is proposed to be amended in order to comply with the Federal Minimum Wage.
25 NCAC 01J .0701-.0703 – This Rule is proposed to be repealed due to the fact that the State Employees' Wellness Program was abolished several years ago.

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

This Section contains the text of proposed rules. At least 60 days prior to the publication of text, the agency published a Notice of Rule-making Proceedings. The agency must accept comments on the proposed rule for at least 30 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. The required comment period is 60 days for a rule that has a substantial economic impact of at least five million dollars (\$5,000,000). Statutory reference: G.S. 150B-21.2.

TITLE 01 – DEPARTMENT OF ADMINISTRATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Administration, Division of Purchase and Contract intends to adopt the rules cited as 01 NCAC 05B .1522-.1523. Notice of Rule-making Proceedings was published in the Register on February 15, 2002 and August 1, 2002.

Proposed Effective Date: April 1, 2003

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Requests for Public Hearing must be submitted in writing to T. Brooks Skinner, Jr. General Counsel, NC Dept. of Administration, MSC 1301, Raleigh, NC 27699-1301 no later than October 15, 2002.

Reason for Proposed Action:

01 NCAC 05B .1522 - Session Law 2001-240 requires the State to add a one percent increase to bids of nonresident bidders where the nonresident bidders' home State grants preferences to in-State bidders (reciprocal preference). The Secretary was required, by January 1, 2002, to publish electrically a list of States that give preferences. The law also provides that the Secretary may adopt rules to implement this act. Temporary rules were adopted effective January 14, 2002.

01 NCAC 05B .1523 – Legislation action 2001, first by SL 2001-424 (Section 15.6d), and then as modified by SL 2001-513 (Section 28.b), removed the 15 agency procurement card pilot program restrictions and empowered the Secretary of Administration to adopt rules for the implementation and operation of a statewide procurement card program. Temporary rules were adopted effective July 1, 2002 and published in the NC Register on August 1, 2002.

Comment Procedures: Written comments should be written to T. Brooks Skinner, Jr., General Counsel, NC Department of Administration, 1301 MSC, Raleigh, NC 27699-1301. Phone (919) 807-2425, Fax: (919) 733-9571. Email: brooks.skinner@ncmail.net. Comment should be received by October 31, 2002.

Fiscal Impact

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

CHAPTER 05 – PURCHASE AND CONTRACT

SUBCHAPTER 05B – PURCHASE PROCEDURES

SECTION .1500 - MISCELLANEOUS PROVISIONS

01 NCAC 05B .1522 RECIPROCAL PREFERENCE

(a) To discourage other states from applying in-state preferences against North Carolina's resident bidders, all agencies shall apply a reciprocal preference, when required in this Section, on all contracts for equipment, materials, supplies, and services, that exceed twenty-five thousand dollars (\$25,000) in value. This shall be done for the purpose of determining the low bidder only and there shall be no increase in price actually paid as a result of this determination.

(b) The Secretary shall publish on the Division of Purchase and Contract's internet site, a list of states and their in-state preference, if any, and all agencies shall use this list to determine if a nonresident bidder is from a State that has an in-State preference for the commodity or service being bid, and how much that preference is.

(c) For each of the contracts described in Paragraph (a) of this Rule, the agency shall apply the reciprocal preference to each nonresident bidder located in a state that has an in-state preference for that equipment, material, supply or service. The amount of the reciprocal preference applied shall be identical to that applied in that state for that equipment, material, supply or service.

(d) Each solicitation document used for the contracts described in Paragraph (a) of this Rule, shall include space for a bidder to give their principal place of business address if it is different than the address given in the execution section of the solicitation document. This shall not prevent the agency that issued the solicitation document from investigating this information and concluding that the principal place of business is different, according to their interpretation of G.S. 143-59(b).

(e) A reciprocal preference shall not be used when procurements are being made under G.S. 143-53(a)(5) and G.S. 143-57.

(f) If the use of the reciprocal preference changes which bidder is the low bidder, the Secretary may waive the use of the reciprocal preference, after consultation with the Board of Award, and after taking into consideration such factors as, competition, price, product origination, and available resources.

(g) For the purpose of this Section, a resident bidder is defined as an offeror that has paid unemployment taxes or income taxes in this State and whose principal place of business is located in this State; a nonresident bidder is defined as an offeror that is not a resident bidder as defined in Paragraph (a) of this Rule; a principal place of business is the principal place from which the trade or business of the company is directed or managed; and a bidder and offeror, as well as bid and proposal, are interchangeable.

Authority G.S. 143-59.

01 NCAC 05B .1523 PROCUREMENT CARDS

Procurement cards (organizational charge cards) are for official use only and shall be used in accordance with this Section and with the statewide contract established and maintained by the Division of Purchase and Contract. Use of procurement cards by any agency is contingent on satisfactory compliance review, as determined by the Division of Purchase and Contract. As the

State's electronic procurement system is implemented, it shall be used to the fullest extent possible, including issuance of purchase orders. Procurement cards may be used as a payment mechanism within e-procurement if permitted by fiscal policies of the agency.

- (1) Each participating agency shall designate a procurement card program administrator, who shall be the chief purchasing officer or chief fiscal officer (or person specifically designated by either of these).
 - (a) All cards requested on behalf of the agency shall be sent to the program administrator (not to individual cardholders) by a traceable delivery method.
 - (b) Cards shall show the agency name, cardholder, the state seal and/or agency logo, and clearly indicate they are for official use only.
- (2) The card program administrator, in consultation with the agency's chief executive or fiscal officer, shall determine appropriate limits by per-transaction amount (not to exceed the statewide per-transaction limit set by the State Purchasing Officer, after taking into consideration, current market trends, the economy, and recommendations received from the State Controller and the State Auditor), total per billing cycle, merchant categories, and similar factors. Agencies shall submit a copy of their procurement card policies and procedures to the Division of Purchase and Contract within 90 days after program implementation and thereafter whenever such policies and/or procedures are updated.
- (3) The card program administrator shall ensure compliance with agency policy and procedures, including cardholders' acknowledgement prior to issuance of cards, account reconciliation, and security.
- (4) Procurement card transactions processed through e-procurement, utilizing the card as a payment mechanism within electronic workflow and approval processes, may be in any amount consistent with agency fiscal policies.
- (5) For procurement card transactions processed outside the State's electronic procurement system, the per-transaction limit shall be two thousand five hundred dollars (\$2,500.00). This limit can be changed only under the following circumstances:
 - (a) In an emergency (as defined by 01 NCAC 05B .1602 or Governor's declaration), the agency card program administrator may request higher limits on cards in critical areas. Such increases shall be in effect no longer than the duration of the emergency. Requests for increased limits are to be made through the Division of

Purchase and Contract if time permits and must be reported to Purchase and Contract in any case.

- (b) Agencies may apply to the SPO for higher limits on specific types of transactions, with justification required.
- (c) The SPO may adjust limits based on analysis of the procurement card program's results, on a statewide or agency basis (See Item 2 of this Rule).
- (6) Agencies shall comply with procurement card policies prepared and disseminated by oversight fiscal offices (e.g., Office of the State Controller for State departments) governing those agencies under their responsibility.
- (7) No other charge cards that obligate payment by the agency or the State shall be used unless an existing contract obligation requires its use, but that obligation shall be discontinued no later than June 30, 2003. Requests for exceptions to this Rule shall be submitted in writing to the State Purchasing Officer. Consideration of requests will be based on need, compliance reviews and contract obligations.

Authority G.S. 143-49(8).

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Pesticide Board intends to amend the rules cited as 02 NCAC 09L .1001, .1003, .1005-.1006 and repeal the rule cited as 02 NCAC 09L .1004. Notice of Rule-making Proceedings was published in the Register on February 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: November 12, 2002

Time: 1:00 p.m.

Location: Conference Room, Jim Graham Building, State Fairgrounds, 1025 Blue Ridge Rd., Raleigh, NC

Reason for Proposed Action: *The Pesticide Board initiated rule-making proceedings as a result of recommendations received from its Pesticide Advisory Committee. The proposed changes would delete certain outdated or duplicative definitions and equipment specifications; revise the sections dealing with restricted areas to replace certain zero deposit standards with an acceptable residue level which the PAC feels is still fully protective of human health; permit the application of specific pesticides within 100 feet of a residence if the inhabitants of legal age have given written consent to the application; and establish a new rule dealing with "prima facie evidence of*

violation." *The Pesticide Advisory Committee recommended the proposed revisions as more practical than the current rules, while still being fully protective of human health.*

Comment Procedures: *Comments from the public shall be directed to James W. Burnette, Jr., NC Pesticide Board, PO Box 27647, Raleigh, NC 27611, phone (919) 733-3556, fax (919) 733-9796, and email james.burnette@ncmail.net. Comments shall be received through October 31, 2002.*

Fiscal Impact

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

CHAPTER 09 - FOOD AND DRUG PROTECTION DIVISION

SUBCHAPTER 09L - PESTICIDE SECTION

SECTION .1000 - AERIAL APPLICATION OF PESTICIDES

02 NCAC 09L .1001 DEFINITIONS

All specific words or terms used in this Section shall have the same definitions as shown in the North Carolina Pesticide Law of 1971, G.S. 143-460, or unless the context otherwise requires, other definitions shall be:

- ~~(1)~~ Agricultural Aircraft Operation. ~~The operation of an aircraft for the purpose of dispensing any pesticide directly affecting agriculture, horticulture, forest preservation, or for any other pest control operation;~~
- ~~(2)~~(1) Adverse Effect. Personal injury, damage to personal property, damage to real property, damage to the environment or any combination of these;
- (2) Agricultural. Of or pertaining to any land or water utilized to produce or maintain, for commercial purposes, crops, livestock, forests or ornamental plants;
- (3) Agricultural Aircraft Operation. The operation of an aircraft for the purpose of dispensing any pesticide directly affecting agriculture, horticulture, forest preservation, or for any other pest control operation;
- ~~(3)~~(4) Aircraft. A weight-carrying structure for navigation of the air that is supported either by its own buoyancy or by the dynamic action of the air against its surfaces; This shall include either fixed-wing or rotary-wing aircraft;
- ~~(4)~~(5) Congested Areas. The same meaning as described in Federal Aviation Regulations (F.A.R.), Part 137;
- ~~(5)~~(6) Contractor. Any person who owns or manages an aerial application business which is engaged in the custom application of pesticides;
- ~~(6)~~(7) Custom Application. Any application of pesticides by aircraft for which service a

- payment is made;
- ~~(7)~~(8) Drift. The airborne movement of pesticides resulting from the application of pesticides such as to carry the pesticides beyond the target area;
- ~~(8)~~(9) Emergency. An occurrence which can impair public health, safety or result in injury, damage, or loss of life which calls for immediate action; An emergency may be minor or of such magnitude as to create a disaster;
- ~~(9)~~(10) Environment. Water, air, land and all plants and man and other animals living therein and the interrelationships which exist among these;
- ~~(10)~~(11) F.A.R.-137. Federal Aviation Regulations Volume VII, Part 137, as amended through September 10, 1980, relating to agricultural aircraft operations;
- ~~(11)~~(12) Pilot. The person in control of the aircraft during the application of a pesticide;
- ~~(12)~~(13) Registered Apiary-an apiary registered with the North Carolina Department of Agriculture; Agriculture and Consumer Services;
- ~~(13)~~ Respirator. A respirator or mask of a type that has been tested by the National Institute of Occupational Safety and Health and found to be satisfactory for protection against the particular pesticide being used;
- (14) Spray Equipment. The equipment used for spraying liquid mixtures of pesticides in an agricultural aircraft operation;
- (15) Target Area. Intended site of pesticide application; application.
- ~~(16)~~ Toxicity Category I Pesticides. Any pesticide products which are required to display the signal word "Danger" prominently on the label.

Authority G.S. 143-458; 143-463.

02 NCAC 09L .1003 DRIFT CONTROL

No person shall apply a pesticide(s) aerially under such conditions that drift from pesticide(s) particles or vapors results in adverse effect. As a minimum, the following precautions shall be taken:

- (1) Fixed nozzles shall be spaced on the boom to afford a uniform spray pattern at the height the aircraft will be flown.
- (2) All pesticides applied aerially as liquids, in liquid carriers, or as dusts shall be released within 15 feet above the canopy of the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.
- (3) All pesticides applied aerially as dry granules or pellets shall be released within 40 feet above the canopy of the target, except where obstructions in or adjacent to the target would endanger the safety of the pilot while applying pesticides at that altitude.
- ~~(4)~~ All applications of the following liquid

~~pesticide formulations shall be made using a D4 or larger disk with a 46 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch, or a system producing a droplet size range not smaller than the above system, except for rotary wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward; pesticides applied aerially shall be applied using a boom with outside nozzles placed no closer to the wingtips than 12-1/2 percent of the total wingspan distance. If the length of the boom of the spraying equipment exceeds the nozzle span, a bleeder line shall be provided from the end of the boom to a nozzle within the approved nozzle span.~~

- ~~(a) phenoxy herbicides,~~
- ~~(b) paraquat,~~
- ~~(c) picloram (Tordon),~~
- ~~(d) dicamba.~~

~~(5) Restricted use pesticides other than those specified in (4) of this Rule shall be applied as follows:~~

- ~~(a) use a D4 or larger disk with a 45 whirlplate with the discharge directed with the airstream or not more than 10 degrees below the horizontal, and operated at a maximum pressure of 40 pounds per square inch; or~~
- ~~(b) a system producing a droplet size range not smaller than the above system, except for rotary wing aircraft flying at speeds of 60 mph or less, in which case the nozzles may be directed downward; or~~
- ~~(c) use a boom with outside nozzles placed no closer to the wingtips than 12-1/2 percent of the total wingspan distance. If the length of the boom of the spraying equipment exceeds the nozzle span, a bleeder line shall be provided from the end of the boom to the last nozzle on the boom.~~

Authority G.S. 143-458; 143-463.

02 NCAC 09L .1004 HANDLING AND LOADING OF PESTICIDES

- ~~(a) Pilots or employees handling or loading toxicity category I pesticides shall wear approved respirators. Filters and cartridges in respirators shall be changed according to the manufacturer's recommendation.~~
- ~~(b) Pilots or employees handling or loading toxicity category I pesticides shall wear freshly laundered protective clothing and shall bathe and change such clothing daily or sooner if the situation warrants.~~
- ~~(c) Pilots or employees handling or loading toxicity category I pesticides shall wear chemical resistant gloves and boots or overshoes, in good condition.~~

~~(d) Aircraft cockpits shall be kept clean.~~

~~(e) If a toxicity category I pesticide contacts the skin of any person during any part of the agricultural aircraft operation, the person shall wash or be washed immediately, thoroughly with detergent and water and clothing replaced with clean clothing. Detergent and water adequate for personal washing shall be available at the pesticide loading site. They must also be available at any pesticide handling site which is separated geographically from the loading site.~~

Authority G.S. 143-458; 143-463.

02 NCAC 09L .1005 RESTRICTED AREAS

(a) No pesticide shall be applied by aircraft within the limits of any congested area except when permission is granted under F.A.R.-137.

(b) No pesticide in excess of the limits established in Paragraph (i) of this Rule shall be deposited by aircraft within 300 feet on that portion of the premises of schools, child-care facilities, adult-care facilities, hospitals, nursing homes, churches, or any building (other than a residence) which is used churches existing for business or social activities if either the premises or the building is occupied by people, non-agricultural purposes.

(c) No pesticide in excess of the limits established in Paragraph (i) of this Rule shall be deposited by aircraft on the right-of-way of a public road or within 25 feet of the road, whichever is the greater distance, that portion of any premises (other than residences, schools, child-care facilities, adult-care facilities, hospitals, nursing homes, or churches) used for business or social activities and existing for non-agricultural purposes.

~~(d)~~ No pesticide in excess of the limits established in Paragraph (i) of this Rule shall be deposited by aircraft on the maintained right-of-way of a public road.

~~(d)(e)~~ No pesticide labeled toxic or harmful to aquatic life shall be deposited in or near any body of water in such a manner as to be hazardous to aquatic life unless such aquatic life is the intended target of the pesticide.

~~(e) No pesticide shall be deposited within 100 feet of any residence.~~

~~(f) No pesticide in excess of the limits established in Paragraph (i) of this Rule shall be deposited by aircraft on that portion of the premises of any residence existing for non-agricultural purposes unless the inhabitants of legal age have given written consent to the application of the specific pesticide(s).~~

~~(g) For public health pest control, a letter of notification shall be sent by the applicator, prior to the application, to the local Public Health Director. This notification shall include that information required in 02 NCAC 09L .1006(4)(a) through (4)(f).~~

~~(h)~~ No pesticide shall be deposited onto any nontarget area in such a manner that it is more likely than not that adverse effect will occur.

(i) Prima Facie Evidence of Violation. The presence of pesticide drift residues based on the official sample results, in excess of any of the following levels specified in this Paragraph shall constitute prima facie evidence that the applicator did not take reasonable precautions to minimize pesticide drift to the maximum extent practicable. For purposes of this standard, residue levels may be determined by evaluation of one or more ground, foliage or other official samples.

- (1) Pesticide residues on any off-target commercial organic farm or garden in the

vicinity of an application site which cause the organic products thereof to fail to meet the established tolerance for organic agricultural commodities as recognized by the North Carolina Department of Agriculture and Consumer Services.

(2) Residues of any pesticide exceeding six parts per million (ppm) on any portion of the premises of schools, child-care facilities, adult-care facilities, hospitals, nursing homes, or churches existing for non-agricultural purposes.

(3) Residues of any pesticide exceeding six parts per million (ppm), on that portion of any premises (other than residences, schools, child-care facilities, adult-care facilities, hospitals, nursing homes, or churches) used for business or social activities and existing for non-agricultural purposes, or on the maintained right-of-way of a public road.

(4) Residues of any pesticide exceeding six parts per million (ppm) on that portion of the premises of a residence existing for non-agricultural purposes.

(j) Pesticide residues on that portion of the premises of a residence existing for non-agricultural purposes that are detected at levels, which with proper application techniques would have occurred, do not constitute prima facie evidence of a violation where authorization and consent have been given in Paragraph (f) of this Rule.

Authority G.S. 143-458.

02 NCAC 09L .1006 EXEMPTIONS

No person or procedure or spraying and spreading system for aerial application of pesticides shall be exempt from any of the provisions of this Section except under these conditions:

- (1) During an emergency proclaimed by the commissioner, specific aerial applicators may, on a temporary basis, be exempted from all, or from specific ~~regulations—rules~~ by the commissioner.
- (2) The Pesticide Board may authorize exemptions:
 - (a) from specific ~~regulations—rules~~ for specific aerial applications when deemed appropriate,
 - (b) from specific ~~regulations—rules~~ for an aerial applicator applying pesticides while engaged in experimental work for or under the direct supervision of a public agency or while engaged in experimental work for a private individual or person.
- (3) Any state, federal or public agency or aerial applicator under contractual agreement with and under supervision of such an agency when conducting a pest control operation may be exempted from ~~2 02 NCAC 9L 09L .1002(i), General Requirements, and 2 02 NCAC 9L 09L .1005(b) through (e), (g), (i), and (j).~~

Restricted Areas, provided that, at least 30 days prior to the proposed initiation of the subject operation they present to the Pesticide Section, a complete description of the operation which meets or exceeds the following standards:

- (a) Project Description. The application shall include all of the following:
 - (i) explanation of why the project is needed;
 - (ii) identification of target pest or pests;
 - (iii) map showing treatment area;
 - (iv) total acreage to be treated;
 - (v) proposed dates of application (range).
- (b) Description of the Pesticide. The application shall contain a description of the pesticide(s) proposed for use under the exemption. Such information shall include:
 - (i) a statement that the pesticide product(s) proposed for use carries current state and federal registration and are currently labeled for the proposed use. Include EPA registration number for each pesticide;
 - (ii) Material Safety Data Sheet (MSDS). Include an MSDS for each pesticide proposed for use;
 - (iii) a statement specifying the composition of the final spray mixture to be applied to the target area. Identify any diluent(s), adjuvant(s), or other materials to be used with the pesticide(s) in the final spray mixture.
- (c) Aircraft Information. The description shall include the following:
 - (i) identification of type(s) of aircraft proposed for use (fixed wing, helicopter, etc.);
 - (ii) identification of equipment specifications.
- (d) Environmental Evaluation. The description shall include the following:
 - (i) identify or map any hospitals, schools, nursing homes, watersheds, and any other sensitive areas in or near the proposed treatment area;
 - (ii) list any rare, threatened, or endangered species in the proposed treatment area and describe measures (if any) to

- lessen adverse environmental impacts to such species or their habitat from the proposed treatment(s);
- (iii) describe alternative methods of pest control (options). A no treatment alternative should be included. Describe probable environmental consequences of each alternative;
- (iv) describe measures (if any) to mitigate the adverse environmental impacts of the proposed project.
- (e) Notification and Public Input Plan. The application shall contain the following:
- (i) Preliminary Notification:
- (A) For small projects (less than 50 acres or fewer than 20 landowners) individual notification (personal contact or mailings) may be used. This notification shall include the information in criteria (a) through (c);
- (B) For larger projects, the news media (radio, TV, newspapers) may be used for preliminary notification. A public meeting may also be used as a preliminary notification tool. This notification shall include the information in criteria (a) through (c);
- (ii) Input Plan. There should be a plan for allowing public input about the project prior to the final choice of the course of action to be taken;
- (iii) Operational Notification. After a decision is made on the course of action to be taken on the project, the people affected by the project should be informed of the decision. On small projects this may be done on an individual basis. On larger projects the news media would be an appropriate avenue of notification;
- (iv) A contact person and telephone number shall be listed in the public notice;
- (v) Evacuation Plan. For persons concerned about the project because of health reasons, there should be a notification procedure so they may leave the treatment area while the project is underway.
- (4) The Pesticide Section shall either approve, disapprove, or refer to the North Carolina Pesticide Board all applications for exemption. Any local health director or aerial applicator licensed under the subcategory of public health pest control, under supervision of such local health director when conducting a control operation for disease vectors or other pest of public health significance shall be exempted from ~~2~~ 02 NCAC 09L .1002(i), General Requirements; 02 NCAC 09L .1003, Drift Control; and 02 NCAC 09L .1005(b) through (e), (g), (i), and (j). Restricted Areas, provided such local health director or his authorized designee notifies the secretary of the Board prior to initiation of subject operation and submits the following information:
- (a) name of aerial applicator or contractor,
- (b) location and general description of operation area(s),
- (c) identity of target pest(s),
- (d) brand name(s) and EPA registration number(s) of the pesticide(s) to be used,
- (e) scheduled date(s) of application(s), and
- (f) outline of nature of operation.
- Approved pesticide(s) shall be applied in compliance with label requirements.
- Authority G.S. 143-458; 143-461(1),(2),(5); 143-463.*

TITLE 08 – STATE BOARD OF ELECTIONS

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Elections intends to adopt the rules cited as 08 NCAC 02 .0110-.0113; 04 .0301-.0307; 06B .0101-.0105; 07B .0101-.0102; 09 .0106-.0109; 10B .0101-.0108; 12 .0101-.0111 and repeal the rules cited as 08 NCAC 02 .0101-.0108; 04 .0101-.0109; 04 .0201-.0208; 09 .0101-.0105.

Notice of Rule-making Proceedings was published in the Register on April 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: November 19, 2002

Time: 11:00 a.m.

Location: State Board Office, 508 North Harrington St., Raleigh, NC

Reason for Proposed Action:

08 NCAC 02 .0101-.0108, .0110-.0113 – G.S. 22.1, which was the authority for 08 NCAC 02 .0101-.0108, was repealed by Section 2 of S.L. 2001-398. The reference to G.S. 163.22 in the repealed statutes is the general duties statute which applies to everything the State Board does. Therefore specific authority for the repealed regulation was repealed allowing G.S. 150B-21.5(b)(1) to apply.

08 NCAC 04 .0101-.0109, .0201-.0208, .0301-.0307 – G.S. 163-165.7 provided voting system law. S.L. 2001-460 (S.B. 17) repealed G.S. 163-160 and G.S. 163-161, the statutory basis for 08 NCAC .0101-.0208. Therefore, those rules can be repealed without notice under G.S. 150B-21.5(b)(1).

08 NCAC 06B .0101-.0105 – The new statute provides new law regarding ballots.

08 NCAC 07B .0101-.0102 – The new regulations provide guidelines regarding faxing voter information.

08 NCAC 09 .0101-.0109 – G.S. 163-182.7 provided new recount law. S.L. 2001-398 (S.B. 14) repealed G.S. 163-179.1 and G.S. 163-192.1 the statutory basis for 08 NCAC 09 .0101-.0105. Therefore those rules can be repealed without notice under G.S. 150B-21.5(b)(1).

08 NCAC 10B .0101-.0108 – Recent statutes mandated the adoption of these Rules by the State Board of Elections. These Rules are needed to set out in a clear outline format the various tasks and actions that must be performed in opening, operating, and closing voting locations.

08 NCAC 12 .0101-.0111 – The changes in this Chapter came from two mandates. One is the amended G.S. 163-257 (S.L. 1999-455, s. 20) which required the State Board to adopt these Rules. The other mandate was the passage of P.L. 107-107 by Congress in December 2001 which encourages the states to make voting easier for armed forces stationed overseas.

Comment Procedures: Comments from the public shall be directed to Don Wright, General Counsel, PO Box 27255, Raleigh, NC 27611-7255, phone (919) 733-7173, fax (919) 715-0135, email don.wright@ncmail.net. Comments shall be received through November 19, 2002.

Fiscal Impact

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

CHAPTER 02 – ELECTION PROTESTS

SECTION .0100 – ELECTION PROTESTS

08 NCAC 02 .0101 COMPLAINTS CONCERNING CONDUCT OF ELECTIONS

~~(a) A complaint concerning the conduct of an election may be filed with the county board of elections by any registered voter who was eligible to vote in the election or by any person who was a candidate for nomination or election in the election.~~

~~(b) A complaint must be in writing and must contain the following:~~

- ~~(1) The name, address and telephone number of the person making the complaint, and any other information needed for the board to readily contact the person.~~
- ~~(2) The signature of the person making the complaint, acknowledged and certified by an officer authorized to administer oaths.~~
- ~~(3) A statement whether the person making the complaint is a registered voter of the jurisdiction or a candidate.~~
- ~~(4) The date, place, and kind of election in question.~~
- ~~(5) A statement whether the complaint concerns the manner in which votes were counted or results tabulated at the precinct or whether it concerns some other kind of irregularity.~~
- ~~(6) Specific allegations of violations of the election law or other irregularities or misconduct sufficiently serious to cast doubt on the apparent results of the election.~~
- ~~(7) If known, the name, address and phone number of each person who was involved in such misconduct or was a witness to it.~~

~~The complaint also may include a request for a specific relief to be ordered.~~

~~(c) A complaint that includes allegations of misconduct by a named or readily identifiable election official shall be considered a complaint against that official under Chapter 3. The complaint against the official may be considered by the county board at the same time as the other portions of the complaint, and may be the basis for action by the board against that official if he is given notice and an opportunity to respond in a manner equivalent to that provided in Chapter 3.~~

~~(d) A complaint must be filed at the county board of elections office or delivered to a member of the county board or the county supervisor of elections.~~

~~(e) A complaint must be filed within the following time:~~

- ~~(1) A complaint concerning the manner in which votes were counted or the results were tabulated at the precinct must be filed before the beginning of the meeting of the county board to canvass the results of the election. However, a complaint of this nature may be filed as late as 6:00 p.m. of the second day after the completion of the canvass and the declaration of the results, if the complaint states good cause for the delay.~~
- ~~(2) Any other complaint must be filed by 6:00 p.m. of the second day after the county board has completed the canvass and declared the results of the elections.~~

~~(f) The county board of elections may consider a complaint filed after the time stated in Paragraph (e) of this Rule, if the board finds and states good cause for the delay.~~

Authority G.S. 163-22; 163-22.1.

**08 NCAC 02 .0102 PRELIMINARY
CONSIDERATION OF COMPLAINT BY COUNTY
BOARD**

~~(a) As soon as possible after receiving a complaint, the county board shall meet to determine whether the complaint:~~

- ~~(1) Substantially complies with Rule .0001; and~~
- ~~(2) Establishes probable cause to believe that a violation of election law or that irregularity or misconduct has occurred.~~

~~(b) If the board determines under Paragraph (a) of this Rule that the complaint either fails to substantially comply with Rule .0001 or fails to establish probable cause, the board shall dismiss the complaint. The dismissal shall be in writing and filed at the board office. Within 24 hours of dismissing the complaint the board shall mail notice of dismissal to the person who made the complaint, at the address stated in the complaint. The board may attempt to notify the person earlier by telephone or otherwise. At the same time the county board mails notice to the person who filed the complaint it shall mail a copy of that notice and a copy of the complaint to the State Board. The person who filed the complaint may file an amended complaint or may appeal the dismissal to the State Board in the manner provided in Rule .0006 of this Chapter.~~

~~(c) If the board determines under Paragraph (a) of this Rule that the complaint does substantially comply with Rule .0001 and does establish probable cause, the board shall schedule a hearing to consider the complaint.~~

~~(d) Any complaint that was filed before the canvass and that concerns the manner in which votes were counted or the results tabulated in the precinct must be resolved before the completion of the canvass. If necessary to provide adequate time to resolve such matters, the board may recess the meeting held to canvass results, but in no event shall such recesses delay the completion of the canvass for more than three days unless approved by the State Board. Resolution of the complaint shall not delay the canvass of the results of elections not affected by the complaint.~~

~~(e) An appeal of the county board's dismissal of a complaint concerning the manner in which votes were counted or the results tabulated in the precinct shall not delay the canvass and declaration of results.~~

~~(f) A complaint concerning any matter other than the manner in which votes were counted or results tabulated in the precinct may be considered before the canvass but shall not affect the canvassing and declaration of results.~~

~~(g) The board may consolidate for hearing any complaints that relate to the same election.~~

Authority G.S. 163-22; 163-22.1.

**08 NCAC 02 .0103 SCHEDULING AND NOTICE OF
COUNTY BOARD HEARING**

~~(a) The county board shall determine the time and location of the hearing. A hearing on a complaint concerning the manner in which votes were counted or the results tabulated in the precinct shall be scheduled at the time and place of the canvass. The~~

~~county board may recess the canvass to provide time to resolve the complaint, as stated in Rule .0002(d).~~

~~(b) The board shall give notice of the hearing to the person who filed the complaint, any candidate likely to be affected, any election official alleged to have acted improperly, and any other person likely to have a significant interest in the resolution of the complaint. Each person given notice of the hearing shall also be given a copy of the complaint or a summary of the allegations made in it.~~

~~(c) Notice shall be given in the following manner:~~

- ~~(1) If the complaint concerns the manner in which votes were counted or the results tabulated in the precinct, the person who files the complaint shall be told when he files the complaint that it will be heard at the time of the canvass. Others to whom notice is to be given shall be notified by telephone or in person as far in advance of the canvass as time permits.~~
- ~~(2) If the complaint concerns a matter other than the manner in which votes were counted or the results tabulated in the precinct, the board shall either mail notice at least four days before the scheduled time for the hearing or shall give notice by telephone or in person at least two days before the hearing.~~

~~(d) Failure to comply with the notice requirements stated in this Rule shall not delay the holding of a hearing nor invalidate the results if it appears reasonably likely that all interested persons were aware of the hearing and had an opportunity to participate.~~

Authority G.S. 163-22; 163-22.1.

**08 NCAC 02 .0104 CONDUCT OF HEARING BY
COUNTY BOARD**

~~(a) The board may allow evidence to be presented at the hearing in the form of affidavits or it may examine witnesses. The chairman or any two members of the board may subpoena witnesses or documents. Each witness must be placed under oath before testifying.~~

~~(b) The board may receive evidence at the hearing from any person with information concerning the subject of the complaint. The person who made the complaint shall be permitted to present his allegations and introduce evidence at the hearing. Any other person to whom notice of hearing was given, if present, shall be permitted to present evidence. The board may permit evidence to be presented by a person to whom notice was not given, if the person apparently has a significant interest in the resolution of the complaint that is not adequately represented by other participants.~~

~~(c) The hearing must be recorded by a reporter or by mechanical means, and the full record of the hearing must be preserved by the county board until directed otherwise by the State Board.~~

Authority G.S. 163-22; 163-22.1.

08 NCAC 02 .0105 DECISION BY COUNTY BOARD

~~(a) The county board may deliberate and make its decision on the complaint immediately following the hearing or it may adjourn to a later time for that purpose. At the conclusion of the hearing the board shall state when it intends to announce its~~

decision and when a written decision will be filed and available for inspection at the board office. The board may choose not to announce its decision before the written decision.

(b) The board shall make a written decision on each complaint which shall state separately each of the following:

- (1) Findings of Fact. The findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. Findings of fact are not mere summaries of testimony.
- (2) Conclusions of Law. The conclusions the board may state are:
 - (A) The complaint should be dismissed because it does not substantially comply with Rule .0001.
 - (B) The complaint should be dismissed because there is not substantial evidence of a violation of the election law or other irregularity or misconduct.
 - (C) The complaint should be dismissed because there is not substantial evidence that the violation, irregularity, or misconduct was sufficiently serious to cast doubt on the results of the election.
 - (D) There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur, and might have affected the outcome of the election, but the board is unable to finally determine the effect because the election was a multi-county election.
 - (E) There is substantial evidence to believe that a violation of the election law or other irregularity or misconduct did occur and that it was sufficiently serious to cast doubt on the apparent results of the election.
- (3) An Order. If the board makes conclusion (A), (B) or (C) under Subparagraph (b) (2), the board shall order the complaint dismissed. If the board makes conclusion (b)(2)(D), the board shall order that the complaint and the board's decision be sent to the State Board for action by it. If the board makes conclusion (b)(2)(E), the board may order any of the following as appropriate:
 - (A) That the vote total as stated in the precinct return or the result of the canvass be corrected and new results declared.
 - (B) That votes be recounted.
 - (C) That the complaint and the board's decision be sent to the State Board for action by it.

(D) Any other action within the authority of the county board.

(c) If the county board is not certain what law is applicable to the findings of fact, the board may state and send its findings of fact to the State Board for it to determine the applicable law.

(d) At the time that the written decision is filed at the county board office the board shall mail a copy of the decision to the person who made the complaint and shall mail to the State Board a copy of the written decision and a copy of the complaint.

Authority G.S. 163-22; 163-22.1.

08 NCAC 02 .0106 NOTICE AND PERFECTION OF APPEAL

(a) The county board's decision on a complaint may be appealed to the State Board by:

- (1) The person who filed the complaint;
- (2) A candidate or election official adversely affected by the county board's decision; or
- (3) Any other person who participated in the hearing and has a significant interest adversely affected by the county board's decision.

(b) Written notice of the appeal must be given to the county board within 24 hours after the county files the written decision at its office.

(c) The appeal to the State Board must be in writing and must include the following information:

- (1) The name and address of the person appealing;
- (2) The person's standing to appeal;
- (3) The date, place, and kind of election in question;
- (4) The date of the county board hearing; and
- (5) The reason for appealing the decision, including any arguments concerning the facts or law in support of the appeal.

(d) The written appeal must be delivered or deposited in the mail, addressed to the State Board, by:

- (1) The end of the second day following the day on which the decision was filed by the county board in its office, if the decision concerns a first primary; or
- (2) The end of the fifth day following the day on which the decision was filed in the board office, if the decision concerns an election other than a first primary.

Authority G.S. 163-22; 163-22.1.

08 NCAC 02 .0107 CONSIDERATION OF APPEAL BY STATE BOARD

(a) In its consideration of an appeal from a decision of a county board on a complaint the State Board may:

- (1) Decide the appeal on the basis of the record from the county board;
- (2) Request the county board or any interested person to supplement the record from the county board, and then decide the appeal on the basis of that supplemented record;
- (3) Receive additional evidence and then decide the appeal on the basis of the record and that additional evidence;

- ~~(4) Hold its own hearing on the complaint and resolve the complaint on the basis of that hearing; or~~
- ~~(5) Remand the matter to the county board for further proceedings in compliance with an order of the State Board.~~

~~(b) The State Board shall give notice of its decision as required by G.S. 163-181 and may notify the county board and other interested persons in its discretion.~~

Authority G.S. 163-22; 163-22.1.

08 NCAC 02 .0108 STATE BOARD AUTHORITY OVER ELECTION PROTESTS

~~In exercise of the authority stated in G.S. 163-22 and 163-22.1 to supervise all elections in the state, the State Board may consider complaints that do not comply with these Regulations, may initiate and consider complaints on its own motion, may intervene and take jurisdiction over complaints pending before county boards, and may take any other action necessary and without taint of fraud or corruption.~~

Authority G.S. 163-22; 163-22.1.

08 NCAC 02 .0110 ACTIONS OF COUNTY BOARD AS TO ELECTION PROTESTS

(a) The county board shall deliver or place in the mail, a copy of an election protest form and any attachments to it, to the State Board of Elections within 24 hours after it is filed. Faxing the protest, with attachments, on that same day it was filed to the State Board shall constitute the required delivery. Sending the protest and attachments, by e-mail, on the same day it was filed shall also constitute the required delivery.

(b) The county board may not consider election protests not filed in time, but shall refer all such untimely protests, along with copies of the protest and attachments, to the State Board of Elections office for consideration of a possible hearing by the State Board of Elections under G.S. 163-182.12.

(c) If after preliminary consideration of a protest, the county board determines that a hearing should be held as authorized by G.S. 163-182.10, the board shall set the hearing no later than 10 business days from the date of the preliminary consideration, and shall start no earlier than 8:00 a.m. and no later than 8:00 p.m. at any location set by the county board of elections. The county board may continue hearings for good cause. Only for good cause and upon informing the State Board of Elections office, may a hearing be set on or continued to a weekend day or holiday.

(d) Notice of hearing as required by G.S. 163-182.10(b)(2) shall be given at least three business prior to the day of the hearing, and the notice required shall be actual notice by any means chosen by the county board. Any oral notice of the hearing shall be followed as soon as possible with a written notice. The oral notice shall constitute valid notice meeting the three-day notice requirement.

- (1) Upon a reasonable and relevant request by a protester or interested person, the chair or any

two members of the county board may issue subpoenas for persons or documents. Such subpoenas shall be served in the same matter as allowed in North Carolina Rules of Civil Procedure.

- (2) The county board shall notify the person protesting, any affected candidate, and any affected officeholder of its decision in a protest hearing no later than 5:00 p.m. the next day after the conclusion of the hearing itself. The board shall file at the board office a written decision within the mandates of GS. 163-182.10(d) by 5:00 p.m. five business days after the oral decision is given to the person filing the protest. Such written decision shall be served by any means of actual delivery upon the protestor and any affected candidate or officeholder within 24 hours after being filed at the board office. Nothing herein shall discourage more prompt decisions and written orders.

- (3) All election protest hearings before county boards shall recorded by a court reporter. The hearing need not be transcribed unless the board's decision is appealed. Upon notice of appeal to the State Board of an election protest, the county board shall cause the record of the hearing to be transcribed and delivered to the State Board, at the county board's expense, within seven business days of the notice of appeal to the county board. A county board may cause hearings to be recorded by mechanical means and not by court reporter only with prior permission of the executive director of the State Board of Elections. Any non-transcribed record of the county hearings may be destroyed 60 days after the date of hearing if not appealed, or 60 days after the entry of any final order or decision in an appealed hearing. Transcripts of hearings shall be kept for two years after their creation.

- (4) If the State Board sets an appeal for hearing, either a member of or the counsel to the county board shall appear at the hearing before the State Board. In addition, the county director of elections shall appear. With prior consent from the State Board, persons other than a county board member and director may appear on behalf of the county board at the appeal.

Authority G.S. 163-22; 163-182-10.

08 NCAC 02 .0111 ELECTION PROTEST FORM
All persons filing election protests with a county board of election shall use the following form:

ELECTION PROTEST

(Use of this form is required by G.S. 163-182.9(c))

PROPOSED RULES

This form must be filed with the county board of elections within the timeframes set out in G.S. 163-182.9 (b)(4). Please print or type your answers. Feel free to use and attach additional sheets if needed to fully answer the questions below. You may also attach relevant exhibits and documents. Please number the pages of such additional sheets and attachments.

1. Full name and mailing address of person filing the protest.

2. Home and business phone number, fax number, and e-mail address.

3. Are you either a candidate or registered voter eligible to vote in the protested election. If a candidate, for what office?

4. List the date, location, and exact nature of the election protested. Name all candidates in the election and the number of votes each received. Note the winning candidate(s) elected or nominated.

5. Does this protest involve an alleged error in vote count or tabulation? If so, please explain in detail.

6. Does this protest involve an irregularity or misconduct not described in number 5 above? If so, please give a detailed description of such misconduct or irregularity and name those who committed such action.

7. Please set out all election laws or regulations that you allege were violated in your responses to 5 or 6 above. State how each violation occurred. Please provide the names, addresses, and phone numbers of those who you allege committed such violations.

8. Please provide the names, addresses, and phone numbers of any witnesses to any misconduct alleged by you in this protest, and specify what each witness listed saw or knows.

9. What action do you desire the county board of elections to take in this matter?

10. Do you contend the allegations set out by you are sufficient to have affected or cast doubt upon the results of the protested election? If your answer is yes, please state the factual basis for your opinion.

11. Have you read and reviewed the North Carolina law pertaining to election protests as set out in G.S. 163-182.9 through G.S. 163-182.14 and current North Carolina State Board of Elections regulations pertaining to election protests?

12. How many pages of additional answer are attached to this protest? How many pages of attachments are attached?

Signature of Protestor

Date/Time Filed with County Board _____
(to be filled out by the county board)

NOTE: The county board must provide the State Board with a complete copy of a filed protest within one business day after it is filed. In addition, the county board shall provide a copy of the election audit with this copy of the protest.

Please direct any questions to your county board of elections or the North Carolina State Board of Elections, PO Box 27255, Raleigh, NC 27611-7255, (919) 733-7173.

Authority G.S. 163-22; 163-182.9.

08 NCAC 02 .0112 APPEAL TO THE STATE BOARD OF ELECTIONS

All appeals of a county board election protest decision must use the following form:

APPEAL OF ELECTION PROTEST TO STATE BOARD OF ELECTIONS

(Use of this form is required by G. S. 163-182.11 (a))

A copy of this appeal must be given to the county board of elections within 24 hours (weekends and holidays excluded) after the county board files its written decision at its office. This same appeal must be filed with or mailed to the State Board of Elections by the end of the second day following the county board decision if the protest involves a first primary. As to a protest of any other election, this appeal must be filed or deposited in the mail by the end of the fifth day following the county board decision. See G.S. 163-182.11(a). A copy of the original election protest form with attachments must be filed with this appeal. A copy of the county

PROPOSED RULES

board decision must be filed with this appeal. The county board will provide the record on appeal. As many additional sheets as are necessary to answer the questions below may be attached, but they must be numbered. Please print or type your answers.

- 1. Full name, mailing address, home and business phone, fax number, and e-mail address of undersigned.

- 2. Are you the person who filed the original protest, a candidate or office holder adversely affected by the county decision, or someone else whose interest has been adversely affected by the county decision?

- 3. State the date, place, kind of election, and results of the election protested (if different from the information on the election and its results as set out in the attached original protest form).

- 4. State the name, mailing address, home phone, and business phone of all candidates involved in the protested election.

- 5. State the date of the county board hearing.

- 6. State the legal and factual basis for your appeal.

- 7. Is there any material submitted with this appeal that was not presented to and considered by the county board? Is so, please identify and state why it was not presented to the county board. Why do you think the State Board of Elections should consider it?

- 8. Normally the State Board will make its decision in an appeal based upon the record from the county board. If you desire the record in this matter to be supplemented, additional evidence to be considered, or a completely new hearing, please state such desire and why it should be allowed in this appeal. See G.S. 163-182.11 (b).

- 9. What relief do you seek? Why?

- 10. Have you read and reviewed G.S. 163-182.11 through G.S. 163-182.14 and the current North Carolina State Board of Elections regulations on appeals of election protests?

- 11. Besides a copy of the original protest and the county board decisions, this appeal includes ___ pages of additional answers and ___ pages of exhibits and documents not included in the original protest and decision.

Signature of Person Appealing

Date Appeal Signed

Date appeal received by State Board of Elections

(To be entered by the State Board of Elections staff)

Send your appeal to, or if you have questions contact: North Carolina State Board of Elections, P.O. Box 27255, Raleigh, NC 27611-7255, (919) 733-7173.

Authority G.S.163-22; 163-182.11.

08 NCAC 02 .0113 NEW ELECTIONS ORDERED BY STATE BOARD OF ELECTIONS

- (a) Eligibility to vote in a new election shall be determined by the voter's eligibility and circumstances at the time of the new election.
- (b) Eligibility to register to vote and to vote in a new election shall be governed by G.S. 163-82.6.
- (c) The date of any new non-municipal election, in which absentee ballots are to be required or allowed, shall be set by the State Board no earlier than 75 days after the date of the order for a new election. In the case of a municipal election where absentee ballots are allowed, a new election shall not be set earlier than 55 days after the date of the order for a new election. This is required in order to provide sufficient time for absentee ballots to be prepared, printed and made available and for "one-

stop" voting to be provided within the mandates set out in G.S. 163, Article 20.

(d) The date of any new election ordered in a county covered by the preclearance requirements of Section 5 of the Voting Rights Act of 1965 shall be set no earlier than 75 days from the date of the new election order in order to prepare, submit, and obtain preclearance approval.

(e) If a new primary is ordered by the State Board, no person who voted in the initial primary of one party shall be allowed to vote in the new election in the primary of another party. County board documentation of the voter's participation in the initial primary shall be prima facie evidence sufficient to disallow the voter from participating in the primary of another party in the new election.

Authority G.S.163-22; 163- 182.13(c).

CHAPTER 04 – VOTING EQUIPMENT

SECTION .0100 - USE OF MECHANICAL VOTING MACHINES

08 NCAC 04 .0101 TYPE OF VOTING MACHINES ALLOWED

~~Any voting machine adopted by a county board of elections for use in any county in North Carolina shall be constructed as to fulfill the following requirements:~~

- ~~(1) It shall secure to the voter secrecy in the act of voting.~~
- ~~(2) It shall enable each voter to vote a straight-party ticket in a general election.~~
- ~~(3) It shall provide facilities for voting for all candidates of as many legal political parties as may make nominations.~~
- ~~(4) It shall, except in primary elections, permit the voter to vote for all the candidates of one party, or in part for the candidates of one or more other parties.~~
- ~~(5) It shall permit the voter to vote for as many persons for an office as he is lawfully entitled to vote for, but no more.~~
- ~~(6) It shall prevent the voter from voting for the same persons more than once for the same office.~~
- ~~(7) It shall permit the voter to vote for or against any question he may have the right to vote on, but no other.~~
- ~~(8) It shall permit each voter in a general election but not in a primary, to deposit, write in, or affix upon receptacles or devices provided for the purpose, ballots containing the names of persons for whom he desires to vote, whose names do not appear upon the machine.~~
- ~~(9) It shall be equipped for use in primary elections so that the election officials can lock out all rows except those of the voter's political party by a single adjustment on the machine.~~
- ~~(10) It shall correctly register or record, and accurately count all votes cast for any and all persons, and for or against any and all questions.~~
- ~~(11) It shall be provided with a public counter which shall show at all times during an election how many persons have voted.~~
- ~~(12) It shall contain proper places on the face of the machine in plain view of the voter when voting where the ballot labels shall be put, either in a perpendicular or horizontal position, so the voter will know exactly how he is voting.~~
- ~~(13) It shall contain a locked, concealed counter which shall be concealed at all times during the time the polls are open but which can be opened after the close of the polls and show the total vote cast for each candidate and for each party and on each question or issue submitted.~~

~~The State Board of Elections, as of December 1975, has already approved four types of voting machines for use in this state which comply with requirements outlined in .0101 of this Section; namely, (a) AVM, (b) IES, (c) R. F. Shoup, (d) Video Voter.~~

~~Authority G.S. 163-160; 163-161.~~

08 NCAC 04 .0102 CUSTODY OF VOTING MACHINES

~~Voting machines, when not in use, shall be under the custody of the chairman of the county board of elections who shall be directly responsible to the county board of elections for the safekeeping, storage, maintenance and care of the machines. All voting machines shall be properly stored in a safe, dry building, securely locked so they cannot be tampered with when not in use on election day. The chairman of the county board of elections may appoint as many persons as the board approves, for the maintenance, storage and care of the voting machines and for the proper preparation of the machines for a primary or election, as well as for their delivery to the voting precincts preceding a primary or an election. These persons so appointed by the chairman as custodians shall be paid for their services such compensation as the county board of elections may authorize and as approved by the county commissioners. On election day when the machines are being used for voting purposes, and until they are collected by the county board chairman, they shall be in the custody of the precinct registrar.~~

~~Authority G.S. 163-160.~~

08 NCAC 04 .0103 INSTRUCTING PRECINCT OFFICIALS ON USE OF VOTING MACHINES

~~The chairman of the county board of elections in a county where voting machines are used in more than one voting precinct, shall hold an instruction meeting before any primary or election for the purpose of instructing the precinct registrars and judges on the use of the machines so that they may be qualified to instruct the voters on how to vote on a voting machine. The precinct election officers shall be instructed on the use and operation of the machine according to factory instructions furnished with the machines when they are purchased or rented, and the chairman of the county board of elections shall not permit a voting machine to be used in any precinct in any election unless the chairman shall be satisfied that the registrar and judges of the precinct have learned the proper use and operation of the machines.~~

~~Authority G.S. 163-160.~~

08 NCAC 04 .0104 BALLOT LABELS FOR USE ON VOTING MACHINES

~~(a) In Primary Elections. All voting machine ballot labels for use in any county using voting machines in a primary shall be printed and furnished by the chairman of the county board of elections. The State Board of Elections shall transmit to the said county chairman a list of the names of all candidates of all political parties who have filed their notices of candidacy with the State Board of Elections and who are entitled to be voted for in the primary election, and the chairman shall print the names of such candidates on the special voting machine ballot labels,~~

together with the names of all candidates who have filed with the county chairman for legislative, county and township offices, arranged under the proper party name. The names of all of the candidates for each office for each political party shall be printed in alphabetical order under or to the right of the title of the office.

~~(b) In General Elections. All voting machine ballot labels for use in any county using voting machines in a general election shall be printed and furnished by the chairman of the county board of elections. The State Board of Elections shall transmit to the said county chairman a list of the names of all party nominees for the various offices for which the State Board of Elections is required by law to canvass the vote and certify the nominees and who are entitled to be voted for in the general election, and the said county chairman shall print their names on the special voting machine ballot labels, together with the names of the nominees for the offices for which the county board of elections is required to canvass the votes and certify the nominees, under the proper party name.~~

Authority G.S. 163-160.

08 NCAC 04 .0105 ARRANGEMENT OF POLLING PLACE WHERE VOTING MACHINES USED

~~At all elections where voting machines may be used, the arrangement of the polling place shall be the same as is now provided by law, except no voting booths or ballot boxes shall be used. The exterior of the voting machines and every part of the polling room shall be in plain view of the election officers. The machines shall be so placed that the ballot labels on the face of the machines can be plainly seen by the election officers and the party challengers and observers when not in use by voters. The election officers shall not themselves be, or permit any other person to be, in any position that will permit one to see or ascertain how a voter votes, except when the voter requests assistance. It shall be the duty of the registrar to post on the wall inside of the polling room sample voting machine ballots so that voters may inspect them to see where the different "parties and candidates" and "questions" are located on the machine and thus be able to find them quickly when voting. It is well, where possible to do so, to have a model voting machine, furnished by the manufacturers of the voting machines, set up on the election officers table, where the voters will pass it on their way to the machine, and have one of the judges of election, or an assistant, instruct each voter as he passes by letting the voter operate the model himself. In this way he can become familiar with the manner of operating the voting machine before he enters it, and will not require assistance in operating it.~~

Authority G.S. 163-160.

08 NCAC 04 .0106 DELIVERY AND INSPECTION OF VOTING MACHINES

~~It shall be the duty of the chairman of the county board of elections to have each voting machine delivered to the voting places and placed in the custody of the registrar within three days before the election with the ballot labels already in place on each machine. When the machines are delivered to the registrar the said chairman or his agent shall deliver to the registrar the keys for each machine in a "sealed envelope." The registrar and chairman shall then check to be sure the number stamped on the~~

~~keys correspond to the number of the voting machines. They shall also check to see that the ballot labels are correctly in position and examine the counters to see if they have been turned to 000, and that the machines are in good working order.~~

Authority G.S. 163-160.

08 NCAC 04 .0107 DIRECTIONS FOR VOTING WHEN MACHINES ARE USED

~~Just preceding the time for the polls to open, the registrar and judges shall open the voting machines and examine the ballot labels and counters to see if it is set at 000, and shall allow any watchers or any electors to examine the same before the voting begins. If found to be correct and in proper form, the counter shall be locked and sealed and remain that way until the polls close.~~

~~Provided that any new type voting machines which contain an added feature whereby before the casting of the first vote the status of all the counters in the voting machine may be printed on a paper memorandum which may be withdrawn without opening the machine, and at the close of the election a similar printed record showing the tally on all the counters which may be withdrawn without opening the machine, the above provisions relating to the inspection of the counters on the back of the machine at the opening and closing of the polls shall not be required.~~

~~After a voter enters the voting room or enclosure where voting machines are used, he shall follow the same procedure preparatory to voting as if paper ballots were used. The voter shall present himself to the registrar who will check the registration book to ascertain if the voter is properly registered. If found to be registered then the judge keeping the poll book will write his name in the poll book as having voted and the registrar shall also check his name on the registration book as having voted. If it is a primary election and the voter has no party affiliation recorded against his name on the registration book and refuses to declare his party affiliation, or states that he is an independent voter, then the registrar shall inform him that he cannot vote in the primary as the law now so provides. If the voter does have his party affiliation recorded, then the registrar shall inform the election officer in charge of the voting machine the party affiliation of the voter as recorded, and the party ticket which he may lawfully vote that is the same party as is recorded for him on the registration book. The voter shall, if properly registered, then go to the officer in charge of the voting machine and present himself for voting. The voter then shall be asked by the officer in charge if he knows how to operate the voting machine. If he says no, the officer, at the voter's request, may explain to the voter how to vote on the machine. If in a primary, the officer must actuate the primary knob or level for the particular political party with which the voter is enrolled so that he cannot vote for candidates of any other party in the primary. After completing the voting the voter opens the curtains and leaves the voting enclosure.~~

~~A voter using a voting machine is entitled to request the same assistance in the actual voting on the machine as the law now allows him to have in marking a paper ballot.~~

Authority G.S. 163-160.

08 NCAC 04 .0108 COUNTING OF VOTES AND

PREPARING RETURNS: ABSENTEE VOTES

~~(a) Immediately upon the close of the polls, the precinct election officers shall lock and seal the voting machine against further voting and open the counter compartment in the presence of persons who may be lawfully present at that time, giving full view of the counters. The presiding registrar, under the scrutiny of a judge of a different political party in a general election, or of any precinct official or any voters present in a primary election, shall then, in the order of the offices as their titles are arranged on the machine, read and announce in distinct tones the result as shown by the counter. He shall also, in the same manner, read and announce the vote on each constitutional amendment, proposition, or other question. As each vote is read and announced, it shall be recorded on two statements by the two judges, and when completed shall be compared with the numbers on the counters of the machine. If found to be correct, the results given by the voting machine counter, shall be announced by the presiding registrar. After the reading and announcing of the vote, and before the doors of the counter compartment of the voting machine shall be closed, ample opportunity shall be given to any person or persons lawfully present to compare the results so announced with the counters of the machine and if any corrections are necessary they shall then and there be made by the precinct officials.~~

~~(b) Provided that any new type voting machines which contain an added feature whereby before the casting of the first vote the status of all the counters in the voting machine may be printed on a paper memorandum which may be withdrawn without opening the machine, and at the close of the election a similar printed record showing the tally on all the counters which may be withdrawn without opening the machine, the above provisions relating to the inspection of the counters on the back of the machine at the opening and closing of the polls shall not be required.~~

~~(c) The election officers shall, as soon as the count is completed and fully ascertained, lock the counter compartment and it shall remain locked for a period of 30 days, except it be ordered opened by a court of competent jurisdiction, or by the State Board of Elections or county board of elections.~~

~~(d) All absentee ballots received at the precinct on primary or general election day from the chairman of the county board of elections shall be opened, checked and counted by the precinct officers in the same manner as is now provided by law where paper ballots are used. The absentee ballots shall be counted after the polls close and the votes added to the total vote as recorded by the voting machine counter. The precinct returns shall show the total votes received by each party or candidate including both those recorded on the voting machines and those of absentee voters.~~

~~(e) All of the absentee ballots and envelopes shall be returned by each registrar to the county canvass made by the county board of elections on the second day following the election.~~

Authority G.S. 163-160.

08 NCAC 04 .0109 COLLECTION OF VOTING MACHINES AND KEYS AFTER ELECTION

~~The keys of the voting machines shall be enclosed in an envelope to be supplied by the board on which shall be written the number of each machine and the district and precinct where it has been used, which envelope shall be securely sealed and~~

~~endorsed by the election officers, and shall be returned on canvass day to the board from whom the keys were received. The number on the seal and the number registered on the protective counter shall be written on the envelope containing the keys. All keys for voting machines shall be kept securely locked by the officials having them in charge. Only an authorized person shall have in his possession any key or keys of any voting machine, and all election officers or persons entrusted with such keys for election purposes, or in the preparation of the machine therefore, shall not retain them longer than necessary to use them for such legal purposes. The chairman of the county board of elections shall collect and store all machines as soon after the close of the election as possible, except where they will have to be used in a second primary, and the machines shall at all times be stored in a suitable place within the discretion of the chairman of the county board of elections, including the polling place itself, if suitable.~~

Authority G.S. 163-160.

SECTION .0200 - USE OF PUNCH-CARD VOTING EQUIPMENT

08 NCAC 04 .0201 DEFINITIONS

The following definitions apply to this Section:

- ~~(1) "Automatic tabulating equipment" includes apparatus which automatically examines (or scans) and counts votes recorded on ballot cards, and tabulates the results.~~
- ~~(2) "Ballot card" means a tabulating card on which votes may be recorded by punched holes or by marking with pen, pencil or special marking device.~~
- ~~(3) "Ballot labels" means the pages, cards or other material containing the names of offices and candidates and the statements of measures or issues to be voted on, which are placed on the voting device.~~
- ~~(4) "Counting center" means the voting precinct in which votes are recorded by the voter.~~
- ~~(5) "Electronic voting system" means a system in which votes are recorded on ballot cards, and such votes are subsequently counted and tabulated by automatic tabulating or counting equipment.~~
- ~~(6) "Voting device" means an apparatus which the voter uses to record his votes on a tabulating card, which votes are subsequently counted by automatic tabulating equipment.~~

Authority G.S. 163-160.

08 NCAC 04 .0202 AUTHORITY TO PURCHASE AND LEASE EQUIPMENT

~~(a) The governing body of any county or municipality, upon recommendation by the county board of elections, may acquire by purchase or lease or lease-purchase agreement or abandon any voting system covered by these rules, provided such equipment or system has been approved by the State Board of Elections and a letter of "certification of approval" is recorded in the office of the State Board of Elections. Any county or~~

~~municipality adopting the use of any system or equipment approved by the State Board of Elections may use such system or equipment in all elections and in all or a part of the precincts within its boundaries, provided however no such equipment shall be used along with paper ballots in the same precinct unless specifically permitted by provision contained in Chapter 163 of the General Statutes of North Carolina.~~

~~(b) The provisions of all state laws relating to elections shall apply to all elections where systems and equipment covered by these rules, are used. The provisions of these rules shall, however, be controlling with respect to elections where vote recorders, tabulating devices, automatic and electronic counting equipment are used.~~

~~(c) Mandatory Precinct Ballot Counter. No county, municipality, county or municipal board of elections shall permit the use of vote recorders, voting devices or electronic counting devices authorized by these rules, unless there is, in place in each precinct where such systems are used, an approved "precinct ballot counter" to be used to count the ballots cast in each such precinct.~~

~~(d) Ballots to Remain in Precinct Until Counted. No ballots, used in conjunction with devices and systems authorized by these rules shall be removed, transported or transferred from the voting precinct in which such votes were cast until such ballots have been counted and the results recorded on the required precinct return forms and properly executed by the registrar and judges.~~

Authority G.S. 163-160; 163-161.

**08 NCAC 04 .0203 VOTE RECORDERS:
TABULATING: COUNTING DEVICES**

~~Any electronic voting system, counting device, vote recorder or ballot system approved by these rules shall:~~

- ~~(1) provide for voting in secrecy, except in the case of voters who have received assistance as provided by law;~~
- ~~(2) permit each voter to vote at any election for all persons and offices for whom and for which he is lawfully entitled to vote; to vote for as many persons for an office as he is entitled to vote for; to vote for or against any question upon which he is entitled to vote; and the automatic tabulating or counting equipment shall reject choices for the office or question recorded on his ballot card if the number of choices exceeds the number for which he is entitled to vote;~~
- ~~(3) permit each voter, by one mark or punch, to vote for the candidates of that party for president and vice-president;~~
- ~~(4) permit each voter to vote for candidates in the primary in which he is qualified to vote, and not to vote for candidates in the primary in which he is not entitled to vote;~~
- ~~(5) prevent the voter from voting for the same person more than once for the same office;~~
- ~~(6) be suitably designed for the purpose used, of durable construction, and may be used safely, efficiently and accurately in the conduct of elections and counting ballots;~~

- ~~(7) when properly operated, record correctly and count accurately every vote cast.~~

~~When such device has been approved, any improvement or change which does not impair its accuracy, efficiency, or ability to meet all requirements shall not require a re-examination or re-approval.~~

Authority G.S. 163-160.

**08 NCAC 04 .0204 BALLOT LABELS:
IDENTIFICATIONS**

~~(a) Arrangement. Ballot labels shall be printed in vertical columns or in a number of separate pages which are placed on the voting device or on the ballot.~~

~~(b) Type; Color. Ballot labels shall be printed in plain clear type in black ink, of such size and arrangement as to fit the construction of the voting device or size of the ballot; they shall be printed on clear white material or on material of different colors to identify different ballots or parts of the ballot. Composition and color of ballot labels shall be subject to approval by the Executive Secretary-Director of the State Board of Elections.~~

~~(c) Titles of Office; Names of Candidates. The titles of offices and the names of candidates shall in all elections be arranged in vertical columns or in a series of separate pages. The office title shall be printed above or at the side of the names of candidates so as to indicate clearly the candidates for each office, the position for which each candidate is running, and the number to be elected. In all cases every ballot or ballot page shall conform to the requirements specified in G.S. 163-137(c).~~

~~(d) Ballot Cards. Ballot cards shall be of the size, design and stock suitable for processing by automatic data processing machines or automatic scanning counting devices that produce a printed type of the total votes cast for each candidate, office or issue. Each ballot card, used in conjunction with a vote recorder, shall have an attached serially numbered perforated stub, which shall be removed by an election official before it is deposited in the ballot box. The name of the county, municipality or special district, the designation and date of the election, and in primary elections, the name of the political party shall be printed on the ballot card.~~

~~(e) Sample Ballots. Sample ballots, which shall be facsimile copies of the official ballot or ballot labels, shall be provided as required by law. At least three copies shall be posted in each polling place on election day and shall be on display in the office of the county or municipal board of elections for at least 20 days prior to the date of the primary or election.~~

~~(f) Write-in Ballot. In elections in which voters are authorized to vote for persons whose names do not appear on the ballot, a separate write-in ballot, which may be in the form of a paper ballot, card or envelope in which the voter places his ballot card after voting, shall be provided to permit voters to write in the title of the office and the name of the person or persons for whom he wishes to vote.~~

Authority G.S. 163-160.

**08 NCAC 04 .0205 PREPARATION FOR
ELECTIONS: PRECINCT ELECTION OFFICERS**

~~Ballots and Supplies. Prior to any election at which equipment or devices authorized by these rules are used the county or~~

municipal board of elections shall have the voting and counting devices prepared for the election and shall provide the precinct election officials with voting devices, ballots, ballot boxes, ballot labels, ballot cards, "write-in" ballots and all other records and supplies as required.

Authority G.S. 163-160.

08 NCAC 04 .0206 PROCEDURE AT THE POLLING PLACE

~~(a) Instruction of Voters. Each voter shall be instructed how to operate the voting device or how to mark the ballot before he enters the voting booth.~~

~~(b) Spoiled Ballots. Any voter who spoils his ballot card may return it to the registrar or one of the judges and secure another. The word "spoiled" or "void" shall be written across the face of the ballot and it shall be placed in a container designated to house "spoiled" or "void" ballot cards.~~

~~(c) Depositing Ballot Card in Ballot Box. After the voter has marked his ballot card he shall return it to the designated election official who shall remove the stub (if a stub is required) and deposit the ballot card in the ballot box. No ballot card from which the stub has been detached shall be accepted by the election official designated to receive the ballot cards and such ballot cards shall be marked "spoiled" and placed with the spoiled ballot cards. Where ballot scanning counting devices are used the voter shall insert his ballot contained in the protective envelope provided and deposit the emptied ballot container envelope with the election official presiding over the ballot "scanner."~~

~~(d) Closing the Polls. As soon as the polls have been closed and the last qualified voter has voted, all unused ballot cards shall be counted, placed in a container and sealed for return to the appropriate board of elections. Before beginning the counting of the ballots, the registrar and both judges shall all witness a test on the precinct ballot counter by engaging the "print" button and securing a printed tape showing a "zero" balance for every candidate and issue. The registrar and both judges shall each sign the tape and shall retain it as a permanent record to be made a part of the precinct return form transmitted to the county board of elections. Following the "zero test" run, the registrar and both judges shall act as a counting team and shall proceed to process the ballot cards for counting by the precinct ballot counter.~~

~~(e) Procedure During Ballot Count. All proceedings during the "zero test" and the actual processing of the ballot cards shall be under the direct supervision of the registrar and both judges and shall be conducted under the observation of the public, but no persons except those authorized for the purpose shall touch any ballot or ballot card or return. If any ballot card is damaged or defective so that it cannot properly be counted by the automatic precinct ballot counter, a true duplicate copy shall be made and substituted for the damaged ballot. All duplicate ballots shall be clearly labeled "duplicate," and shall bear a serial number which shall be recorded on the damaged or defective ballot.~~

~~(f) Official Returns. The official results obtained from the precinct ballot counter after adding the "curbside ballots," if any, shall be entered upon the precinct return forms provided by the county board of elections and shall be signed by the registrar and judges as required by law.~~

~~(g) Disposition of Ballots After Counting. The precinct election officials shall place the ballot cards in the ballot card container,~~

~~provided by the county board of elections, which shall then be locked or sealed and such seal signed by the registrar and judges and shall then be delivered to the custody of the county board of elections in accordance with the procedure adopted and specified by the county board of elections.~~

Authority G.S. 163-160.

08 NCAC 04 .0207 COLLECTION OF VOTING EQUIPMENT AFTER ELECTION

~~The vote recorders, counting devices, ballot card containers, and all other election paraphernalia shall be secured and housed or delivered in accordance with the rules adopted by the county board of elections.~~

Authority G.S. 163-160.

08 NCAC 04 .0208 MANUFACTURERS REQUIRED TO PRESENT RULES

~~All manufacturers of devices or equipment authorized for use in North Carolina by these rules shall, through their respective representatives or sales agents, provide a copy of these rules to any county or other governmental entity from which solicitation is made.~~

Authority G.S. 163-160.

SECTION .0300 – APPROVAL AND OPERATION OF VOTING SYSTEMS

08 NCAC 04 .0301 REQUIREMENTS OF VOTING SYSTEMS

Any voting system used in any election in North Carolina shall be constructed to fulfill the following requirements:

- (1) It shall be designed to reasonably secure secrecy of the voter in the act of voting;
- (2) It shall enable the voter to vote a straight party ticket in a general election;
- (3) It shall require the voter to vote for the candidates for president and vice-president separately from the straight party vote;
- (4) It shall provide capacity for listing of all nominees of all recognized political parties and other lawful candidates;
- (5) It shall, except in primary elections, permit the voter to vote for all the candidates of one party, or in part for the candidates of one or more other parties;
- (6) It shall permit the voter to vote for only as many persons for an office as the voter chooses and is lawfully entitled to vote for;
- (7) It shall prevent the voter from voting for the same persons more than once for the same office;
- (8) It shall permit the voter to vote for or against only the question(s) the voter may have the right to vote;
- (9) It shall permit each voter in a general election but not in a primary, to write in the name of persons for whom he desires to vote, whose names do not appear upon the ballot, except

- where prohibited by G.S. 163-123 or other statutes;
- (10) It shall be equipped for use in primary elections so that the voter may vote only in the primary election to which the voter is entitled to vote;
 - (11) When properly operated, it shall correctly register or record, and accurately count all votes cast for all ballot items;
 - (12) It shall contain a visible public counter that shall show at all times during an election the number of persons who have voted;
 - (13) It shall clearly indicate to the voter during the act of voting the ballot items the voter has selected;
 - (14) Vote totals for each ballot item shall be contained by a method that is locked and concealed at all times during the time the polls are open;
 - (15) It shall meet current Federal Voting System Standards or other applicable Federal Standards;
 - (16) It shall be suitably designed and durably constructed for the conduct of elections; and
 - (17) It shall be equipped to provide retrievable ballots.

- (9) Obtain a list of all jurisdictions currently using the voting system; and
- (10) Obtain such other reasonable information requested by the State Board of Elections;

(b) Modifications or Enhancement of Voting Systems. A change to any voting system or unit, including software and hardware modification, shall be submitted in writing for the review of the Executive Director of the State Board of Elections. Following the review, the Executive Director shall determine whether the change is a modification of the voting system as certified by the State Board of Elections. If it is determined to be a modification, the voting system as modified shall be submitted to the State Board of Elections for approval. If the Executive Director shall determine the change is an enhancement that does not substantially alter the voting system as certified by the State Board of Elections, the Executive Director may approve the enhancement and shall not require the review of the State Board of Elections.

(c) Disapproval of Voting System. The State Board of Elections shall have the right to hear and act on complaints arising by petition or otherwise, on the failure or neglect of a voting system or vendor marketing a system to comply with any part of the election laws of the State of North Carolina or for any other satisfactory cause, including but not limited to performance of the system in an election setting. Before exercising this power, the State Board of Elections shall notify the voting system vendor and/or county boards of elections affected and give opportunity to be heard at a hearing to be set by the State Board of Elections.

Authority G.S. 163-22; 163-165.7.

08 NCAC 04 .0302 APPROVAL OF VOTING SYSTEMS

(a) Before approving a voting system for use in North Carolina, the State Board of Elections shall do all of the following:

- (1) Obtain a current financial statement from the proposed vendor and manufacturer's contact information (mail address, telephone and fax numbers, email address);
- (2) Cause staff to review and appraise the voting system;
- (3) Witness a demonstration of the voting system by the proposed vendor;
- (4) Obtain a copy of Independent Testing Authority certification as authorized by National Association of State Elections Directors or Federal Agency;
- (5) Ensure that a copy of the system's source code is held in escrow by a third party approved by the State Board of Elections for the purpose of taking custody of all source codes, including all revisions or modifications of source codes. Proprietary information is not subject to North Carolina Public Records laws;
- (6) Any discussion of proprietary information by the State Board of Elections shall take place in Closed Session as authorized by the Open Meetings requirements of North Carolina law;
- (7) Ensure performance of system complies with North Carolina laws and rules related to voting systems;
- (8) Obtain a copy of the manufacturer's instructions and maintenance manual;

Authority G.S. 163-22; 163-165.7.

08 NCAC 04 .0303 OFFICIAL BALLOT(S) TO BE USED ON VOTING SYSTEM

(a) In Primary Elections:

- (1) All voting system ballots for use in any county shall be printed and furnished by the chairman of the county board of elections.
- (2) The chairman shall print or cause to be printed on the official ballots for use in the county all ballot items. This shall include but not be limited to the name of each candidate who is to be voted for in that county, as contained on the list of candidates received from the State Board of Elections and from the notices of candidacy filed with the county board of elections.
- (3) The names of all of the candidates for each office for each political party shall be printed in the exact order as determined and provided to each county board of elections by the State Board of Elections.
- (4) The responsible board of elections shall prepare ballots in a number equal to one hundred percent (100%) of the number of registered voters in the primary and shall furnish each precinct voting place with each kind of ballot to be voted in the primary in a number equal to at least seventy percent (70%) of the number of persons registered to vote in the primary or in the precinct, keeping the

balance in reserve in such a manner that is secured yet easily accessible if needed. If a second primary or runoff election is necessary, the responsible board of elections shall prepare and fully distribute, without a reservation, ballots in a number equal to at least twice the number of ballots issued for that particular race in the first primary.

(b) In General Elections:

- (1) All voting system ballots for use in any county shall be printed and furnished by the chairman of the county board of elections.
- (2) The chairman shall print or cause to be printed on the official ballots for use in the county. This shall include but not be limited to the names of each candidate who is to be voted for in that county, as contained on the list of nominees received from the State Board of Elections and from the notices of candidacy filed with the county board of elections.
- (3) The names of all of the nominees for each office shall be printed in the exact order as determined and provided to each county board of elections by the State Board of Elections.
- (4) The responsible board of elections shall prepare ballots in a number equal to one hundred percent (100%) of the number of registered voters in the election and shall furnish each precinct voting place with each kind of ballot to be voted in the election in a number equal to at least seventy percent (70%) of the number of persons registered to vote in the election or in the precinct, keeping the balance in reserve in such a manner that is secured yet easily accessible if needed. If a runoff election is necessary, the responsible board of elections shall prepare and fully distribute, without a reservation, ballots in a number equal to at least twice the number of ballots issued for that particular race in the first election.

(c) In Other Elections:

- (1) All voting system ballots for use in any county shall be printed and furnished by the chairman of the county board of elections.
- (2) The chairman shall print or cause to be printed on the official ballots for use in the county, the questions, issues, or propositions which are to be voted on in that county, as contained on the list of statewide items received from the State Board of Elections, petitions or from the action of local governmental entities.
- (3) Any review of any special election ballot containing questions, issues, or propositions by the State Board of Elections office or a county board of elections shall not be considered a certification or opinion that the items on the ballot are lawfully upon the ballot and lawfully authorized to be vote upon at the time and place so indicated. It shall be the responsibility of the political entities

authorizing the placing of the questions, issues, or propositions for a vote to determine the legality of items to be presented. Upon the request of a county board of elections, the State Board of Elections may present any issue as to the legality of any ballot items in a special election to the North Carolina Attorney General for a legal opinion.

- (4) The responsible board of elections shall prepare ballots in a number equal to one hundred percent (100%) of the number of registered voters in the election and shall furnish each precinct voting place with each kind of ballot to be voted in the election in a number equal to at least seventy percent (70%) of the number of persons registered to vote in the election or in the precinct, keeping the balance in reserve in such a manner that is secured yet easily accessible if needed. If a runoff election is necessary, the responsible board of elections shall prepare and fully distribute, without a reservation, ballots in a number equal to at least twice the number of ballots issued for that particular race in the first election.

(d) The State Board shall review for accuracy the ballot content, arrangement and instructions to voters and certify all ballots to be used in each official election. The primary responsibility for proofing the ballot lies with the county board of elections. Ballots are to be submitted to the State Board as soon as practicable but not later than five days following the certification of ballot items. When related litigation is pending the State Board shall exert every effort to certify ballot information in as timely a manner as possible.

Authority G.S. 163-22; 163-165.6.

08 NCAC 04 .0304 OPERATION AND MATTER OF VOTING ON VOTING SYSTEMS

(a) Prior to the opening of the polls, the precinct officials shall open the voting system and examine the ballot for accuracy and examine the counters or other method to determine there is a zero balance. Any persons interested in viewing this procedure may observe but shall not interfere or impede the process. If the system prints a zero tape or other paper document, it shall be maintained and secured in the manner prescribed by the manufacturer and the county board of elections.

(b) The voter shall follow the instructions contained on the voting system. Only properly voted official ballots shall be introduced into the voting system. If a voter improperly marks or damages a ballot, it shall be returned to the precinct official, marked as spoiled and maintained as specified by the county board of elections. The voter may not receive a replacement ballot until the spoiled or damaged ballot is returned to the precinct official. The voter shall not be given more than three replacement ballots.

(c) Except as provided for curbside voting, official ballots shall not leave the voting enclosure during the time that voting is being conducted there.

Authority G.S. 163-22; 163-165.7.

08 NCAC 04 .0305 INSTRUCTION OF PRECINCT OFFICIALS AND VOTERS IN THE USE OF VOTING SYSTEMS

(a) The chairman of the county board of elections in a county where a voting system is used shall conduct an instructional meeting before any primary or election to instruct the precinct officials in the use of the voting system. The chairman may use any persons deemed knowledgeable or useful to the instruction of the precinct officials. The instructions on the use and operation of the voting system shall be according to manufacturer's instructions furnished with the voting system, whether the system is purchased or leased by the county board of elections. The precinct officials shall be qualified to instruct the voters on the use of the voting system.

(b) The chairman of the county board of elections shall not permit a voting system to be used in any precinct in any election unless the chairman shall be satisfied that the precinct officials of the precinct have learned the proper use and operation of the system. Such additional instruction as determined by the county board of elections to be needed shall be provided.

(c) A voter may request instruction for the proper use of the voting system from a precinct official. The precinct official shall provide such technical instruction to the voter but shall not seek to influence or intimidate the voter in any manner.

Authority G.S. 163-22; 163-165.7.

08 NCAC 04 .0306 DUTIES OF CUSTODIANS OF VOTING SYSTEMS

(a) The chairman of the county board of elections shall be responsible for the safekeeping, storage, maintenance and care of the voting system. The voting system shall be properly stored in a safe, appropriate and secure location so that the system cannot be tampered with when not in use on election day. The county board of elections may appoint as many persons as determined necessary for the maintenance, storage and care of the voting system and for the proper preparation and testing of the voting system and delivery to the voting precincts preceding a primary or an election. Persons employed for this purpose shall be compensated for their services as authorized by the county board of elections.

(b) On election day when the system is used for voting purposes and until the county board chairman collects the system, the voting system shall be under the direct supervision and control of the chief judge unless otherwise authorized.

Authority G.S. 163-23; 163-165.7.

08 NCAC 04 .0307 TESTING OF VOTING SYSTEM BEFORE USE IN AN ELECTION

The county board of elections shall test or cause to be tested each voting system or unit that will be used in the election to ensure that the system is operating properly and has been programmed to count votes accurately. There shall be a record maintained along with the voted and unvoted ballots at the county board of elections office that shall include at a minimum the dates, times and method of testing used and the persons conducting the test. Any interested person may observe the testing of the voting system but shall not interfere or impede the process. For the purpose of testing a voting system prior to the

purchase or lease of the system, testing at a one-stop absentee voting site shall fulfill the requirement to test the voting system in a precinct within the county.

Authority G.S. 163-22; 163-165.7.

CHAPTER 06 – PARTISAN ELECTIONS AND BALLOTS

SUBCHAPTER 06B – BALLOTS

08 NCAC 06B .0101 GENERAL BALLOT GUIDELINES

(a) All ballots cast in elections, primaries, and referenda shall be printed and distributed at the public expense of the jurisdiction for which the election is conducted.

(b) Ballots shall be arranged in the order certified to the county board of elections by the State Board of Elections.

(c) Ballots shall be printed in plain clear type, of such size and arrangement as to fit the construction of the voting system or size of the ballot.

(d) The ballot shall be printed with contrasting type and background so that it can be easily viewed by the voter; material of different colors to identify different ballots may be used. In primary elections, ballots of different colors may be used to distinguish a political party's ballot if practicable. Composition and color of ballots shall be subject to approval by the Executive Director of the State Board of Elections.

(e) The State Board of Elections shall review for accuracy the ballot content, arrangement and instructions to voters and approve all ballots to be used in each official election. The primary responsibility for proofing the ballot lies with the county board of elections. Ballots are to be submitted to the State Board of Elections as soon as practicable but not later than five days following the certification of ballot items. When related litigation is pending the State Board of Elections shall exert every effort to certify ballot information in as timely a manner as possible.

(f) The responsible board of elections shall prepare ballots in a number equal to one hundred percent (100%) of the number of registered voters in the primary or election and shall furnish each precinct voting place with each kind of ballot to be voted in the primary or election in a number equal to at least seventy percent (70%) of the number of persons registered to vote in the primary or election in the precinct, keeping the balance in reserve in such a manner that is secured yet easily accessible if needed. If a second primary or runoff election is necessary, the responsible board of elections shall prepare and fully distribute, without a reservation, ballots in a number equal to at least twice the number of ballots issued for that particular race in the first primary or election.

Authority G.S.163-22; 163-165.3; 163-165.4.

08 NCAC 06B .0102 USE OF PAPER BALLOTS WHERE VOTING SYSTEMS ARE USED

The county board of elections shall have authority to furnish paper ballots of each kind to precincts using voting systems for use by:

- (1) Persons who have been challenged and the challenge has been overruled or sustained;

- (2) Persons who vote using the curbside voting provisions;
- (3) Persons who vote a provisional ballot; and
- (4) A board of elections in extraordinary circumstances if written approval is issued by the State Board of Elections.

Authority G.S. 163-22; 163-165.3; 163-165.4.

08 NCAC 06B .0103 ARRANGEMENT OF OFFICIAL BALLOTS

(a) As soon as practicable after the close of the filing period, the State Board of Elections shall certify to the county boards of elections the order of the offices and candidate names to be voted on the official ballot. The State Board of Elections shall provide the text and arrangement of referenda to be voted on the official ballot.

(b) Generally the order of precedence for candidate ballot items shall be as follows:

- (1) Federal Offices;
- (2) State Offices in the order certified by the State Board of Elections;
- (3) District and local offices;
- (4) Non-partisan offices; and
- (5) Referenda, unless the voting system design requires it to be before candidate ballot items.

Ballot items for full terms of an office shall be listed before ballot items for partial terms of the same office. The term of the unexpired office only shall be listed as part of the title of the office.

(c) Names of candidates shall be printed in the exact form either certified by the State Board of Elections for those candidates that are required to file the Notice of Candidacy with the State Board of Elections, by convention or by petition. Candidates for all offices shall provide their name exactly as it is to appear on the ballot. Candidates may request in writing a change in the manner that their name is to appear on the ballot during the time the filing period is open.

Authority G.S. 163-22; 163-165.6.

08 NCAC 06B .0104 LATE CHANGES IN BALLOTS

After the official ballots for a general or special election have been printed and the absentee voting period has begun, the death, resignation, or disqualification of a candidate whose name appears on the official ballots shall not require that the ballots be reprinted. If the vacancy occurs before the absentee voting period begins, the responsible board of elections may determine that it is feasible and advisable to have the ballots reprinted with the name of the replacement nominee as authorized by G.S. 163-114. If the ballots are not reprinted, a vote cast for the candidate whose name is printed on the ballot shall be counted as a vote for the replacement nominee.

Authority G.S. 163-22; 163-165.3.

08 NCAC 06B .0105 COUNTING OF OFFICIAL BALLOTS

(a) Following the close of the polls the official ballots shall be counted. Precinct officials shall follow the procedures specified by the voting system manufacturer and in compliance with G.S.

163-182.1 and 163-182.2. The counting of the ballots shall be completed in the presence of the precinct election officials, observers, and any persons desiring to observe the count. All official ballots shall be counted at the precinct unless authorized by legislative local act and approved by the State Board of Elections.

(b) The counting of the ballots at the precinct shall be continuous until completed. From the time the counting of the ballots is begun until the votes are counted and the requisite documentation is signed, certified as required, and delivered to the chief judge or judge chosen to deliver them to the county board of elections, the precinct chief judge and judges shall not separate, nor shall any of them leave the voting place except for unavoidable necessity.

(c) In the cases where the precinct officials must interpret the voter's choice, the following shall apply:

- (1) When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices;
- (2) If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices;
- (3) If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined; and
- (4) If a voter has done anything to a ballot other than mark it properly, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.

(d) When the counting is completed the chief judge or designee shall announce the results at the precinct. The announcement of the results shall clearly state the results are unofficial. The unofficial results shall be transmitted to the county board of elections in the manner determined by the county board of elections and the voting system. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow. As soon as the precinct reports are received, the chairman, secretary or designee shall publish the unofficial reports to the news media.

(e) Provisional official ballots shall be counted by the county board of elections before the canvass. If the county board finds that an individual voting a provisional official ballot is not eligible to vote in one or more ballot items on the official ballot, the board shall not count the official ballot in those ballot items, but shall count the official ballot in any ballot items for which the individual is eligible to vote.

Authority G.S. 163-22; 163-182.1; 163-182.2.

CHAPTER 07 – FAXING AND ELECTRONIC TRANSFER OF VOTER INFORMATION

SUBCHAPTER 07B – SUBMITTING AND ACCEPTING VOTER INFORMATION BY FAX

08 NCAC 07B .0101 SUBMITTING VOTER

REGISTRATION AND CHANGES OF PARTY AFFILIATION

(a) An applicant may submit any form outlined in G.S. 163-82.3 by fax to the county board of elections fax number. There are no other numbers to which faxed voter registration applications may be sent. Note that faxed voter registration applications must be received by the county board of elections by 5:00 p.m. on the 25th day before the election. Applicants are encouraged to retain the fax transmission sheet in case the timeliness of their faxed application is called into question.

(b) The applicant, after transmitting an original application for voter registration or a change of party affiliation by fax, must mail or have placed in delivery the original and signed voter registration application to the county board of elections office in the county in which the applicant is applying no later than 20 days before the election.

(c) Changes of name and/or address submitted by registered voters by fax may be made in form of any written notice signed by the registrant that includes the registrant's full name, date of birth, former residence address, new residence address, and date of moving from the old to the new address. Changes of name and/or address submitted by fax must be received by 5:00 p.m. on the 25th day before the election. Original documents do not have to be delivered to the board of elections.

Authority G.S. 163-22; 163-82.6; 163-82.15.

08 NCAC 07B .0102 ACCEPTING VOTER REGISTRATION APPLICATIONS

(a) County boards of elections must ensure that fax machines are in good working order. County boards shall also ensure that their fax numbers are made widely available throughout the county and to the State Board of Elections.

(b) The State Board of Elections shall maintain all current fax numbers for county boards of elections on its Website at www.sboe.state.nc.us and shall provide telephone assistance to those seeking the proper fax number.

(c) The county board of elections shall, as much as possible, ensure the quality and security of its fax machine. A log of any problems or times in which the fax machine was not operational shall be maintained.

(d) The county board shall develop a plan for checking the fax machine for voter registration documents and shall ensure their delivery to a secure location to await processing.

(e) The following shall apply to new registrations and changes of information submitted by fax:

(1) New registrations and changes of party affiliation submitted by fax must be completed on a form outlined in G.S. 163-82.3 and must be followed by the original application with the original signature of the voter; and

(2) Changes of name and/or address submitted by registered voters by fax may be made in form of any written notice signed by the registrant that includes the registrant's full name, date of birth, former residence address, new residence address, and date of moving from the old to the new address. Changes of name and/or address submitted by fax must be received by 5:00 p.m. on the 25th day before the election. Original documents do not have to be

delivered to the board of elections prior to processing for changes of address.

(f) When a faxed voter registration document is received by a county board of elections office, staff must determine whether or not the document is a new registration within the county or a change of information within the county. New registrations and changes of party affiliation should be separated from changes of name and/or address received by fax.

(g) Faxed original applications and changes of party affiliation should be held in queue until the original application is received by mail or other delivery. Upon receipt of the original application, the application may be processed as timely if transmitted by the 20-day deadline.

(h) Faxed changes of name and/or address may be processed immediately.

(i) New applications and changes of information submitted by fax shall be maintained in the same manner as all other registration/change of information documents.

Authority G.S. 163-22; 163-82.6; 163-82.15.

CHAPTER 09 - CONDUCT OF VOTE RECOUNTS BY COUNTY BOARDS OF ELECTIONS

08 NCAC 09 .0101 RECOUNTS TO FOLLOW CUSTOMARY PROCEDURES

~~Except as provided to the contrary in this Chapter, a recount of votes and publication of results shall be undertaken in the same manner and under the same circumstances as provided by law for the original counting of votes.~~

Authority G.S. 163-179.1; 163-192.1.

08 NCAC 09 .0102 LOCATIONS OF RECOUNTS

~~Upon receiving a demand for recount of votes, if the demanding candidate is entitled by law to a recount or if a county board of elections determines that a recount is otherwise in order, the board shall set a date, time, and place for such recount. The board shall determine that all votes cast shall be counted at a central location, that they shall be counted in the precincts in which they were cast, or that they shall be counted at a combination of these and other locations where vote tabulation normally occurs.~~

Authority G.S. 163-179.1; 163-192.1.

08 NCAC 09 .0103 NOTICE OF RECOUNT

~~Upon deciding the date, time, and place of a recount of votes, a county board of elections shall give notice to any candidates whose votes will be recounted and to any other candidate or other person determined by the board to be sufficiently interested in the outcome of such recount. The county board shall give such notice in any form that is reasonably calculated to reach such persons and shall advise such persons of the date, time and place of recount and of their right or the right of their designees to be present to witness the recount of votes.~~

Authority G.S. 163-179.1; 163-192.1.

08 NCAC 09 .0104 OFFICIALS CONDUCTING RECOUNT

~~In recounting votes, a county board of elections may employ the services of as many elections officials and ballot counters as it deems necessary. In no event, however, shall votes be recounted in the precincts in which they were cast unless the registrar and both judges of said precinct are present for the entire period during which votes are recounted and the results are recorded.~~

Authority G.S. 163-179.1; 163-192.1.

08 NCAC 09 .0105 CHALLENGE OF RECOUNT PROCEDURES

~~In the event that any candidate for an office for which votes have been recounted challenges the results of such recount or the manner in which votes were recounted, the candidate shall, within 24 hours, file his protest with the county board of elections. Protests of recounts shall be in the same form as provided for other protests and shall be heard by the county board in the same manner as provided for other protests.~~

Authority G.S. 163-179.1; 163-192.1.

08 NCAC 09 .0106 GENERAL GUIDELINES

(a) Prior to each recount, the board of elections shall confer with affected parties and candidates and describe to them the process of conducting recounts.

(b) In the case of tie votes, the winner shall be determined by lot only in the case of G.S. 163-182.8(2). Where there are 5,000 or fewer votes cast, there shall be only one determination by lot for each tied election. There shall be no determination by lot until the time has expired for the affected candidate(s) to request a recount, unless all of the affected candidate(s) waive their right in writing to request a recount.

(c) During the conduct of recounts, in the cases where the board of elections must interpret the voter's choice, the following shall apply:

- (1) When it is impossible to determine a voter's choice for an office, the ballot shall not be counted for that office but shall be counted for all other offices;
- (2) If a ballot is marked for more names than there are positions to be filled, it shall not be counted for that office but shall be counted for all other offices;
- (3) If a ballot has been defaced or torn by a voter so that it is impossible to determine that voter's choice for one or more offices, it shall not be counted for such offices but shall be counted for all offices for which the voter's choice can be determined; and
- (4) If a voter has done anything to a ballot other than mark it properly with pen or pencil, it shall be counted unless such action by the voter makes it impossible to determine the voter's choice.

(d) The following shall apply in counting punch card ballots:

- (1) If the voter has shown consistency in marking his choices on the ballot - all of the candidates for whom the voter has indicated a preference shall be counted if the corresponding chad is completely punched out or hanging by one

corner (showing that three of the four corners have been punched out); and

- (2) If the chad has not been punched out or is not hanging by one corner, then the determination must be made if the voter has shown consistency in marking the ballot. If the voter has shown consistency in marking choices on the ballot - all of the candidates for whom the voter has indicated a preference shall be counted. A preference shall be constituted by the equal application of the stylus against the ballot for the preferred candidates.

(e) In conducting recounts of lever, direct record electronic, and any other types of voting machines that require a county board member or designated official to reprint tapes and to read the totals and another board member to record the totals for each candidate shall be conducted by a bi-partisan team of four: two officials (one from each party) reading and confirming the totals per machine and two officials (one from each party) recording the results simultaneously.

(f) In conducting hand to eye recounts or recounts of paper ballots, a bi-partisan team of four shall be used: two officials (one from each of the two parties in the State with the largest number of registered voters) to relay the results of each ballot with one person reading the ballot and the other official observing the ballot and the person reading the results of the ballot, and two officials (one from each of the two parties in the State with the largest number of registered voters) recording the tally of votes for each candidate on paper while stating aloud after each choice is read on the fifth tally for a particular candidate, the word "tally."

(g) The county board of elections conducts recounts in two circumstances. In the first circumstance, the recount is mandatory under G.S. 163-182.7(b). In the second circumstance, the recount is not mandatory but the county board of elections or the State Board of Elections determines, using its authority in G.S. 163-182.7(a), that in order to complete the canvass a recount is necessary.

Authority G.S. 163-22; 163-182.7.

08 NCAC 09 .0107 RECOUNT OF OPTICAL SCAN/MARKSENSE/PUNCHCARD BALLOTS

(a) How to conduct the first recount. In the first recount, all ballots that were originally to be counted by the optical scan equipment are to be counted again by the optical scan equipment. All ballots that were rejected for tabulation purposes by the machines - commonly called "outstacked" or center bin ballots - are to be counted by hand and eye. The results provided shall be carefully re-read using the team of four guidelines outlined in 08 NCAC 09 .0106(c).

(b) The steps after the first recount. When the first recount has been completed, the board of elections shall follow these steps:

- (1) The county board must determine whether the first recount produces a change in the winner;
- (2) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount, by hand and eye, of all ballots;
- (3) If the apparent winner after the initial balloting remains the apparent winner after the first

- recount, Subparagraph (4) of this Rule must be considered;
- (4) The county board must determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount;
 - (5) If the machine totals from the initial balloting and the first recount are the same, no second recount is necessary;
 - (6) If the machine totals from the initial balloting and the first recount are not the same, Subparagraph (7) of this Rule must be considered;
 - (7) The county board must determine whether the discrepancy in the machine total can be reconciled;
 - (8) The county board shall determine if the discrepancy in the machine total between the initial balloting and the first recount can be explained. The county board shall examine the outstack/center bin ballots from the first recount, determine how they should be counted, and reconcile the count with the machine count on the initial balloting. If this reconciliation produces the same machine total for the first recount as the machine total in the initial balloting, no second recount is necessary; and
 - (9) If the reconciliation produces a different machine total for the first recount than the machine total in the initial balloting, the losing candidate is entitled to demand a second recount, by hand and eye, of all ballots.

(c) A manual recount, by hand and eye, of all ballots is mandatory whenever machine error occurs. If human error is the cause of the discrepancy - and can be graphically explained - the State Board of Elections shall hear such appeals, and make a judicial determination on the facts.

Authority G.S. 163-22; 163-182.7.

08 NCAC 09 .0108 DIRECT RECORD ELECTRONIC AND LEVER (DIRECT RECORD MECHANICAL) VOTING MACHINES

- (a) How to conduct the first recount. In the first recount, all votes cast on each unit shall be retabulated and results provided. The results provided shall be carefully re-read using the team of four guidelines outlined in 08 NCAC 09 .0106(c).
- (b) The steps after the first recount. When the first recount has been completed, the board of elections shall follow these steps:
- (1) The county board must determine whether the first recount produces a change in the winner;
 - (2) If the apparent winner after the initial balloting is the apparent loser after the first recount, that candidate shall be entitled to demand a second recount;
 - (3) If the apparent winner after the initial balloting remains the apparent winner after the first recount, Subparagraph (4) of this Rule must be considered;

- (4) The county board must determine whether there is a discrepancy in the machine totals between the initial balloting and the first recount;
- (5) If the unit totals from the initial balloting and the first recount are the same, no second recount is necessary;
- (6) If the unit totals from the initial balloting and the first recount are not the same, Subparagraph (7) of this Rule must be considered;
- (7) The county board must determine whether the discrepancy in the machine total can be reconciled;
- (8) The county board shall determine if the discrepancy in the unit totals between the initial balloting and the first recount can be explained. Possible acceptable explanations may include problems with the setup of the ballot, problems with the software or other unit malfunction; and
- (9) If the reconciliation produces a different unit total for the first recount than the unit total in the initial balloting, the losing candidate is entitled to demand a second recount provided by the county board of elections in cooperation with the voting equipment vendor(s).

(c) A manual recount, by hand and eye, of ballots is not possible whenever a lever machine or direct record electronic voting machine error occurs. The State Board of Elections shall hear any appeals, and make a judicial determination on the facts.

Authority G.S. 163-22; 163-182.7.

08 NCAC 09 .0109 MANUAL HAND TO EYE RECOUNTS

Mandatory recounts by hand and eye of optical scan/marksense/punchcard voting equipment shall be conducted as follows if a sufficient sample of the precincts of the voting units in question were recounted by hand and eye and produced identical results with that of the mandatory recount in those precincts that one could reliably assume that any problems with scanning equipment was confined to those precincts in which there was a difference in the totals between the original count and the mandatory recount, then:

- (1) The mandatory recount by hand initially shall occur in only 10 percent of the voting jurisdiction's precincts.
- (2) Those precincts shall include all those precincts in which a different total was produced by the machine-read count of ballots for the first count, including the outstacked/center bin, and the mandatory recount, as well as a sufficient number of additional precincts to constitute a total of at least 10 percent of the precincts of the voting jurisdiction.
- (3) However, in any event, at least five percent of the voting jurisdiction's precincts included in the sample shall have experienced the same count for machine-read ballots, including the

- outstacked/center bin, on the original count, and on the mandatory recount.
- (4) The precincts included in the sample which had the same machine-read count on the original and mandatory recount shall be chosen by random draw by lot from a container held by the Chair of the county board of elections, with all precincts which did not experience a difference in count by number being placed into the container, with the candidate whom appears to have been the loser after the mandatory recount drawing said lots.
- (5) If the hand recount of those precincts which did not experience a difference in count from the original count and the mandatory recount results in a different total from that produced on the previous counts, in any precinct, then upon request of the apparent losing candidate, all precincts for that race shall be recounted by hand.

Authority G.S. 163-22; 163-182.7.

CHAPTER 10 – ELECTION DAY MATTERS

SUBCHAPTER 10B – VOTING, VOTING PLACES AND PRECINCT OFFICIALS' DUTIES AND TASKS

08 NCAC 10B .0101 TASKS AND DUTIES OF PRECINCT OFFICIALS AT VOTING PLACES

(a) This Rule a Summary - The provisions of this Section provide a nonexclusive summary of the tasks and duties given to officials under G.S. 163. The legal duty is contained, not in this Rule, but in G.S. 163. For purposes of this Chapter, unless otherwise noted, the term "precinct officials" shall mean chief judge, precinct judge, assistants, emergency election-day assistants, and ballot counters. Observers are not precinct officials and shall not act or presume to act on behalf of a county board of elections. Observers shall only be allowed in partisan or ABC elections and are not legally authorized in any non-partisan election involving either candidates or issues.

(b) Tasks of Precinct Chief Judge - Precinct Chief Judges, in accordance with election statutes, within the Rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election. Where the precinct chief judge does not have the exclusive statutory mandate to perform a task or duty, a precinct judge may be designated to perform such task or duty.

- (1) Attend an instructional meeting presented by the county board of elections prior to each primary or election as required by G.S. 163-46.
- (2) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.

- (3) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.
- (4) Prior to day of the primary or election, receive and review from the county board the precinct observer list and promptly make any objection for good cause to the county board as provided in G.S. 163-45.
- (5) Receive, prior to the election or primary, sample ballots from the county board of elections, and to post a sample ballot at the voting place prior to opening on the primary or election day as set out in G.S. 163-165.2.
- (6) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as precinct chief judge on a primary or election day.
- (7) Receive, prior to the day of the primary or election, from the county board of elections any security keys or codes as to any voting systems or units that are to be operated at the precinct.
- (8) Prior to the opening of the polls, administer to any precinct official, not previously sworn, the oath of office as set out in G.S. 163-41.
- (9) Prior to the opening of the polls, to ensure there is open means of phone/radio communication between the voting place and the county board of elections office or director.
- (10) If at the time of opening the voting place, a judge has not appeared, to appoint another person to act as precinct judge, until the chairman of the county board of elections appoints a replacement as set out in G.S. 163-41, or ratifies the selection of the chief judge.
- (11) Be present at the voting place at 6:00 a.m., and ensure the prompt opening of the polls at 6:30 a.m. as mandated by G.S. 163-166 and any Rules promulgated under that statute.
- (12) Respond to any voter's request to have assistance to vote as set out in the provisions of G.S. 163-166.8(b).
- (13) Ensure the continued arrangement of the voting enclosure as required in G.S. 163-166.2.
- (14) Supervise the orderly closing of the voting place at 7:30 p.m. in compliance with procedures set out in G.S. 163-166.10 and any rules promulgated under that statute.
- (15) Handle challenges made on election or primary day in accordance with G.S. 163-87.

- and to conduct the hearing upon said challenge in accordance with G.S. 163-88.
- (16) Be responsible, as mandated by G.S. 163-182.3, for adherence to all rules pertaining to counting, reporting, and transmitting official ballots.
- (17) Be responsible for the maintenance of and appearance of efficient, impartial, and honest election administration at the precinct as required by G.S. 163-166.5 (3).
- (18) Be responsible for the maintenance of the voting place buffer zone, and ensure compliance with the same.
- (19) Ensure peace and good order at the voting place as required by G.S. 163-48.
- (20) Ensure that voters are able to cast their votes in dignity, good order, impartiality, convenience, and privacy as required in G.S. 163-166.7(c) and any rules promulgated under that statute.
- (21) If needed, to check or assist in checking the registration of voters at the voting place.
- (22) If ballot counters are needed, receive the list of counters from the county board, or appoint counters if authorized to do so by the county board. Swear in any ballot counters prior to their county votes. Report to the county board of elections the names and addresses of any ballot counters to the county board at the county canvass as set out in G.S. 163-163-43.
- (23) Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set out in G.S. 163-274 (1).
- (24) Not accept money from candidates, commit fraud, false statements, or false writings in performing election duties, or face the criminal consequences set out in G.S. 163-275(3)(8)(9) and (12).

(c) Tasks of Precinct Judge- Precinct Judges, in accordance with election statutes, within rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election. A precinct judge may be designated to perform tasks and duties of a chief precinct judge, where those duties are not statutorily made exclusive to the chief precinct judge.

- (1) Attend an instructional meeting presented by the county board of elections prior to each primary or election as required by G.S. 163-46.
- (2) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
- (3) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct.

Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

- (4) If the chief judge fails to appear at the opening of poll, to appoint, with the other precinct judge, a person to act as chief judge until the chairman of the county board appoints a new chief judge as per G.S. 163-41.
- (5) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as precinct chief judge on a primary or election day.
- (6) Be present at the voting place at 6:00 a.m., and ensure the prompt opening of the polls at 6:30 a.m. as mandated by G.S. 163-166 and any rules promulgated under that statute.
- (7) Perform the required legal duties of chief precinct judge/judge or face criminal consequences as set out in G.S. 163-274 (1).
- (8) Not accept money from candidates, commit fraud, false statements, or false writings in performing election duties, or face the criminal consequences set out in G.S. 163-275(3)(8)(9) and (12).
- (9) To aid and cooperate with the precinct chief judge, as requested or needed, as to those duties noted in Subparagraphs (12) through (21) of Paragraph (b) of this Rule.

(d) Tasks of Election Assistants- Election Assistants, in accordance with election statutes, within the rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election: Aid the chief judge and other precinct judges in the performances of their tasks and duties as needed or directed.

- (1) Check the registration of voters at the voting place as per G.S. 163-166.7(a).
- (2) Guide voters to voting units or provide voters ballots as per G.S. 163-166.7(b).
- (3) Prior to performing duties and tasks after being duly appointed, take the oath required by G.S. 163-41.
- (4) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as an election assistant on a primary or election day.
- (5) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
- (6) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not

to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

(e) Tasks of Emergency Election –Day Assistant-Emergency Election-Day Assistants, in accordance with election statutes, within the rules of the State Board of Elections, and under the supervision of the county board of elections, shall have the following tasks to perform as to each primary or election:

- (1) To be prepared prior to and on the day of a primary or election to serve, on short notice given by the county board of elections, to travel to and work at any voting place within the county.
- (2) Perform all the tasks and duties of an election assistant as set out in Paragraph (d) of this Rule.
- (3) Promptly notify the county board of elections of any sickness, emergency, or other circumstances that will or might prevent the person from performing as an election assistant on a primary or election day.
- (4) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.
- (5) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

(f) Tasks of Ballot Counters - All ballot counters, in accordance with election statutes, with the rules of the State Board of Elections and under supervision of the county board of elections, shall perform all the following. There is no requirement to have ballot counters appointed or used by a county board of elections unless they are needed.

- (1) After appointment, to appear at the poll immediately at close of the polls and to be prepared to count ballots under the direction and control of the chief and other precinct judges.
- (2) To be sworn into office, by the precinct chief judge prior to starting counting.
- (3) Upon learning that any parent, spouse, child, or sibling has filed for elective office, to inform the county board of elections so that the provisions of the law prohibiting a precinct official from serving in an election with a close relative as a candidates can be followed.

(4) Inform the county board of elections if any blood relative of kinship of first cousin or nearer or a parent in-law, child in-law or sibling in-law is a precinct official/worker serving with you in the same precinct, and not to serve with that relative in the same precinct. Also inform the county board of elections of any relationship, as described in the previous sentence, that you may have with an emergency election-day assistant and not serve with that person in the same precinct.

(g) General duties of all Precinct Officials - All precinct officials, in accordance with election statutes, with the rules of the State Board of Elections and under the supervision of the county board of elections, shall perform all of the following:

- (1) Count votes when votes are required to be counted at the voting place, G.S. 163-182.2;
- (2) Make an unofficial report of returns to the county board of elections, G.S. 163- 182.2;
- (3) Certify the integrity of the vote and the security of the official ballots at the voting place, G.S. 163-182.2;
- (4) Return official ballots and equipment to the county board of elections, G.S. 163- 182.2;
- (5) Ensure that the voting system remains secure throughout the period voting is being conducted;
- (6) Ensure that only properly voted official ballots are introduced into the voting system;
- (7) Ensure that, except as provided by G.S. 163-166.9, no official ballots leave the voting enclosure during the time voting is being conducted there;
- (8) Ensure that all improperly voted official ballots are returned to the precinct officials and marked as spoiled;
- (9) Ensure that voters leave the voting place promptly after voting;
- (10) Ensure that voters not clearly eligible to vote in the precinct but who seek to vote there are given proper assistance in voting a provisional official ballot or guidance to another voting place where they are eligible to vote;
- (11) Ensure that information gleaned through the voting process that would be helpful to the accurate maintenance of the voter registration records is recorded and delivered to the county board of elections;
- (12) Ensure that registration records are kept secure;
- (13) Ensure that party observers are given access as provided by G.S. 163-45 to current information about which voters have voted;
- (14) Aid any voter, as needed, in curbside voting as provided for in G.S. 163-166.9;
- (15) Provide Spanish ballot instructions as needed to voters, when such instructions are required to be available by law. Direct all language needs which can not be handled at the precinct to the county board office;

- (16) Register and help, at the voting place, those persons eligible to register and vote on election day as allowed by G.S. 163-254 and G.S. 163-82.6(d);
- (17) Promptly report to the county board of elections, any physical or mental ailment, impairment, or deterioration that may adversely affect the performance of an election related task or duty. Report any such conditions known in any other precinct officials to the county board;
- (18) Promptly report any violation of election laws or regulations to the chief judge, or to the county board of elections if the chief precinct judge is involved in the violation;
- (19) Provide any person who requests it any information on how to contact the county director of elections, the county board of elections, or the office of the State Board of Elections; and
- (20) Work and stay at the voting place, at all times during the voting day, until closure. By prior agreement with the county board of elections and pursuant to G.S. 163-42, election assistants and emergency election-day assistants may work less than the entire voting day.

and sealed (or otherwise secured in the manner recommended by the manufacturer) and should remain that way until the polls are closed.

(f) The Chief Judge, with the cooperation of at least one official of the other major political party shall verify the delivery of all election supplies, records and equipment necessary for the conduct of the election.

(g) The Chief Judge shall ensure that all applicable instructions, signs, and sample ballots are posted around the polling place, including signs designating the voting place, the buffer zone, temporary and/or permanent accessible parking, and the curbside voting area.

(h) The Chief Judge shall ensure that the polling place is arranged to provide private spaces so voters may cast votes unobserved. The Chief Judge shall also ensure that there is continual adequate space and furniture for separate areas for voter registration records, ballot distribution, and private discussions with voters concerning irregular situations. The voting enclosure must be set up so that all equipment and furniture can be generally seen. The exterior of the voting units and every part of the voting enclosure shall be in plain view of the Chief Judge and Judges.

(i) The door to the voting place/enclosure should be sufficiently wide to accommodate voters in wheelchairs. The door width, hardware, and thresholds shall comply with the Americans with Disabilities Act Accessibility Guidelines (ADAAG) or shall be made to comply on election day. The County Board of Elections must approve any plan that would cause a deviation in the set up and arrangement of the voting enclosure. For example, generally the door into the voting place/enclosure should be the same door used to exit the voting place/enclosure. However, if by doing so the flow of voters is disturbed, a separate door may be used to exit the voting place/enclosure. If a separate door is used, it should be in plain view of the Chief Judge, Judges, and Assistants so that no unauthorized persons may enter the voting enclosure through the exit door.

(j) The Chief Judge shall assign a Judge or Assistant to provide demonstrations to voters, upon request, in the proper use of the voting system.

(k) At the Chief Judge's request at 6:30 a.m. (according to the official timepiece used by the Chief Judge), one of the Judges shall announce that the polls are open and shall state the hour at which they will be closed.

Authority G.S. 163-22; 163-165.5.

08 NCAC 10B .0103 VOTING PROCEDURES

(a) From the time the polls are opened until the precinct count has been completed, the returns signed, and the results declared, no person shall take or remove from the voting enclosure election supplies and materials, including official ballots, containers of official ballots, provisional official ballots, spoiled ballots, the pollbook or voter authorization slip(s), the registration record(s) or any voting units or devices that are part of the voting system, except as authorized by law to accommodate curbside voters. Other provisions for secure removal of election supplies and materials at any time would be permissible under the emergency management plan of a county board of elections in the cases of natural or man-made emergencies.

Authority G.S. 163-22; 163-166.6.

08 NCAC 10B .0102 SETTING UP POLLING PLACE PRIOR TO VOTING

(a) The Chief Judge, Judges, and Assistants shall arrive at the voting place no later than 6:00 a.m. on the day of the election.

(b) The Chief Judge shall administer the oath to Judges and Assistants who have not taken the oath.

(c) The Chief Judge shall assign tasks regarding the set up of the polling place to ensure the participation of judges and assistants of each represented party. The tasks and duties assigned shall adhere to the rules promulgated by the State Board of Elections. At least one official shall be directed by the Chief Judge to manage curbside voting and facilitating the process for voters with special needs.

(d) The Chief Judge or designated official shall ensure that the telephone or other approved communications device is working.

(e) The members of the County Board of Elections shall ensure that each voting system is delivered to the voting place and placed in the custody of the Chief Judge or designated official within three days before the election with the ballot labels or other necessary identifiers already in place on each unit. Keys and other security devices necessary for the operation of the voting system shall be delivered to the Chief Judge in a sealed container. Together, a board member or agent of the County Board of Elections and the Chief Judge or designated official shall inspect the contents of the sealed container to ensure that all necessary mechanisms are provided to the Chief Judge. All numbers stamped on the keys and security devices should correspond to the number of the voting units. Together they shall also ensure that the ballots are correctly in position and that no votes have been cast or recorded on any unit, and that the units are in good working order. Voting units should be locked

(b) A person seeking to vote shall enter the voting enclosure at the voting place through the designated entrance and shall clearly communicate the person's name and place of residence to one of the judges of election. In some cases, the precinct judge may prompt the voter to provide this information. In a primary election, the voter shall also state the political party with which the voter affiliates and in whose primary the voter desires to vote, or if the voter is an unaffiliated voter permitted to vote in the primary of a particular party, the voter shall state the name of the authorizing political party in whose primary the voter wishes to vote. This information, including the political party's primary in which the voter elected to participate, provided by the voter shall be recorded in the precinct pollbook or on the voter authorization slip. The judge or assistant to whom the voter gives this information shall announce the name and residence of the voter so that the information may be heard by the necessary officials and observers. After examining the precinct registration records, the judge or assistant shall state whether the person seeking to vote is duly registered. The precinct judge or assistant shall not presume the identity/name, address, or party affiliation of any person seeking to vote.

(c) If the person is found to be registered and is not challenged, or if the challenge is overruled, the responsible judge of election shall provide the voter with each official ballot the voter is entitled to vote. In a primary election the voter shall be allowed to vote the political party ballot(s) the voter is entitled to vote and no others, except non-partisan ballots. Unaffiliated voters may choose to participate in only one party's primary and no others on the same day. In the case of a second primary, unaffiliated voters who participated in a party's primary in the first primary may only vote that party's ballot in the second primary. However, if an unaffiliated voter did not participate in the first primary, the voter may choose which party's primary to participate in during the second primary. Note that unaffiliated voter participation in party primaries is subject to authorization by the respective state party executive committees. Unaffiliated voters who are otherwise qualified may always participate in non-partisan primaries.

(d) If the person is found to not be registered to vote in the precinct, the responsible judge of election shall inform the person of the fail-safe voting process. First, based on information provided by the person the responsible judge shall determine whether or not the person may be eligible to vote an official provisional ballot. The person is eligible to vote an official provisional ballot if the person resides in the precinct and either:

- (1) is a registered voter in the county and has moved into the precinct 30 days or more prior to the election and has not reported the change to the board of elections; or
- (2) claims to have applied for voter registration in the county but there is no record of the person's name on the registration records; or
- (3) was removed from the list, but the person maintains continuous eligibility within the county; or
- (4) disputes the voting districts (and ballots) to which the person has been assigned.

(e) If the person is found to not be registered to vote in the precinct and the responsible judge of election learns from the person that the person resides in a different precinct, the

responsible judge shall provide the person with adequate information in order to direct the person to the proper voting place. If, for any reason, the person refuses to go to the proper precinct to vote, the person shall be permitted to vote a challenged ballot and follow challenge procedures as set out in G.S. 163, Article 8.

(f) It is the duty of the chief judge and judges to gather any voter information regarding changes of name and address in order to assist the county board of elections in updating voter records. If the county board of elections has specifically identified certain voters' records in an attempt to gather additional information, the responsible judge shall ask the voter to update the information. However, registered voters with known and documented valid residence addresses within the county do not have to perform any activity as a prerequisite to voting.

(g) It is the duty of the chief judge and judges to give any voter any technical information the voter desires in regard to ballot items. In response to questions asked by the voter, the chief judge and judges shall communicate to the voter only technical information necessary to enable the voter to mark the ballot.

(h) The Chief Judge shall assign two precinct officials, one from each political party if possible, to keep the pollbook or other voting record and to keep the registration list. The names of all persons voting shall be checked on the registration record and entered on the pollbook or other voting record. In an election where observers may be appointed each voter's party affiliation shall be entered in the proper column of the pollbook or other approved record opposite the voter's name. The designated official shall make each entry at the time the ballots are handed to the voter.

(i) The chief judge, judges, and assistants must ensure that registration records are kept secure and do not leave the voting enclosure for any purpose. Properly designated observers are entitled to obtain a list of the persons who have voted in the precinct so far in that election day at least at the following times: 10 a.m., 2 p.m. and 4 p.m. Counties using authorization to vote documents as opposed to traditional pollbooks may comply with the requirement by permitting each observer to inspect election records so that the observer may create a list of persons who have voted in the precinct.

Authority G.S. 163-22; 163-166.7.

08 NCAC 10B .0104 LEAVING THE VOTING ENCLOSURE, SPOILED OR INCOMPLETE BALLOTS

(a) When the voter has been presented with the official ballots by the judge, the voter shall be deemed to have begun the act of voting, and the voter shall not leave the voting enclosure until the voter has finalized the act of voting by performing whatever action is necessary to cause the act of voting to be finalized. On receiving the ballots, the voter shall immediately retire alone to one of the voting booths unless the voter is entitled to assistance and without any undue delay, the voter shall mark the ballots. The voter shall return the unvoted ballot(s) to the precinct officials.

(b) If a voter spoils or damages a ballot, the voter may obtain another upon returning the spoiled or damaged ballot to the chief judge or other designated official. A voter shall not be given a replacement ballot until the voter has returned the spoiled or damaged ballot. The voter shall not be permitted to receive

more than three replacement ballots. The chief judge shall deposit each spoiled or damaged ballot in the container provided for that purpose.

(c) When the voter has marked the ballots the voter shall ensure the ballot(s) are cast. If the voter has been challenged and the challenge has been overruled, before casting the ballot(s), the voter shall write the voter's name on each of the ballots so they may be identified in the event the voter's right to vote is again questioned. After casting the ballots in the proper manner, the voter shall immediately leave the voting enclosure unless the voter is one of the persons authorized by law to remain within the enclosure for purposes other than voting.

(d) No voter shall be permitted to occupy a voting booth already occupied by another voter, provided, however, husbands and wives may occupy the same voting booth if both wish to do so. Excluded from this prohibition are persons lawfully providing assistance.

(e) When the voter leaves the voting enclosure, whether or not the voter has finalized voting, the voter shall not be permitted to enter the voting enclosure again for the purpose of voting.

(f) If a voter leaves the voting enclosure and is found not to have finalized the act of voting by pressing the appropriate button or touching the screen in the appropriate space in the case of Direct Record Electronic Voting Machines, by feeding their ballot into the appropriate tabulator in the case of Optical Scan/Marksense and Punchcard Voting Equipment, by pulling the appropriate lever in the case of Lever Voting Machines, or by depositing the paper ballot into the ballot box; the Chief Judge and Judges of election may find, by unanimous vote, that the votes marked by the voter had not been disturbed by any other person and may execute the ballot for the voter who has vacated the voting enclosure. If the Chief Judge and Judges of election cannot unanimously confirm that the ballot marked by the voter has not been disturbed, the ballot must be marked as spoiled and placed with other spoiled ballots (or in the case of direct record electronic and lever machines, the ballot must be cleared according to the voting system specifications). The fact that a ballot is only partially and not fully marked shall have no bearing on the decision of the Chief Judge and Judges. In each instance where this type of incident occurs, the Chief Judge and Judges must document the circumstances and make the information known to the county board of elections.

Authority G.S. 163-22; 163-166.7.

08 NCAC 10B .0105 PROCEDURES AT THE CLOSE OF VOTING

(a) Before each primary and election, the chairman of the county board of elections shall furnish each chief judge written instructions on how ballots shall be marked and counted. Before starting the counting of ballots in the precinct, the chief judge shall instruct all of the judges, assistants, and ballot counters in how differently marked ballots shall be counted and tallied.

(b) The Chief Judge shall announce or have it announced that the polls are closed at 7:30 p.m. unless the time has been extended until 8:30 p.m. Time shall be determined by the same timepiece used to determine the opening of the polls.

(c) Any person who is in line at the close of polls shall be afforded an opportunity to vote. A list shall be made, starting at the end of the line and moving forward, of everyone standing in line at the close of polls and anyone whose name is on that list

shall be permitted to vote. No person entering the voting enclosure after the close of polls has been announced, other than those whose names are on the list, shall be permitted to vote under any circumstance.

(d) The Chief Judge and Judges must subscribe their names to each pollbook.

(e) Only official ballots shall be voted and counted. No official ballot shall be rejected because of technical errors in marking it, unless it is impossible to determine the voter's choice under the rules for counting ballots. Such determination shall be made by the county board of elections if the chief judge and judges are unable to determine the voter's choice, or whether a particular ballot should be counted.

(f) No person shall purposely deface or tear an official ballot in any manner, and no person, other than the voter, shall purposely erase any name or mark written on a ballot by a voter.

(g) The Chief Judge, along with a Judge of another political party, shall "close the polls" on each voting unit. The results sheet from each unit shall be placed in an "Official Precinct Returns Envelope." As soon as the polls are closed the chief judge and judges shall, without adjournment or postponement, count the ballots. The counting of ballots at the precinct shall be continuous until completed. More than one voting unit may be counted at the same time by the precinct officials, assistants, and ballot counters, but the chief judge and judges shall supervise the counting of all units and shall be responsible for them. From the time the first unit is read or opened and the count of votes begun until the votes are counted and the statement of returns made out, signed, certified and provided to the chief judge or judge responsible for delivering them to the county board office, the precinct chief judge and judges shall not separate, nor shall any one of them leave the voting place except in case of unavoidable necessity as determined by the Chief Judge.

(h) The counting of the ballots shall be made in the presence of the precinct election officials and witnesses and observers who are present and desire to observe the count. Observers shall not interfere with the orderly counting of the ballots. As soon as the votes have been counted and the precinct returns certified, the chief judge, or one of the judges selected by the chief judge, shall report the total precinct vote for each ballot item to the witnesses and observers who are present and also by telephone or other electronic means to the county board of elections. This report shall be unofficial and shall have no binding effect upon the official county canvass to follow.

(i) The Chief Judge and Judges shall sign the consolidation and accounting sheets and statement of returns and shall place them in the "returns" envelope or container.

(j) The Chief Judge shall place or cause to be placed by an authorized person under the Chief Judges direction and control: voter registration documents and information, provisional ballot envelope, payroll information, county board communication devices, unit keys and security devices and the official returns envelope. The container should be sealed with non-transparent tape of sufficient size to contain signatures. It shall be signed by the Chief Judge and two Judges.

(k) Consolidation sheets, including the statement of returns for all voted official ballots, should be completed by adding curbside votes to the totals. In any precinct using direct record electronic voting equipment, the county board of elections, with the approval of the State Board of Elections, may provide for all such paper ballots to be transported upon closing of the polls to

the office of the county board of elections for counting. An accounting form shall be completed that accounts for every used and unused ballot - providing the number of blank ballots received by the board of elections, the number of regular voted ballots, provisional voted ballots, and spoiled ballots.

(l) Voted provisional ballots must be placed in a sealed envelope or container and the seal must be signed by the Chief Judge and Judges.

(m) The Chief Judge shall bring (or have delivered by secure means) the results cartridge (or reading) from each unit to the board of elections office.

(n) All supplies must be collected for return to the board of elections office. Any items brought into the polling place facility should be removed upon vacating the polling place. Precinct Judges shall ensure that the facility is left in the same condition in which it was secured for voting purposes.

(o) Under no circumstance shall voting items be left in the polling place facility out of the custody of the Chief Judge or other designee.

Authority G.S. 163-22; 163-166.10.

08 NCAC 10B .0106 ELECTION SUPPLIES RETURN

(a) After an election or primary, all election supplies shall be immediately taken to the county board of elections office. Election materials and supplies, used or unused, may not remain in the custody of the Chief Judge, Judges, or any other person in unsecured locations overnight.

(b) If it is not possible for a county board of elections to have all precincts return materials and supplies on the night of the election, the county board of elections must submit a security plan to the Executive Director of the State Board of Elections 30 days prior to the election. The Executive Director will provide either approval or required modifications to the plan in writing no later than 15 days prior to the election. A county board must have an alternative security plan approved in order to use it. The board of elections shall have an emergency backup plan that will enable board of elections employees or other authorized persons to retrieve the items from the custody of the Chief Judge and Judges and transport them to the board of elections office.

(c) All materials shall be transported with a "chain of custody" form that includes the signatures and times in which the supplies are in the custody of each official. All supplies, once received at the board of elections, will be verified and signed by a board of elections representative.

Authority G.S. 163-22; 163-166.10.

08 NCAC 10B .0107 ASSISTANCE TO VOTERS IN PRIMARIES AND GENERAL ELECTIONS

(a) Who Is Entitled to Assistance: In any primary or election, including one-stop absentee voting, a registered voter qualified to vote in the primary or election shall be entitled to assistance in getting to and from the voting booth, entering and exiting the voting booth, and in preparing their ballots in accordance with the following:

- (1) Any assistance rendered must be performed in person, and shall not be allowed by electronic, paper, or mechanical means of communication with a person outside the voting booth, except in circumstances of disabled voters with

special needs. The use of electronic, paper, or mechanical devices by the voter, while alone in the voting booth and not in contact with another person outside the voting booth, shall not be considered voting assistance;

- (2) Any voter shall be entitled to assistance from a near relative, as defined in G.S. 163-166.8(a)(1), of his choice. Under no circumstances shall any other relative, friend, guardian, person holding a power of attorney, or any other person be allowed to render assistance except as allowed under the circumstances set out in G.S. 163-166.8(a)(2) and in Paragraph (b) of this Rule; and

- (3) The person rendering assistance shall not in any manner seek to persuade or induce any voter to cast any vote in any particular way.

(b) Any voter in any of the following four categories shall be entitled to assistance from any person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union:

- (1) One who, on account of physical disability, is unable to enter the voting booth without assistance;
- (2) One who, on account of physical disability, is unable to mark his or her ballot without assistance;
- (3) One who, on account of illiteracy, is unable to mark his or her ballot without assistance;
- (4) One who, on account of visual impairment, is unable to enter the voting booth or mark the ballot without assistance;

No precinct official may refuse the voter's choice of the person to assist him, unless the person so named is legally excluded, does not appear at the voting place to assist the voter prior to the close of the polls, or refuses to assist the voter. If the voter's choice of the assisting person, cannot be met on the ground(s) set out herein, the voter shall be allowed to make an additional choice until a willing assisting person is available to assist the voter. There shall be no limitation on the number of voters a person can assist, as long as the assisting person is properly chosen by each voter to assist.

(c) Procedure for Obtaining Assistance: A person seeking assistance in any election shall, upon arriving at the voting place, first request the chief judge to permit him to have assistance, communicating the reasons. If the chief judge determines that the voter is entitled to assistance, the chief judge shall ask the voter to identify the person the voter desires to provide assistance. If that person is not present, the voter is entitled to contact the person and to wait for the person at the voting place, but outside the voting enclosure. When that person is available to assist or is already present to assist, the voter, along with that person, shall present themselves to the chief judge. The chief judge shall thereupon request the person indicated to render the requested aid. In the case of assistance requested at a one-stop voting site, the assistance may be requested from and received from any election official available at such site.

(d) Any chief judge, judge, or assistant shall provide assistance to a voter if so requested, except for good cause, unless the election official is prohibited from doing so by his status as the voter's employer, official of the voter's union, or agent of the

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voter's employer or union. Under no circumstances shall any precinct official or person be assigned to assist a voter who was not specified by the voter.

(e) Conduct of Persons Rendering Assistance. - Anyone rendering assistance to a voter shall be admitted to the voting booth with the person being assisted and shall be governed by G.S. 163-166.8(c). The assisting person shall not do the following:

- (1) Give, present, or display within the vision of the voter, any list of preferred candidates, a marked sample ballot, or any other type of document, item, or display that conveys a choice of candidate(s). An assisting person may respond to an inquiry of a hearing impaired voter in writing if needed, as long as a ballot choice is not communicated to the voter;
- (2) Speak or play within the hearing or vision of the voter, any conversation, communication, or recording that conveys a choice of candidate(s);
- (3) Operate a phone, radio, computer, or any other means of communication while in the voting booth with the voter.
- (4) Communicate to others how the voter voted, unless ordered by a court, or make a memorandum of anything that occurred in the voting booth; or
- (5) Violate any election law set out in G.S. 163, or violate any election rule set out in Title 8 of the NC Administrative Code.

(f) It shall be presumed that the operation of any means of communication capable of being received by a voter in the voting booth shall constitute an attempt to receive unlawful voting assistance, except in cases of a disabled voter with special needs. Upon having reasonable grounds to suspect such communication or operation by the voter, a precinct official may make inquiry and investigate the alleged operation of the communication equipment. The voter shall be informed of this presumption of unlawful assistance, and the prohibitions contained within G.S. 163-166.8 as to voter assistance. Regardless, any voter suspected of such conduct shall be allowed to vote and cast his or her ballot.

Authority G.S. 163-22; 163-166.8.

08 NCAC 10B .0108 CURBSIDE VOTING

In any primary or election any qualified voter who is able to travel to the voting place, but because of age, or physical disability and physical barriers encountered at the voting place is unable to enter the voting place or enclosure to vote in person without physical assistance, shall be allowed to vote either in the vehicle conveying such person to the voting place or in the immediate proximity of the voting place under the following restrictions.

- (1) The county board of elections shall have printed and numbered a sufficient supply of affidavits to be distributed to each precinct chief judge which shall be in the following form:

Affidavit of Person Voting Outside Voting Place or Enclosure

State of North Carolina
County of _____

I do solemnly swear (or affirm) that I am a registered voter in _____ precinct. That because of age or physical disability I am unable to enter the voting place to vote in person without physical assistance. That I desire to vote outside the voting place and enclosure. I understand that a false statement as to my condition will be in violation of North Carolina law.

Date

Signature of Voter

Address

Signature of precinct election official who administered oath;

- (2) The chief judge or a judge may designate one of the assistants to attend the voter, or assist the voter himself or herself. Upon arrival outside the voting place, the voter shall execute the affidavit after being sworn by a precinct election official. The ballot(s) shall then be delivered to the voter who shall mark the ballot(s) and hand them to the assisting precinct election official. The ballot(s) shall then be delivered to one of the judges of elections who shall deposit the ballot(s) in the

proper boxes. The affidavit shall be delivered to a different judge of election;

- (3) The voter and any assisting person shall be entitled to the same assistance and subject to the same restrictions in marking the ballot as is authorized by G.S. 163-166.8 and 08 NCAC 10B .0107; and
- (4) The affidavit executed by the voter shall be retained by the county board of elections for a period of six months. In those precincts using voting machines, the county board of elections shall furnish paper ballots of each kind for use by persons authorized to vote outside the

voting place by this section. In any precinct using direct record electronic voting equipment, the county board of elections, with the approval of the State Board of Elections, may provide for all such paper ballots to be transported upon closing of the polls to the office of the county board of elections for counting. Those ballots may be transported only by the chief judge, judge, or assistant. Upon receipt by the county board of elections, those ballots shall be counted and canvassed in the same manner as one-stop ballots cast under G.S. 163-227.2, except that rather than the count commencing when the polls close under G.S. 163-234(5) as provided for one-stop ballots, the count shall commence when the board has received from each precinct either that precinct's ballots or notification that no such ballots were cast. The total for ballots counted by the county board of elections under this subdivision shall be canvassed as if it were a separate precinct.

Authority G.S. 163-22.

CHAPTER 12 – RULES FOR MILITARY AND OVERSEAS CITIZENS ABSENTEE VOTING PROCEDURES

08 NCAC 12 .0101 DEFINITIONS

In this Chapter:

- (1) "director" means the county director of elections;
- (2) "board" means the county board of elections;
- (3) "facsimile (fax) transmission" means transmission by a telefacsimile machine (FAX) or any other form of facsimile (fax) transmission device which transports an authentic copy of a document from one user of the device to the other;
- (4) "electronic mail (email)" means transmission via the World Wide Web using a software application such as Microsoft Outlook, Outlook Express, Pegasus, and others to enable transmission from one email address to another email address;
- (5) "transmission statement" means the printout from the sender's fax machine or device that indicates the status of the transmission by fax. The transmission statement will either confirm that the fax was received or indicate that it was not received; and
- (6) Any reference to deadlines should be assumed to represent Eastern Standard Time.

Authority G.S. 163-22; 163-257.

08 NCAC 12 .0102 ELECTRONIC MAIL (E-MAIL)

The following requests may be accepted via e-mail:

- (1) Requests for absentee ballot applications;
- (2) Requests for voter registration forms ;

- (3) Voter registration mailing address changes; and
- (4) Ballot mailing address changes.

Authority G.S. 163-22; 163-257.

08 NCAC 12 .0103 APPLICATIONS/REQUESTS

(a) Voters under G.S. 163, Article 21 may use the Federal Post Card Application (FPCA) to register to vote and to apply for an absentee ballot. The applicant may send the application by air mail or have it placed in delivery or send it by fax to the State Board of Elections secure fax line and may request that the ballot be sent by air mail, placed in delivery or transmitted by fax.

(b) Upon receipt of an application for an absentee ballot under G.S. 163, Article 21, it shall be determined at the county level whether or not the applicant is qualified to vote, a list should be made of those applications approved and disapproved (which list shall be open to inspection by election officials and the public) and an absentee ballot shall be forwarded to each person whose application is approved.

(c) When the county board receives an application request by fax or other delivery from a voter under G.S. 163, Article 21 and that voter requests to have the ballot sent to him/her by fax, the county board shall verify the voter's eligibility to vote. If the voter is eligible to vote, the county board shall send the ballot to the voter as soon as practicable by fax using the telephone number supplied by the voter for that purpose or the number specified by the Department of Defense's Federal Voting Assistance Program. If the voter is not eligible to vote in the State or county, notice of non-eligibility shall be provided to the voter by fax as soon as practicable after the receipt of the request. All transmission statements shall be retained with the corresponding voters' records.

Authority G.S. 163-22; 163-257.

08 NCAC 12 .0104 INSTRUCTIONS AND NOTICE; DELIVERY

(a) Each county board shall send by airmail or have placed in delivery, for each absentee voter under G.S. 163, Article 21, appropriate printed instructions for its completion and return, together with a container-return envelope.

(b) Each county board shall send to each absentee voter under G.S. 163, Article 21 who requests that a ballot be sent to him/her by fax all appropriate printed instructions for its completion and return. The printed instructions sent to each such voter shall include the same information provided for other absentee voters with the following:

(c) An absentee ballot that is completed and returned by the voter by facsimile transmission must:

- (1) Contain the following statement: "I understand that by using facsimile transmission to return my marked ballot, I am voluntarily waiving a portion of the secrecy of my ballot to the extent necessary to process my ballot, but expect that my vote will be held as confidential as possible. At the same time, I pledge to place the original voted ballot in a secure envelope, together with any other required materials and send the documents

immediately by air mail or place them in delivery to the appropriate county board of elections." followed by the voter's signature and date of signature; and

- (2) Contain the voter's signature and must be witnessed by two other persons who are at least 18 years of age, and who are not disqualified by G.S. 163-226.3(a)(4) or 163-237(b1).

Authority G.S. 163-22; 163-257.

08 NCAC 12 .0105 GENERAL GUIDELINES

(a) A qualified voter under G.S. 163-245 may apply by mail or by facsimile (fax) transmission to the board of elections office for an absentee ballot. The application must include the address or, if the applicant requests delivery of an absentee ballot by facsimile (fax) transmission, the telephone facsimile (fax) transmission number, to which the absentee ballot is to be returned, the applicant's full North Carolina residence address, date of birth, and the applicant's signature.

(b) For the purposes of these rules, requests should be made on the Federal Post Card Application (FPCA). Note that an absentee ballot application submitted under this section must permit the person to register to vote and to request an absentee ballot for each state election held within that calendar year for which the voter is eligible to vote.

(c) An application requesting delivery of an absentee ballot by mail may be received by the board at any time. Also, an application for an absentee ballot for a state election from a qualified voter requesting delivery of an absentee ballot by facsimile (fax) transmission may be received by the county board of elections at any time before the election for which the absentee ballot is sought.

(d) After receipt of an application, the county board of elections shall send the absentee ballot and other absentee voting material to the applicant by the most expeditious delivery service. However, if the applicant requests that an absentee ballot be sent by facsimile (fax) transmission, the board of elections office shall send the absentee ballot and other absentee voting material to the applicant by facsimile (fax) transmission utilizing the methods recommended by the Federal Voting Assistance Program (FVAP).

Authority G.S. 163-22; 163-247(1); 163-257.

08 NCAC 12 .0106 PROCESSES BY MAIL

(a) The absentee ballot number and other absentee voting information shall be entered into the register of absentee requests, applications, and ballots issued. Upon receiving the request to receive voting materials by mail, the board shall cause to be mailed to the voter in a single package:

- (1) the official ballots the voter is entitled to vote;
- (2) a container-return envelope for the ballots, printed in accordance with G.S. 163-229; and
- (3) An instruction sheet.

(b) If the absentee ballot and other absentee voting materials are mailed to the applicant, the container return envelope sent with the ballot and other materials shall be addressed to the election director of the county in which the voter is domiciled and registered.

(c) Upon receipt of an absentee ballot by mail, the voter, in the presence of two other persons who are at least 18 years of age, and who are not disqualified, shall:

- (1) Mark the ballots, or cause them to be marked by one of such persons in the voter's presence according to the voter's instruction;
- (2) Fold each ballot separately, or cause each of them to be folded in the voter's presence;
- (3) Place the folded ballots in the container-return envelope and securely seal it, or have this done in the voter's presence; and
- (4) Make the certificate printed on the container-return envelope according to the provisions of G.S. 163-248(c).

(d) The sealed container-return envelope in which executed absentee ballots have been placed shall be transmitted to the board who issued them as follows: All ballots issued under the provisions of G.S. 163, Articles 20 and 21 shall be transmitted by mail or placed in delivery, at the voter's expense, and delivered not later than 5:00 p.m. on the day before the primary, special or general election.

Authority G.S. 163-22; 163-257.

08 NCAC 12 .0107 PROCESSES BY FAX

(a) Faxed ballots must be received by 500 p.m. on the day before the primary, special or general election and that the original voted ballots for faxed ballots must be mailed or placed in delivery as soon as practicable to serve as a fail-safe mechanism and serve as part of the election audit trail.

(b) The board shall maintain a record of the name of each voter to whom an absentee ballot is sent under G.S. 163, Articles 20 and 21. The record must list the date on which the ballot is mailed or provided by facsimile (fax) transmission and the date on which the ballot is received by the board of elections office and the dates on which the ballot was executed and postmarked.

Authority G.S. 163-22; 163-257.

08 NCAC 12 .0108 ABSENTEE VOTING BY FACSIMILE (FAX) TRANSMISSION

(a) An application for an absentee ballot shall indicate that the absentee ballot returned by facsimile (fax) transmission will be accepted if received by the board no later than 5:00 p.m. the day before an election. The application shall also indicate that the original ballot must be mailed or placed in delivery. The application must include the voter's name, North Carolina residence address, ballot mailing address or telephone number of the facsimile machine to which the ballot is to be sent, date of birth and signature.

(b) An application for an absentee ballot received by facsimile (fax) transmission shall indicate that the absentee ballot returned by mail will be accepted by the board subject to the provisions of G.S. 163, Article 21.

(c) An application for an absentee ballot received by facsimile (fax) transmission will be treated in the same manner as an application for an absentee ballot received by mail, except that a notation will be made on the absentee ballot application log when an application is received by facsimile (fax) transmission.

(d) If an absentee ballot is sent to a voter by facsimile (fax) transmission, the ballot will include:

- (1) a transmittal form that fulfills all transmission information requirements;
- (2) instructions to the voter with procedures for returning the completed ballot by facsimile (fax) transmission or by mail, including a telephone number for the State Board of Elections dedicated fax line to which all ballots returned by facsimile (fax) transmission are to be transmitted, and the address of the appropriate office to which the ballot must be mailed; and
- (3) the statements required with places for the voter and witnesses to sign.

(e) The instructions sent to the voter will include a description of the procedures that a voter returning the ballot must follow. The instructions will also inform the voter that if the voter follows these instructions, the ballot will be counted, unless it is sent in violation of G.S. 163, Articles 20 or 21 or is otherwise ineligible. The instructions will also inform the voter that the voter assumes the risk that faulty facsimile (fax) transmission may occur.

Authority G.S. 163-22; 163-257.

08 NCAC 12 .0109 RECEIVING FACSIMILE (FAX) TRANSMISSIONS

(a) When a completed absentee ballot is received by facsimile (fax) transmission, the board of elections will note the date of receipt on the absentee ballot application log and, if the ballot is received on the day before election day, the time of receipt. The board of elections will then remove the ballot portion of the transmission from the portion that identifies the voter; place the ballot portion in a container-return envelope of the type used for absentee ballots returned by mail; seal the envelope; and maintain the voted ballot and envelope in a secure location for county board of elections consideration.

(b) A county board of elections may not accept multiple transmissions of a voted ballot or any other voting material submitted by the voter. The earliest date and timed version of a voted ballot or any other voting material received by the board of elections will be accepted. All other versions of a voted ballot or any other voting material will be rejected, except in the following circumstances: an incomplete fax transmission occurs and calls for a new complete fax transmission, and/or the original voted ballot which will be retained for audit purposes or used as a fail-safe mechanism.

(c) An absentee ballot that is returned by facsimile (fax) transmission must be received by the board of elections no later than 5:00 p.m., Eastern Standard Time, on the day before election day in order to be counted. Faxed ballots will not be accepted after that time, except votes for President and Vice-President of the United States may be received by fax or other delivery by the close of polls on election day. The original voted ballots transmitted by airmail or placed in delivery should be received, however, failure to receive the original voted ballot does not disqualify the faxed ballot. All approved absentee ballots returned by facsimile (fax) transmission will be hand-counted.

(d) Procedures for handling mail-in ballots that were sent to the voter electronically shall be the same as for other mail-in absentee ballots.

- (1) An absentee ballot that was sent to a voter by facsimile (fax) transmission and was returned by mail will not be counted if the envelope in which the ballot is returned contains the ballot of more than one voter.
- (2) Immediately after a copy of the voted ballot has been faxed to the county board, the voter shall place the original voted ballot in a secure envelope, together with a certificate as provided for in these Rules, and send the documents by air mail or place them in delivery to the county board office.
- (3) All copies of voted ballots received by fax shall be approved, disapproved, processed, and counted, and disputes in connection therewith shall be handled in the same manner as applicable to other absentee ballots. Transmission problems that result in failure of the faxed ballot to be received by the board will result in the original voted ballot (hard copy) serving as a fail-safe mechanism. Fail-safe ballots must be submitted by the deadlines for counting absentee ballots under G.S. 163, Article 21. Original voted ballots will be used as part of the audit process and as part of the election record in any election protest(s).

Authority G.S. 163-22; 163-257.

08 NCAC 12 .0110 BALLOT VERIFICATION AND SECURITY

(a) The county board shall take all necessary precautions to preserve the security of the ballot materials and specifically shall ensure that the vote cast by a voter using a faxed ballot is not revealed, except to the extent necessary by law or judicial determination. Upon the completion of all inspections of a faxed ballot required by law, the board or any employee thereof acting under its direction shall promptly separate the waiver from the faxed ballot. Any person handling a faxed ballot shall not identify the votes cast by any voter, except upon judicial determination.

(b) Prior to certification of the results of the election, the county board shall:

- (1) Compare the information on the faxed copy of each voted ballot with the same on the original voted ballot sent by air mail or placed in delivery by the voter who faxed to the county board a copy of the voted ballot, and the signature on the statement received by fax with the signature on the certificate received by air mail or delivery; and
- (2) Ascertain whether an original voted ballot has been received for each faxed copy of a voted ballot received and counted. Note that failure to receive an original voted ballot by the deadline shall not result in the faxed ballot being disqualified.

(c) Whenever the particulars of the faxed copy of a voted ballot of a voter do not conform exactly with the particulars of the original voted ballot sent by air mail or delivery to the county board afterwards by that voter and whenever an original voted

ballot has not been received which corresponds to a faxed copy of a voted ballot which has been received, those ballots and all other pertinent documents and information relative to those ballots shall be turned over to the investigative staff of the State Board of Elections for further investigation.

(d) Within 30 days after the election, the county board shall gather and keep together the faxed copy of the voted ballot, the certified statement and the original voted ballot sent by air mail or delivery of each voter who transmitted a copy of a voted ballot by fax. Those ballots needed for an investigation conducted by the investigative staff of the State Board of Elections or by law enforcement officials shall be returned to the county board as soon as practicable after the conclusion of the investigation. All ballots and documents relative to a faxed copy of a voted ballot received by the county board shall be retained by it for the period required by law for retention of other materials relevant to the election.

Authority G.S. 163-22; 163-257.

08 NCAC 12 .0111 OTHER PROVISIONS

(a) The State Board of Elections agrees, unless the State Board of Election directs otherwise, to participate in any pilot projects sponsored by the Department of Defense to assist in improving processes for faxing or emailing voting information and materials. Should the State Board of Elections participate in a project, a full report shall be written by the staff regarding the pilot project for State Board consideration.

(b) Transmission details including preferred transmission times to county boards will be ascertained according to local needs. General procedures will be developed to accommodate for this part of the process.

(c) All county boards of elections plans for sending and receiving voting information and materials via electronic transmission must be submitted and approved by the State Board of Elections. Plans must include information regarding the type of equipment being used—type of fax machine, serial number, location of equipment, and security measures employed.

Authority G.S. 163-22; 163-257.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Secretary of Health and Human Services intends to amend the rules cited as 10 NCAC 22G .0505, .0510, .0512-.0515, and repeal the rules cited as 10 NCAC 22G .0408, .0506-.0507, .0509. Notice of Rule-making Proceedings was published in the Register on August 1, 2002.

Proposed Effective Date: July 1, 2003

Public Hearing:

Date: October 16, 2002

Time: 10:00 a.m. – 12:00 p.m.

Location: NC Division of Aging Conference Room, 693 Palmer Drive, Taylor Hall, Raleigh, NC

Reason for Proposed Action: *The Division of Aging is reviewing and updating the rules pertaining to nutrition services to make them consistent with current needs and practices, to conform with the 2000 amendments to the Older Americans Act, to eliminate repetition, and to reorganize them for improved communication of requirements. Most of the Division's nutrition rules have been amended only once, or at most twice, since the rules were adopted in 1980. Repetitive statement of requirements for congregate nutrition and home-delivered nutrition have been eliminated. Requirements common to both services (such as menus or food safety) have been moved from two rules proposed for repeal into existing rules for food preparation and safety, menu planning, and administration requirements. Requirements applicable to only congregate or home-delivered have been consolidated in two sections under one rule for administration. All requirements related to sanitation grades and other rules for foodhandling establishments have been amended to reference the rules in 15A NCAC 18A .2600, as promulgated by the Division of Environmental Health in the Department of Environment and Natural Resources. The rules for food preparation and safety now contain one reference to the Environmental Health rules, rather than repeating them.*

Comment Procedures: *Written comments should be sent to Phyllis Stewart, 2101 Mail Service Center, Raleigh, NC. Email: satana.deberry@ncmail.net. Comments should be received by October 31, 2002.*

Fiscal Impact

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

CHAPTER 22 - AGING

SUBCHAPTER 22G – PROGRAM OPERATIONS

SECTION .0400 - TITLE VII NUTRITION PROGRAM

10 NCAC 22G .0408 DEFINITIONS OF SERVICES

~~(a) The Division of Aging has established definitions of the services eligible for funding under Title III of the Older Americans Act. Services to be operated by grantees and contractors with assistance from the Division shall be consistent with these definitions.~~

~~(b) The Division of Aging's service definitions are as follows:~~

- ~~(1) "Information and Referral" is aimed at providing the elderly with information about services available and assisting them in gaining access. The process involves:~~
 - ~~(A) maintenance of information about services and opportunities available;~~
 - ~~(B) employment of qualified staff to inform of services and opportunities and to assist in taking advantage of them;~~
 - ~~(C) identifying, with the client, the types of assistance needed, placing him or~~

her in contact with the services, and following up.

The Unit of Service is: a one to one contact.

- (2) ~~"Outreach" is aimed at isolated elderly in need of available services who have not been able to use them. The process involves:~~
- (A) ~~seeking out and identifying hard to reach individuals;~~
 - (B) ~~assisting those identified to gain access to these services.~~

The Unit of Services is: a home visit.

- (3) ~~"Transportation" enables elderly persons to go to and from facilities and resources in order to apply for and receive services, reduce isolation, and promote independent living. Delivery may vary from county to county based on availability of transportation resources.~~

The Unit of Service is: a one way trip.

- (4) ~~"Counseling" provides direct guidance and assistance by qualified professional staff in copying with personal problems (family, emotional, psychological) and is generally offered as a special service in the focal agency for the elderly or is contracted to a specialized agency.~~

The Unit of Service is:

Group = staff hour

Individual = person hour

- (5) ~~"Health Screening" is a preventive and maintenance service provided by trained personnel and includes:~~
- (A) ~~maintaining individual health history;~~
 - (B) ~~basic examination;~~
 - (C) ~~testing for diabetes, glaucoma, abnormal blood pressure, etc.;~~
 - (D) ~~evaluation and counseling;~~
 - (E) ~~referral to other agencies and follow-up.~~

The Unit of Service is: a case hour.

- (6) ~~"In Home Aide Services" are those paraprofessional services which assist the individual, his family or both with essential home management tasks, personal care tasks, or supervision, or all of the above, to enable the individual, his family, or both to remain, and function effectively, at home as long as possible. In Home Aide Services may be used for the purpose of providing respite for a primary caregiver. For this purpose, In Home Aide Services may be provided to a client or patient in his own home or in the home of his primary caregiver. Respite Care may consist of any level of home management or personal care tasks.~~

The Unit of Service is: an hour of service.

- (7) ~~"Home Health" services include health care prescribed by a physician and given in the home. Such services may include:~~
- (A) ~~skilled nursing care;~~

(B) ~~occupational, physical, and speech therapy;~~

(C) ~~special services to blind and visually handicapped;~~

(D) ~~nutritional guidance;~~

(E) ~~medical social work; and~~

(F) ~~a home health aide.~~

The Unit of Service is: an hour of service.

- (8) ~~"Housing Assistance" includes services to obtain or maintain adequate housing; Component 1 includes direct provision and supervision of repairs (home renovation, weatherization). Component 2 involves location of funding for repairs, assistance in applying for funds, and follow-up to see that service was delivered. Component 3 assists the client in relocation to more suitable housing.~~

The Unit of Services is: a case hour.

- (9) ~~"Legal" services provide individual legal advice or representation in civil matters by an attorney. They may include, but may not be limited to, a component involving advice or representation by:~~

(A) ~~a paralegal under the supervision of an attorney;~~

(B) ~~a third year law student under the supervision of an attorney; or~~

(C) ~~a non lawyer in administrative public benefits problems. The Unit of Service is: one case hour of direct legal services.~~

- (10) ~~"Employment Referral" is a referral designated to help individuals find employment or link them with training programs that would qualify them for employment. Such services include:~~

(A) ~~provision of information about job opportunities;~~

(B) ~~counseling with individuals prior to referral;~~

(C) ~~helping employers create an environment for acceptance of the elderly and linking particular individuals with specific opportunities;~~

(D) ~~working with employers to create job opportunities for the elderly;~~

The Unit of Service is: a case hour.

- (11) ~~"Nutrition Services" include the range of services provided for and made accessible to nutrition program participants. Services may include: the provision of a hot meal, meeting one third of the Recommended Dietary Allowances of the National Research Council, in a congregate setting or delivered to an individual in the home; modification in the regular diet if sufficient numbers of persons have the need and if the food and skills are available to meet the need; and education in nutrition.~~

The Unit of Service is: a meal provided.

~~(12) "Day Care Services" include an organized program of services during the day in a community group setting for supporting the personal independence, and promoting the social, physical, and emotional well being of older adults who do not need nursing care but who require complete, full-time supervision during the day in order to live in their own home or the home of a relative or older adults. These are individuals who need help with activities of daily living to maintain themselves in their own homes or older adults who need intervention in the form of enrichment and opportunities for social activities in order to prevent deterioration that would lead to placement in group care. Included in these services are medical examinations required for individual participants for admission to day care and periodically thereafter when not otherwise available without cost, food and food services to provide a nutritional meal and snacks as appropriate to the program, and transportation to and from the service facility when needed and not otherwise available. Services must be provided in a center certified as meeting state standards for such programs.~~

The Unit of Service is: a person day.

~~(13) "Care Management" is a service designed to provide professional assessment of the total needs of an older adult and the planning, acquisition, coordination, and monitoring of all services required to meet the needs of the older adult from all service agencies in the community.~~

The Unit of Service is: a case hour.

~~(14) "Recreation Services" are organized activities that offer individuals the opportunity to use their leisure time in creative, enjoyable, and self fulfilling experiences. A well-balanced program shall include active and passive services that offer physical, mental, social, cultural, and other opportunities for experiences and expression. Proper planning and coordination should maximize the efficient use of all community resources i.e., facilities, leaders, participants and agencies. The services should be responsive to the unique and varied needs and desires of the potential participants. Recreation services include such activities as sports, music, drama, dance, arts and crafts, nature study, physical fitness, table games, tours, gardening, and camping.~~

The Unit of Service is: a person-hour.

~~(c) For purposes of these definitions, the units of service measures will be applied as follows:~~

~~(1) Case hour an hour of time spent working on a case, regardless of whether the time is spent with a client or not. Work not related to a~~

~~specific client would not be included in this definition.~~

~~(2) Hour of Service an hour of time spent in direct service at a client's home includes travel time to home.~~

~~(3) Person hour an hour of time spent with a single client. Person hours related to the provision of service to a group of clients would equal the number of hours spent with the group in service provision times the number of persons present at the time of service delivery.~~

~~(4) Staff hour an hour of staff time spent on any activity related to the service identified.~~

Authority G.S. 143B-10; 143B-138.

SECTION .0500 - NUTRITION PROGRAM FOR THE ELDERLY

10 NCAC 22G .0505 STAFFING

In addition to federal requirements for staffing of nutrition services providers, the following state policies shall be adhered to: Staffing requirements for nutrition service providers shall be:

~~(1) Consideration shall be given to employing minority individuals at least in proportion to the numbers of minority older persons represented among the nutrition service participants;~~

~~(2)(1) Each nutrition service provider which receives Home and Community Care Block Grant funds shall have made make arrangements for a qualified nutritionist or dietitian to certify the menu. A qualified dietitian or nutritionist is one who possesses, as a minimum, a Bachelor's Degree in dietetics, foods, nutrition or institutional management and is licensed or exempted by the State of North Carolina a licensed dietitian/nutritionist as defined in G.S. 90-350;~~

~~(3)(2) The nutrition service provider shall provide staff to operate the program including, at a minimum, a nutrition program director, and director and, if funded for congregate nutrition, a site manager;~~

~~(4)(3) The nutrition program director must be empowered with the necessary authority to conduct the day-to-day management and required administrative functions;~~

~~(5)(4) The site manager may be paid from Home and Community Care Block funds for no more than four hours per day;~~

~~(5) Nutrition service providers shall recruit, orient, train, and supervise volunteers to assist in nutrition program services and activities;~~

~~(6) Training Requirements:~~

~~(a) Service providers shall be responsible for assuring that nutrition program directors are knowledgeable of Nutrition program directors must complete within 12 months of~~

- ~~(b) Within 12 months of employment the nutrition program director must participate in training on Congregate Nutrition Program Management arranged by the Division of Aging; and~~
- ~~(7) Assure that staff is knowledgeable as follows:~~
 - ~~(a) Nutrition Program Directors: administration procedures, record keeping systems, reporting, food safety, food service;~~
 - ~~(b) Site Manager: (for Congregate Nutrition Sites) site operations, site records, community resources and methods of referrals, food safety, and food portioning;~~
 - ~~(c) Volunteers: site procedures for specific volunteer activities; and~~
 - ~~(d) All staff: aging process, fire/disaster evacuation, and training required for specific staff categories provided by the Division of Aging and/or Area Agency on Aging.~~

- ~~(10) inform the participants of agency procedures governing provision of service, confidentiality, waiting lists, service priorities, complaint and grievance, and other matters germane to the participant's decision to accept service;~~
- ~~(11) have a written plan which describes procedures to be followed in case a participant becomes ill or is injured. The plan shall be thoroughly explained to staff, volunteers, and participants and shall be posted in at least one visible location in each nutrition site; and~~
- ~~(12) be able to recruit, train, and supervise volunteers. Supervision must be provided in portioning of food onto plates by volunteers.~~

Authority G.S. 143B-10; 143B-138; 143B-181.1(c).

10 NCAC 22G .0507 REQUIREMENTS FOR FOOD PREPARATION CENTERS

~~All food preparation centers, whether operated directly by the nutrition service provider or under contract, must maintain a Grade A rating throughout the period of the food contract.~~

Authority G.S. 143B-10; 143B-138; 143B-181.1(c).

10 NCAC 22G .0509 HOME-DELIVERED MEALS STANDARDS

~~The Division of Aging requires all nutrition services providers who provide home delivered meals with Home and Community Care Block Grant funds to meet the following standards:~~

- ~~(1) Standard of Participation.~~
 - ~~(a) Home delivered meals shall be provided only to a person age 60 or over and the spouse of the person regardless of age if one or the other is homebound by reason of illness or incapacitating disability.~~
 - ~~(b) Meals shall be delivered only to persons residing in a home setting and who are not currently enrolled in any care providing program or facility including day care except on days not enrolled in day care. A determination of need for a home delivered meal must be made by conducting an initial in-home assessment and subsequent periodic re-evaluation of need.~~
- ~~(2) Packaging and Packing Standards.~~
 - ~~(a) All meals packaged at nutrition sites shall be individually packaged first (before congregate meals are served) and packed in secondary insulated food carriers with tight fitting lids and transported immediately.~~
 - ~~(b) All meals packaged at food preparation centers shall be individually packaged and packed in secondary insulated food carriers with~~

Authority G.S. 143B-181.1 (c).

10 NCAC 22G .0506 CONGREGATE SITE REQUIREMENTS

~~In addition to federal site requirements, all congregate nutrition sites shall meet the following site requirements:~~

- ~~(1) have a site director who is responsible for activities at the site;~~
- ~~(2) make special provisions as necessary for the service of meals to eligible handicapped individuals with limited mobility;~~
- ~~(3) be located in a facility where all eligible individuals will feel free to visit. Site selection shall take into consideration the type and location of the facility so as not to offend the cultural and ethnic preferences of the eligible individuals in the service area;~~
- ~~(4) operate five days per week, 52 weeks per year, except designated holidays or emergency situations. Participants shall be notified at least two weeks in advance of designated holidays;~~
- ~~(5) meet all local and state fire codes and building code requirements;~~
- ~~(6) meet all local and state sanitation codes adopted in accordance with 15A NCAC 18A .2600;~~
- ~~(7) be located in areas where there are high concentrations of older adults with greatest economic need;~~
- ~~(8) do a reassessment of participants once per year and update client registration forms;~~
- ~~(9) develop emergency plans for each site for medical emergencies and for evacuation in~~

- ~~tight fitting lids and transported immediately.~~
- ~~(c) Only aluminum foil, styrofoam or plastic reusable divided containers shall be used for hot food. The lids shall provide an air tight seal. Bread shall not be placed on top of other food.~~
- ~~(d) Cold and hot food shall be packaged and packed separately.~~
- ~~(e) Appropriate individual containers with tight fitting lids shall be used for all cold food, "sandwich" type bags which can be sealed may be used for bread.~~
- ~~(f) Temperature checks shall be made at least one time per month on each route to document that food temperatures meet the RULES GOVERNING THE SANITATION OF RESTAURANTS AND OTHER FOOD HANDLING ESTABLISHMENTS, pursuant to 15A NCAC 18A .2600.~~
- ~~(g) All food delivery carriers must be safe for food contact and must be sanitized daily by the food service provider.~~
- ~~(3) Meal Standards.~~
 - ~~(a) All home delivered meals shall meet one third of the current daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences National Research Council and the Division of Aging meal pattern requirements.~~
 - ~~(b) All menus shall be written for a minimum of twenty days and shall be reviewed by a qualified nutritionist/dietitian to assure the menus provide one third RDA.~~
 - ~~(c) All regular menus shall be submitted to the nutritionist/dietitian for review and approval at least two weeks prior to use.~~
 - ~~(d) The approved menus shall be on file, with any changes in writing, for at least one year by the service provider.~~
 - ~~(e) At least one hot or cold nutritious meal shall be provided daily at least five days a week. Frozen, canned, dehydrated, or nutritional supplement products may also be used for emergency situations and additional or weekend meals. All frozen meals shall be dated with the delivery dates.~~
- ~~(4) Clinical Diet Standards.~~
 - ~~(a) Prior to serving a clinical diet, a physician's written prescription using the current North Carolina Dietetic~~

~~Association Diet Manual shall be on file with the nutrition service provider.~~

- ~~(b) Each therapeutic diet prescription shall be re-ordered in writing by the physician every six months. Menus for each type of therapeutic diet must be written by a qualified nutritionist/dietitian. Menus for the clinical diets shall follow the standard set forth in the North Carolina Dietetic Association Diet Manual. These menus shall remain on file for at least one year at the level.~~

~~(5) Delivery Standards.~~

- ~~(a) Each delivery route shall be clearly established in writing.~~
- ~~(b) No more than two hours shall elapse between the time of delivery to the drop off points and the time of delivery of the last meal on the route.~~
- ~~(c) Each meal shall be received at the participant's home by an individual.~~

Authority G.S. 143B-10; 143B-138; 143B-181.1(c); 45 C.F.R., Chapter XIII, Part 1321.

10 NCAC 22G .0510 FOOD PREPARATION AND SAFETY REQUIREMENTS

The Division of Aging requires all congregate and home delivered meal nutrition services providers to meet the following requirements, in addition to those specified in the federal regulations;

(1) Food Preparation.

- (a) State and local regulations applicable to the particular types of food preparation and meal delivery systems used by the project shall be adhered to in all stages of food service operations. Each nutrition provider must abide by food safety and sanitation practices required in the "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" (15A NCAC 18A .2600).
- (b) All staff working in the preparation of food shall be under the supervision of a person who shall insure the application of hygienic techniques and practices in food handling, preparation and service. This supervisory person shall consult with the nutrition service provider's dietitian for advice and consultation as necessary.
- (c) Tested quality recipes, adjusted to yield the number of servings needed, shall be used to achieve the consistent and desirable quality and quantity of meals.

- (d) All foods shall be prepared and served in a manner to present optimum flavor and appearance, while retaining nutrients and food value.
- ~~(2)~~ Home-delivered Meal Packaging and Packing Standards.
- ~~(a)~~ All meals packaged at nutrition sites for home delivery shall be individually packaged first (before congregate meals are served) and packed in secondary insulated food carriers with tight fitting lids and transported immediately.
- ~~(b)~~ All home-delivered meals pre-plated at food preparation centers shall be individually packaged and packed in secondary insulated food carriers with tight fitting lids and transported immediately.
- ~~(c)~~ Only divided containers with air-tight seals shall be used for hot food. Bread shall not be placed on top of other food.
- ~~(d)~~ Cold and hot food shall be packaged and packed separately.
- ~~(e)~~ Individual containers with tight-fitting coverings shall be used for all cold food. "Sandwich" type bags that can be sealed may be used for bread.
- ~~(f)~~ All food delivery carriers must meet National Sanitation Foundation Standards (pursuant to the "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" at 15A NCAC 18A .2600) and must be sanitized daily by the food service provider.
- ~~(2)~~(3) Food Safety.
- ~~(a)~~ Menus shall be:
- ~~(i)~~ Planned in advance for a minimum of 20 days in a clearly written format. Menus shall be identified as nutrition project menus;
- ~~(ii)~~ Certified in writing as providing one-third of the current Recommended Dietary Allowance as established in Recommended Daily Allowances by the Food and Nutrition Board of the National Academy of Sciences, National Research Council, based on current food composition tables developed by the dietitian/nutritionist whose services are utilized by the project. The Recommended Daily Allowances publication, including subsequent amendments and editions, is adopted by reference pursuant to G.S. 150B-21.6. The Recommended Daily Allowances publication is available for review at the Division of Aging, 693 Palmer Drive, Raleigh, North Carolina 27626-0531 and may be ordered through the Division of Aging at a current cost of twenty dollars (\$20.00);
- ~~(iii)~~ Posted with serving dates indicated in a conspicuous location in each congregate meal site as well as each preparation area; and
- ~~(iv)~~ Adhered to, subject to reasonable availability of food items as well as availability of USDA donated food.
- ~~(b)~~ Menu plans shall reflect the use of seasonal fresh fruits and vegetables.
- ~~(e)~~(a) All food shall be packaged and transported in a manner to protect against potential contamination including dust, insects, rodents, unclean equipment and utensils, and unnecessary handling. Packaging and transport equipment must maintain appropriate food temperatures. Records of all temperature checks shall be kept on file for audit by the service provider.
- ~~(d)~~ The holding time between the completion of cooking at the commissary or kitchen and delivery of food to the nutrition site shall not exceed three hours.
- ~~(e)~~ Single service disposable items including plastic gloves, utensils, and tableware shall be used one time only and then discarded.
- ~~(f)~~ Food left after everyone has been served may be served as seconds to congregate participants. Food served in this manner may not be reported as additional participant meals served.
- ~~(g)~~ All food which has been served and not eaten shall be discarded.
- ~~(h)~~(b) Nutrition service providers shall educate participants and all staff regarding the sources and prevention of foodborne illness.
- ~~(i)~~(c) All food served must be prepared in a Grade A kitchen. All food used must

- ~~meet standards of quality, sanitation, and safety applying to foods that are processed in a commercially licensed establishment. All nutrition providers and food preparation sub-contractors shall follow the "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" (15A NCAC 18A .2600) to maintain a Grade A sanitation rating.~~
- (d) Food prepared, frozen, or canned in the home shall not be served at the site.
- (e) Food from unlabeled, rusty, leaking, or broken containers or cans with side dents, rim dents, or swells shall not be used.
- (f) All meat and poultry, fresh or frozen, used in the meals must be inspected by USDA or State officials, from Federally or State inspected plants, and must bear inspection stamps on the box or package.
- (g) All foods used in the meals must be from approved sources; be in compliance with applicable state and local laws, ordinances, and regulations; and be clean, wholesome, free from spoilage, free from adulteration and mislabeling, and safe for human consumption.
- (h) Fresh raw fish must bear the PUFI (Packed Under Federal Inspection) Shield.
- (i) Fresh fruits and vegetables of good quality may be donated and incorporated into their menu only when they can be used to serve all participants. Prior to use, all fruits and vegetables shall be washed to remove dirt or insecticide residues.
- ~~(n) Staff preparing and serving food must use good hygiene techniques and practices in all handling of the food.~~
- ~~(o) All hot food must be maintained at 140 degrees Fahrenheit or above throughout all processes from cooking to serving, with the exception of ground beef which must be cooked at 155 degrees Fahrenheit, and all cold food must be maintained at 45 degrees Fahrenheit or below during all processing through serving.~~
- ~~(p) Each congregate nutrition provider must abide by food safety and sanitation practices required in "Rules Governing the Sanitation of Restaurants and Other Food Handling Establishments" (15A NCAC 18A .2600) and other applicable state and local ordinances and regulations.~~
- ~~(q) All material used in food delivery carriers must be guaranteed to be safe for food contact. All carriers must be sanitized daily by the food service eaterer.~~
- (j) Food temperatures must be taken and recorded when food arrives at the nutrition site and again immediately before serving congregate meals. If warming equipment or refrigeration equipment is used to hold food prior to serving, then temperatures also must be taken and recorded at the time of food delivery. Food temperatures shall be recorded by the name of each specific food item. All temperature records must be maintained until audited.
- (k) Temperature checks shall be made at least one time per month on each home-delivered meal route to document that food temperatures meet the "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" (15A NCAC 18A .2600).
- ~~(s)(1) The nutrition site must be left clean daily. kept clean and in good repair.~~

Authority G.S. 143B-10; 143B-138; 143B-181.1(c); 45 C.F.R., Chapter XIII, Part 1321.

10 NCAC 22G .0512 MENU PLANNING REQUIREMENTS

- ~~(a) Each meal served shall contain at least one-third of the current daily Recommended Dietary Allowances as established by the Food and Nutrition Board, National Academy of Science - National Research County (Tenth Edition).~~
- (a) Agencies providing congregate nutrition and/or home delivered meal services must use and follow the "Menu Pattern" in this Paragraph comply with the following menu planning requirements:
- (1) Each day's menus must meet one third of the daily Recommended Dietary Allowances. Each meal served shall contain at least one-third of the current daily Recommended Dietary Allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences. If a nutrition program provides additional meals, then at least two-thirds of the Recommended Dietary Allowances shall be provided for two meals per day or 100% of the Recommended Dietary Allowances shall be provided for three meals per day.
 - (2) All foods must be identified on the menu in order to calculate nutrient value.
 - (c)(3) All meals must meet the following specifications: Calorie - The calorie content must be a minimum of 700 calories per

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~~day meal. One meal per 20 day cycle may exceed 1,000 milligrams sodium.~~

- (4) The sodium content shall not exceed 1,300 mg per meal.
- (5) Recipes for all foods used in combination must be supplied to the person responsible for certifying the menu to facilitate nutrient analysis. When recipe ingredients are changed, the recipe must be re-submitted for approval by the licensed dietitian/nutritionist.
- (6) All prepared or breaded meat items or meat in combination must be specified on the menu.
- (7) The form of vegetable or fruit used (fresh, frozen, dried, or canned) must be indicated on the menu for nutrient analysis.

(b) Menu Requirements

- (1) All menus shall be written for a minimum of 20 days and shall be certified by a qualified nutritionist/dietitian to assure the menus provide one-third of the current Recommended Daily Allowances.
- (2) All regular menus shall be submitted to the nutritionist/dietitian for review and approval at least two weeks prior to use.
- (3) The approved menus shall be on file, with any changes in writing, for at least one year by the service provider.
- (4) At least one hot or cold nutritious meal shall be provided daily at least five days a week.

<u>MENU PATTERN FOOD GROUP</u>	<u>AMOUNT</u>
<u>Meat/Meat Alternative</u>	<u>2 ounces cooked, edible portion or equivalent</u>
<u>Bread/Grains</u>	<u>2 servings</u>
<u>Vegetables/Fruits</u>	<u>2 servings</u>
<u>Fats</u>	<u>total fat not to exceed 30% of total calories per meal</u>
<u>Dairy</u>	<u>1 serving</u>

- (1) Protein ~~Category.~~ ~~Meat/Meat Alternative Group.~~
 - (A) The total protein content of each meal must be no less than 21 grams. Of this, 14 grams must be a "complete protein" in the form of 2 oz. edible meat, fish or poultry, exclusive of fat, bone, or gristle. One-half cup cooked drained dried beans, peas or lentils may be used as a substitute for 1 oz. of meat. One cup of dried beans may be used ~~twice in one 20 day cycle~~ as a substitute for 2 oz. meat; however, a "complementary" protein source must be served at the same meal with the one cup dried beans in order to serve a complete protein (i.e., rice, corn, or cornbread). Other protein sources such as one egg or two tablespoons peanut butter may also be substituted for 1 oz. meat.
 - (B) Ground meat may be used in entrees no more than twice in one week. Casseroles or other mixed dishes must have ingredients specified on

Frozen, canned, dehydrated, or nutritional supplement products may also be used for emergency situations and additional or weekend meals. All frozen meals shall be dated with the delivery dates.

- (5) Menus with serving dates must be posted in a conspicuous location in each congregate meal site as well as each preparation area.
- (6) All menus shall be adhered to, subject to reasonable availability of food items as well as availability of USDA donated food.

(c) Therapeutic Diet Standards.

- (1) Prior to serving a therapeutic diet, a physician's prescription written according to the guidelines in the current North Carolina Dietetic Association Diet Manual shall be on file with the nutrition service provider.
- (2) Each therapeutic diet prescription shall be re-ordered in writing by the physician every six months. Menus for each type of therapeutic diet must be written by a qualified nutritionist/dietitian. Menus for the therapeutic diets shall follow the standard set forth in the North Carolina Dietetic Association Diet Manual. These menus shall remain on file for at least one year.

(d) Each ~~category~~-food group and amount of the following "Menu Pattern" outlined in this Paragraph must be served shall be offered and must be available to be served to each participant.

- (2) ~~Complex Carbohydrate~~ ~~Category.~~ ~~Bread/Grains Group.~~ Each meal ~~must~~ shall contain two servings of a whole grain or enriched grain product.
- (3) Vegetable/Fruit ~~Category.~~ ~~Group.~~
 - (A) Each meal must contain two servings of different fruits and vegetables. When salad is served, it must be placed in a separate compartment of a compartmental tray to avoid mixing with other foods or served in a separate salad bowl. Juice may fulfill no more than half of the vegetable/fruit requirement for any one meal.
 - (B) One serving of vitamin C-rich ~~cold~~ food must be served twice per week.
- (4) Fat ~~Category.~~ ~~Group.~~ Total fat shall not exceed 30% of the total calories per meal. One teaspoon of butter or fortified margarine in an individual covered package chip or container may be used if it adds palatability to the menu. The menu must identify whether gravy, salad

- ~~dressing, mayonnaise, margarine or butter is used when served.~~
- (5) ~~Calcium Rich Food Category Dairy Group.~~ Each meal must contain a total of no less than ~~270 mg.~~ 400 mg. calcium. This may be obtained by one serving of 8 ounces of whole, low fat, skim, buttermilk, chocolate (not chocolate drink), sweet acidophilus milk, or Ultra High Temperature (UHT) milk, fortified with vitamins A & D in an individually sealed carton, or other foods high in calcium.
- (6) ~~Special Requirements.~~
- (A) ~~Recipes for all foods used in combination must be supplied to facilitate nutrient analysis to the person responsible for certifying the menu. When recipe ingredients are changed, the recipe must be re-submitted for approval~~
- (B) ~~All prepared or breaded meat items or meat in combination must be specified on the menu. The bidder receiving the food bid must obtain and submit a Certificate of Compliance from the manufacturer for each item to be included on the meat category. Only approved brands may be used in the meat category.~~
- (C) ~~The form of vegetable or fruit used (fresh, frozen, dried, or canned) must be indicated on the menu for nutrient analysis.~~
- (D) ~~Vegetable protein products are allowed by the Food and Nutrition Service (FNS), USDA, to be used in meat mixtures up to a maximum of 30%. Seventy percent of the ingredients in the meat mixture must be meat.~~
- (E) ~~Vegetable protein extended products may be used one time per week and must be noted on the menu. A copy of the Certificate of Compliance shall be filed with the menus.~~

a meal, on the same basis as meals are provided to persons 60 years of age and older, to individuals providing volunteer services during the meal hours and to individuals with handicaps or disabilities who have not attained 60 years of age but who reside with an eligible older adult or reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided. Disability status shall be verified by reviewing a notice of disability benefit award. Nutrition service providers are required to maintain a current copy of the notice of benefit award for each person served.

- (2) Service Priority. Priority shall be given to serving:
- (A) Individuals who have been abused, neglected, or exploited as substantiated by the county department of social services and for whom the service is needed as part of the adult protective services plan;
- (B) Individuals who are at risk of abuse, neglect, or exploitation;
- (C) Individuals who are health impaired and who are in need of nutritional supports, or those older persons whose independent living arrangements do not provide adequate facilities for meal preparation.
- (3) Ineligible Persons.
- (A) Eligibility for the service is restricted to those persons whose dietary needs can be met by the meals available through the program as outlined in Rule .0512 of this Section.
- (B) Persons residing in long term care facilities and persons enrolled in a care-providing program or a facility, including an adult day care or adult day health care program in which a meal is provided, are not eligible. Persons who meet eligibility criteria who are enrolled in care providing programs including adult day care or adult day health care programs are eligible to receive congregate meals on the days they do not participate in such programs.
- (b) Home Delivered Meals.
- (1) Target Population.
- (A) ~~The target population for home-Home delivered meals shall be available to~~ persons 60 years of age and older who are physically or mentally unable to obtain food or prepare meals, who have no responsible

Authority G.S. 143B-181.1(c).

10 NCAC 22G .0513 ELIGIBILITY FOR SERVICE

- (a) Congregate Nutrition Program.
- (1) Target Population.
- (A) Congregate nutrition services shall be available to persons 60 years of age and older and their spouses, regardless of age. Spouses under the age of 60 are eligible for services when the person 60 and over is receiving nutrition services.
- (B) Area Agencies on Aging shall establish clear, written procedures that will also allow congregate nutrition programs the option to offer

person who is able and willing to perform this needed service, and who are unable to participate in the congregate nutrition program because of physical or mental impairment. The spouse of an eligible older person is also eligible to receive a home delivered ~~meal.~~ meal if one or the other is homebound by reason of illness or incapacitating disability.

(B) Area Agencies on Aging shall also establish procedures that will allow home delivered meals programs the option to offer a meal, on the same basis as meals are provided to persons 60 years of age and older, to individuals providing volunteer services during the meal hours and to individuals with disabilities who reside at home with an eligible older adult. Disability status ~~should~~ shall be verified by reviewing a notice of disability benefit award.

(C) In those special instances where a family caregiver is caring for an eligible homebound older person, the family caregiver is also eligible to receive a meal.

(2) Service Priority. Priority shall be given to serving:

(A) Individuals who have been abused, neglected, or exploited as substantiated by the county department of social services and for whom the service is needed as part of the adult protective service plan;

(B) Individuals who are at risk of abuse, neglect, or exploitation;

(C) Individuals who do not have a caregiver or another responsible party available to assist with care; and

(D) Individuals who experience impairment in performance of activities of daily living (ADL) and instrumental activities of daily living (IADL).

(3) Ineligible Persons. Eligibility for the service is restricted to those persons whose dietary needs can be met by home delivered meals available through the program as outlined in Rule .0512 of this Section. Persons residing in long term care facilities and persons enrolled in a care-providing program or a facility, including an adult day care or adult day health care program in which a meal is provided, are not eligible. Persons who meet eligibility criteria who are enrolled in care providing programs or adult day care or adult day health care programs are eligible to receive home delivered meals on the days they do not participate in such programs.

Authority G.S. 143B-181.1(c).

10 NCAC 22G .0514 ADMINISTRATION REQUIREMENTS

Agencies providing Congregate and Home Delivered Meal nutrition services shall:

(1) Apply for authorization to accept food stamps as contributions at the nearest Field Office of the Food and Nutrition Service, USDA.

(2) Assure that all provisions relating to the use and handling of USDA issued food stamps as prescribed by federal, state, and local agencies responsible for administering the food stamp program are met.

~~(3) Recruit, orient, train, and recognize volunteers.~~

~~(4) Assure that staff is knowledgeable as follows:~~

~~(a) Nutrition Program Directors: administration procedures, record keeping systems, reporting, food safety, food service.~~

~~(b) Site Manager: (for Congregate Nutrition Sites) site operations, site records, community resources and methods of referrals, food safety, and food portioning.~~

~~(c) Volunteers: site procedures for specific volunteer activities.~~

~~(d) All staff: aging process, fire/disaster evacuation, and training required for specific staff categories provided by the Division of Aging and/or Area Agency on Aging.~~

~~(5) Provide all staff (both paid and volunteer) with written information on personnel policies which shall include: job descriptions; policies on fringe benefits, vacations, holiday and sick leave, outside employment; grievance procedures and termination; hours, compensation and travel allowance; probation and promotion; procedures and timetable for performance evaluations; and training requirements.~~

~~(6)~~(3) Maintain adequate records documenting service activities which shall include:

(a) Client registration forms;

(b) Unit of service records;

(c) Service cost sharing records;

(d) Diet prescriptions for each clinical therapeutic diet served.

(e) Meal delivery ~~tickets~~ tickets, if food preparation is sub-contracted, or similar documentation of meals prepared, meals served, and meals unserved; and

(f) Employment records including affirmative action efforts and results, equal opportunity employment goals and outcomes.

~~(7)~~(4) Comply with all regulations related to donated USDA food and cash reimbursement.

Disbursements of cash in lieu of commodities shall only be used by grant recipients and contractors to purchase U.S. agricultural commodities and other foods for their nutritional projects. Maintain separate records to document USDA cash used to purchase:

- ~~(a)~~ United States Department of Agriculture commodities and other foods used in the food service.
- ~~(b)~~ Food in meals provided under contract arrangements with food management companies, caterers, restaurants, or schools. Each meal must contain United States produced commodities or other foods at least equal in value to the USDA per meal cash entitlement.
- ~~(8)~~(5) Submit required records and reports required by the Division of Aging on a current and timely basis.
- ~~(9)~~ Conduct a written assessment of each participant every six months except those on temporary home delivered meal status.
- ~~(10)~~(6) Maintain confidentiality of all participant records.
- ~~(7)~~ Operate five days per week, 52 weeks per year, except designated holidays or emergency situations. Participants shall be notified in writing of designated holidays;
- ~~(8)~~ Inform participants of agency procedures governing the provision of service, confidentiality, waiting lists, service priorities, complaints and grievances, and other matters germane to the participant's decision to accept service;
- ~~(9)~~ Congregate requirements:
 - ~~(a)~~ Have a site director who is responsible for activities at the site;
 - ~~(b)~~ Make special provisions as necessary for the service of meals to eligible handicapped individuals with limited mobility;
 - ~~(c)~~ Meet all local and state fire codes and building code requirements;
 - ~~(d)~~ Meet all local and state sanitation codes adopted in accordance with 15A NCAC 18A .2600;
 - ~~(e)~~ Be located in areas where there are high concentrations of older adults with greatest economic need;
 - ~~(f)~~ Update client registration information for each client at least annually;
 - ~~(g)~~ Develop emergency plans for each site for medical emergencies and for evacuation in case of fire or explosion. Conduct fire drills at least quarterly during hours of site operation; and
 - ~~(h)~~ Have a written plan which describes procedures to be followed in case a participant becomes ill or is injured.

The plan shall be thoroughly explained to staff, volunteers, and participants and shall be posted in at least one visible location in each nutrition site.

- ~~(11)~~ Use donated foods to the maximum extent feasible and comply with all USDA regulations related to donated food and cash reimbursement.
- ~~(10)~~ Home-delivered requirements:
 - ~~(12)~~(a) Conduct an in-home assessment in writing within seven working days of acceptance of referral.
 - ~~(13)~~(b) Notify a participant in writing of his/her eligibility or ineligibility for home delivered meals within 10 working days of assessment.
 - ~~(c)~~ Conduct a written reassessment of each home-delivered meal participant every six months, except those on temporary home delivered meal status.
 - ~~(14)~~(d) Establish in writing the area to be served by the Home Delivered Meals program.
 - ~~(15)~~(e) Ensure that each home delivered meal route is no longer than one hour, and ensure that no more than two hours elapse between the delivery of the food at the drop-off site and delivery of the meal to the home of home-bound older person maintains food delivery temperatures that meet the requirements of "Rules Governing the Sanitation of Restaurants and Other Food Handling Establishments" (15A NCAC 18A .2600).
 - ~~(f)~~ Deliver meals only to an eligible person residing in a home setting and only when they are received by an individual.
 - ~~(16)~~(g) Establish written agency procedures for reporting changes in participant eligibility.

Authority G.S. 143B-181.1(c).

10 NCAC 22G .0515 PROHIBITED ACTIVITIES

- ~~(a)~~ Funds shall not be used to purchase vehicles to deliver home delivered meals to participants.
 - ~~(1)~~ Reimburse mileage for staff delivering home delivered meals to participants;
 - ~~(2)~~ Purchase vehicles to deliver home delivered meals to participants;
 - ~~(3)~~ Pay for staff or volunteer time to deliver home delivered meals to participants.
- ~~(b)~~ Prohibited service activities:
 - ~~(1)~~ Medical treatment or medication shall not be provided or administered by program staff or volunteers.

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- (2) Financial transactions except those related to service cost sharing shall not be carried out by program staff or volunteers.
- (3) Unapproved meals may not be provided to participants.
- (4) Gifts from participants may not be accepted by program staff or volunteers.
- (5) Meals cannot be provided to residents of long term care facilities, guests, ineligible handicapped persons under age 60, adult day care or adult day health care participants, and paid staff under age 60 without reimbursement of the full ~~unit cost~~ cost of the meal. Participants in adult day care or adult day health care programs are eligible for nutrition services on the days they do not attend day care or day health care programs.
- (6) ~~Special Therapeutic~~ diets may not be served unless a physician's order is on file, ~~there are sufficient numbers of special diets required so as to justify the meals,~~ file and the nutrition program has the capability to provide the service.
- (7) Except on an emergency basis, nutrition site(s) shall not be closed or combined on a temporary or permanent basis without the prior written approval of the Area Agency on Aging Administrator.

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

CHAPTER 06 - AGENT SERVICES DIVISION

SUBCHAPTER 06A - AGENT SERVICES DIVISION

SECTION .0200 - DESCRIPTION OF FORMS

11 NCAC 06A .0213 SELF-EMPLOYED ADJUSTER RENEWAL APPLICATION

~~The "Self-Employed Adjuster Renewal Application" shall include the year for which the license is being renewed, the date the license will be cancelled if the renewal application is not received by the Division, amount of license renewal fee, signature, personal information, instructions for proper completion and return of the application and other pertinent information.~~

Authority G.S. 58-33-25(n); 58-33-30(a); 58-33-125.

11 NCAC 06A .0214 MOTOR VEHICLE DAMAGE APPRAISER RENEWAL APPLICATION

~~The "Motor Vehicle Damage Appraiser Renewal Application" shall include the year for which the license is being renewed, the date the license will be cancelled if the renewal application is not received by the Division, amount of license renewal fee, signature, personal information, instructions for proper completion and return of the application and other pertinent information.~~

Authority G.S. 58-33-25(n); 58-33-30(a); 58-33-125.

11 NCAC 06A .0215 RESIDENT BROKER APPLICATION

~~The "Resident Broker Application" shall include personal information, license fee, signature of the applicant and other information to aid the Division in determining the qualification of the applicant.~~

Authority G.S. 58-33-25(n); 58-33-30(a); 58-33-30(h)(1).

11 NCAC 06A .0216 NONRESIDENT BROKER APPLICATION

~~The "Nonresident Broker Application" shall include personal information, license fee, signature of the applicant and other information to aid the Division in determining the qualification of the applicant and must be accompanied by a Home State Certification.~~

Authority G.S. 58-33-25(n); 58-33-30(a); 58-33-30(h)(2).

11 NCAC 06A .0221 CANDIDATE GUIDE

~~The "Candidate Guide Application" shall require the applicant to provide personal information, type of examination to be taken, signature of authorized company representative when applicable, and other information to aid the Division in determining if the applicant is qualified to take the examination for which he is applying. The guide shall be made available through the Division and provided upon written request and appropriate fee.~~

Authority G.S. 143B-181.1(c); 42 U.S.C. 3027.

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to amend the rules cited as 11 NCAC 06A .0302, .0304, .0402, .0412-.0414, .0417, .0506, .0602, .0702, .0805 and repeal the rules cited as 11 NCAC 06A .0213-.0216, .0221-.0233, .0235-.0236, .0239-.0240, .0301, .0306, .0401, .0403, .0410, .0502-.0503, .0507-.0508, .0601. Notice of Rule-making Proceedings was published in the Register on August 1, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 22, 2002

Time: 10:00 a.m.

Location: 3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: These Rules are being updated to reflect changes made in recent legislation.

Comment Procedures: Comments from the public shall be directed to Shirley Jones, PO Box 26387, Raleigh, NC 27611, phone (919) 733-7487. Comments shall be received through October 31, 2002.

Fiscal Impact

State

Authority G.S. 58-33-30(a).

11 NCAC 06A .0222 NORTH CAROLINA INSURANCE LICENSE APPLICATION

~~The "North Carolina Insurance License Application" for an agent shall include personal information, type of license applied for, signature of applicant, and other information to aid the Division in determining what license should be issued and if the applicant is qualified for that license.~~

Authority G.S. 58-33-30(a).

11 NCAC 06A .0223 NORTH CAROLINA LIMITED REPRESENTATIVE APPLICATION

~~The "North Carolina Limited Representative Application" shall include personal information, type of license applied for, company number, signature of the applicant and the authorized company representative, and other information to aid the Division in determining what license should be issued and if the applicant is qualified for that license.~~

Authority G.S. 58-33-30(a).

11 NCAC 06A .0224 ADJUSTER AND APPRAISER N.C. LICENSE APPLICATION

~~The "Adjuster and Appraiser N.C. License Application" shall include personal information, type of license applied for, company number and signature of authorized company representative when applicable, signature of applicant, and other information to aid the Division in determining what license should be issued and if the applicant is qualified for that license.~~

Authority G.S. 58-33-30(a).

11 NCAC 06A .0225 APPOINTMENT OF NORTH CAROLINA AGENT

~~The "Appointment of North Carolina Agent" form shall include personal information, insurance authority for which appointed, company number, effective date of the appointment, signature of authorized company official and other information to aid the Division in the recording of the appointment.~~

Authority G.S. 58-33-40(b)(c).

11 NCAC 06A .0226 TERMINATION OF NORTH CAROLINA AGENT APPOINTMENT

~~The "Termination of North Carolina Agent Appointment" form shall include personal information, insurance authority being terminated, signature of authorized company official, company number, effective date of termination, and other information to aid in the recording of the termination of authority.~~

Authority G.S. 58-33-40(e).

11 NCAC 06A .0227 APPLICATION FOR LICENSE TO REPRESENT A PURCHASING GROUP

~~An "Application for License to Represent a Purchasing Group" shall include the name of the purchasing group, personal information about the applicant, conditions of license, signature of applicant and other information to aid the Division in~~

~~determining the qualification of the applicant and must be accompanied by a Home State Certification.~~

Authority G.S. 58-22-60.

11 NCAC 06A .0228 BOND (FORM B) PG-2

~~This form is used only in licensing a representative for a purchasing group. The "Bond (Form B)" shall include the name of the principal, bond number, the name of the surety, the amount of the bond, conditions of the bond, appropriate signatures and other pertinent information. A power of attorney must accompany this bond.~~

Authority G.S. 58-21-65(b)(4).

11 NCAC 06A .0229 N.C. INSURANCE AGENT/LICENSE APPLICATION RISK RETENTION

~~The "North Carolina Insurance Agent License Application Risk Retention" shall include personal information, type of license, signature of applicant and other information to aid the Division in determining if the applicant is qualified for that license and must be accompanied by a home state certificate.~~

Authority G.S. 58-33-35.

11 NCAC 06A .0230 APPOINTMENT OF NORTH CAROLINA AGENT - RISK RETENTION

~~The "Appointment of North Carolina Agent - Risk Retention" form shall include personal information, insurance authority for which appointed, company name and number, effective date of appointment and authorized signature of company official.~~

Authority G.S. 58-22-60.

11 NCAC 06A .0231 TERMINATION OF NORTH CAROLINA AGENT - RISK RETENTION

~~The "Termination of North Carolina Agent - Risk Retention" form shall include personal information, the kind of insurance authority being terminated, company name and number, effective date of termination of appointment, and signature of company official.~~

Authority G.S. 58-33-40(e).

11 NCAC 06A .0232 APPLICATION FOR RESIDENT SURPLUS LINES LICENSE

~~The "Application for Resident License to Represent Surplus Lines Insurer (Form RSL)" shall include personal information and other pertinent information to aid the Division in determining if the applicant is qualified for that license, as well as conditions for the issuance of the license. It must be signed by the applicant and notarized and include three endorsements.~~

Authority G.S. 58-2-40; 58-21-65(b)(2),(f).

11 NCAC 06A .0233 BOND (FORM B) SL-2

~~The "Bond (Form B) SL-2" shall include the name of the principal, bond number, name of the surety, amount of bond, date and conditions of the bond, appropriate signatures and other pertinent information. A power of attorney must accompany this bond.~~

Authority G.S. 58-21-65(b)(4).

11 NCAC 06A .0235 CORPORATE SURPLUS LINES APPLICATION

~~The "Corporate Surplus Lines Application" shall contain the name, address, and telephone and facsimile numbers of the corporation, and the names of the surplus lines licensees within the corporation. The application shall be signed by an officer of the corporation and shall be notarized. As used in this Rule, "corporation" includes a limited liability company as described in G.S. 57C, and a partnership, limited partnership or registered limited liability partnership as described in G.S. 59.~~

Authority G.S. 58-2-40; 58-21-65(c)(d).

11 NCAC 06A .0236 APPLICATION FOR CORPORATE/PARTNERSHIP INSURANCE LICENSE

~~The "Application for Corporate/Partnership Insurance License" shall contain the name, address, and telephone and facsimile numbers of the corporation or partnership. The application shall be signed by an officer of the corporation or partnership, and notarized. As used in this Rule, "corporation or partnership" includes a limited liability company as described in G.S. 57C, and a partnership, limited partnership or registered limited liability partnership as described in G.S. 59.~~

Authority G.S. 58-2-40; 58-33-25(h); 58-33-30(a).

11 NCAC 06A .0239 NONRESIDENT SURPLUS LINES LICENSE APPLICATION

~~The "Application for Nonresident License to Represent Surplus Lines Insurer (Form NRSL)" shall include personal information and other pertinent information to aid the Division in determining if the applicant is qualified for that license, as well as conditions for the issuance of the license. It must be signed by the applicant, notarized, and include three endorsements.~~

Authority G.S. 58-2-40; 58-21-65(f).

11 NCAC 06A .0240 NONRESIDENT SURPLUS LINES LICENSE RENEWAL

~~Each year the Division shall send to each surplus lines licensee an invoice for the license renewal fee. Upon receipt of the renewal fee by the Division the license shall be renewed and a new license mailed to the licensee. The applicant must be a member of a surplus lines advisory organization at the time of application for renewal.~~

Authority G.S. 58-2-40; 58-21-40(d); 58-21-65(f).

SECTION .0300 - EXAMINATIONS

11 NCAC 06A .0301 TYPES OF EXAMINATIONS

~~Types of examinations administered for licensing are life, and health; property and liability; Medicare supplement/long term care; auto physical damage; adjusters; hail adjusters; title; and surplus lines.~~

Authority G.S. 58-2-40; 58-21-65(b)(3); 58-33-30(e).

11 NCAC 06A .0302 EXAMINATIONS – SPECIAL ACCOMMODATIONS (ADA)

~~All examinations shall be in objective or essay form.~~ A physically handicapped individual whose ability to write is impaired or lost ~~and or~~ a visually handicapped individual may have special assistance from other individuals acting as readers or recorders. Applicants requiring special assistance ~~must shall~~ request ~~in writing such assistance~~ the assistance, from the test administrator, before registration for the examination, by the filing deadline of the examination. Verification of handicaps and a statement of all assistance needed ~~must shall~~ be included at the time of application.

Authority G.S. 58-2-40; 58-33-30(e).

11 NCAC 06A .0304 RESPONSIBILITY OF APPLICANT AT EXAMINATION SITE

(a) Applicants who have not previously failed the same examination ~~must shall~~ bring to the examination site the Certificate of Course Completion/Examination Admission Ticket, their confirmation numbers obtained from the Service at time of registration, and two forms of proof of identity, one of which must be photo bearing.

(b) Applicants who have previously failed an examination may retake the examination and ~~must shall~~ pay applicable fees for each administration.

(c) Examination fees ~~must may~~ be paid by ~~cash,~~ company check, certified check, cashier's check or money order, made payable to the Service.

(d) Applicants taking the ~~life, and health, life and health,~~ Medicare ~~supplement/long supplement,~~ long term care, personal lines, or property and liability examination shall bring to the examination site a "Certificate of Course Completion/Examination Admission Ticket" validated by an approved preclicensing school or by the Division indicating that the applicant has successfully completed the mandatory preclicensing education requirements as specified in G.S. 58-33-30(d)(2). The "Certificate of Course Completion/Examination Admission Ticket" is valid for three months from the date of course completion or a maximum of five examination sittings, whichever occurs first.

(e) No applications shall be supplied at the examination site for completion by applicants; nor shall required supplies be furnished to applicants.

(f) Applicants ~~must shall~~ arrive at the examination site at the time specified in the current examination schedule.

Authority G.S. 58-2-40; 58-33-30(d)(2); 58-33-30(e); 58-33-125.

11 NCAC 06A .0306 REGISTRATION FOR EXAMINATION

~~An applicant for examination must register with the Service.~~

Authority G.S. 58-2-40; 58-33-30(e).

SECTION .0400 - LICENSING PROCEDURES

11 NCAC 06A .0401 LICENSES: GENERAL PROVISIONS

~~(a) All licenses shall specify the kinds of insurance for which the agent, adjuster, limited representative, motor vehicle damage appraiser or broker is licensed.~~

~~(b) All licensees must be able, upon request, to furnish evidence of their licensing authority.~~

~~(c) Licenses issued by the Division are:~~

- ~~(1) resident or non-resident adjuster;~~
 - ~~(A) company/firm,~~
 - ~~(B) self-employed,~~
 - ~~(C) hail;~~
- ~~(2) resident or non-resident agent,~~
- ~~(3) resident or non-resident limited representative,~~
- ~~(4) resident or non-resident broker,~~
- ~~(5) resident or non-resident motor vehicle damage appraiser,~~
- ~~(6) resident or non-resident surplus lines license,~~
- ~~(7) corporate surplus lines license,~~
- ~~(8) corporate/partnership,~~
- ~~(9) purchasing group agent or broker,~~
- ~~(10) risk retention agent or broker,~~
- ~~(11) foreign military agent,~~
- ~~(12) temporary license,~~
- ~~(13) rental car company limited license.~~

~~(d) An agent, limited representative or broker may be licensed for any one or several of the kinds of insurance enumerated in G.S. 58-33-25 upon meeting all qualifications.~~

Authority G.S. 58-2-40; 58-21-65(f); 58-33-17; 58-33-25; 58-33-30(h).

11 NCAC 06A .0402 LICENSING OF RESIDENT AGENT, LTD REPRESENTATIVE AND ADJUSTER

~~(a) Applicants must meet minimum qualifications as stated in G.S. 58-33-30. The definitions in G.S. 58-33-10 are incorporated into this Rule by reference.~~

(b) An agent licensed to sell life and health insurance may sell variable contracts provided the agent is licensed to sell securities through the Secretary of State, holds a current NASD registration, (series 6 or 7 and 63) and is appointed by a company authorized to sell variable annuities and variable life insurance products in North Carolina. The company is responsible for verifying that the agent has met all the NASD requirement.

(c) A limited representative must shall be licensed with each company for which he will solicit business. ~~No solicitation shall begin by the applicant until he has received such license.~~

(d) Responsibility of insurance companies for forms:

- (1) Companies shall make application for limited representatives and ~~company/firm~~ adjusters to be licensed.
- (2) Companies shall have on file with the Division the address of one central licensing office and the individual within such office to which all correspondence, licenses, and invoices will be forwarded.
- (3) Companies shall have on file with the Division the name of the individual responsible for all agent appointments, termination of agent appointments and agent license applications submitted by the company to the Division.

~~(4) A company shall verify the licensure of an agent before the company appoints the agent.~~

(e) Responsibility of the agent:

(1) An applicant who ~~is subject to~~ must take the examination shall comply with ~~the requirements of~~ Section .0300 of this Subchapter.

~~(2) An agent shall verify licensure to a company prior to being appointed.~~

~~(3)~~(2) A person, after surrender or termination of a license for such period of time that he is no longer eligible for waiver of the examination, shall meet all legal requirements for previously unlicensed persons.

~~(4)~~(3) Any licensee licensed under Chapter 58, Article 33 of the North Carolina General Statutes shall notify the Division in writing of any change of residence or business address within ~~30~~ 10 days ~~of such~~ after the change.

~~(5)~~(4) Every licensee shall, upon demand from the Division, furnish in writing any information relating to the licensee's insurance business within 10 business days ~~of such~~ after the demand.

(f) Responsibility of the service:

~~(1) The service shall administer the examination for life, and health; property and liability; automobile physical damage; adjusters; hail adjusters; title; and surplus lines.~~

~~(2) The service shall issue pass or fail notices for each examination administered, without reference to numeric scores, within two weeks of testing.~~

~~(3) The service shall notify the Division of score reports for all examinations administered within one week of testing.~~

~~(4) The service shall meet the requirements of its contract with the Commissioner in a timely manner.~~

(g) Responsibility of the Division:

~~(1) Upon receipt of score reports from the service, the Division shall issue appropriate licenses to qualified applicants.~~

~~(2) For eligible applicants, the Division shall issue a 90 day temporary license. For additional information refer to 11 NCAC 6A .0410.~~

~~(h)~~(f) An applicant for a resident license shall, if applicable, obtain an original letter of clearance from his former state of residency certifying the kinds of insurance for which the applicant was licensed, that all licenses held in that state have been canceled and that the applicant was in good standing in that state at the time of the cancellation of licenses. A letter of clearance shall be valid for no more than ~~60~~ 90 days from date of issuance.

Authority G.S. 58-2-40; 58-2-195(a); 58-33-26; 58-33-30; 58-33-66.

11 NCAC 06A .0403 LICENSING: NONRESIDENT AGENT, LTD REPRESENTATIVE AND ADJUSTER

~~(a) An applicant must meet minimum qualifications as stated in G.S. 58-33-30, except those pertaining to residency.
 (b) A nonresident applicant must submit appropriate forms, along with a company check, certified check, cashier's check or money order, and an original letter of certification from the applicant's state of residency stating that he is duly licensed for the same kind of insurance for which he is applying. A letter of certification shall be valid for no more than 60 days from date of issuance.~~

Authority G.S. 58-2-40; 58-33-30(a),(h)(2).

11 NCAC 06A .0410 TEMPORARY LICENSE

~~(a) A temporary license is available only to persons described in G.S. 58-33-65(a).
 (b) The company shall submit to the Division the application for temporary license.
 (c) Successful completion of the examination within 90 days from the date a temporary license is issued will result in the issuance of a permanent license.
 (d) Unsuccessful completion of, or failure to take the examination within 90 days from the date a temporary license is issued, will cause immediate cancellation of the temporary license. The company shall return the temporary license to the Division immediately.
 (e) Applicants for temporary license under G.S. 58-33-65(a)(1),(2) will follow the procedures outlined in this Rule. In addition, an authorized company official shall send a letter to the Division requesting a temporary license and stating the reason applicant is applying.~~

Authority G.S. 58-2-40; 58-33-65.

11 NCAC 06A .0412 APPOINTMENT OF AGENT: RESPONSIBILITY OF COMPANY

~~Companies shall be responsible for investigating an agent prior to appointing the agent. The company shall determine that each agent holds the proper license for each kind of authority for which such agent will be appointed. A company's investigation of an agent shall give due consideration to the provisions of G.S. 58-33-30(c) concerning character, competence and trustworthiness. The appointing company shall inquire of agents information relevant to the grounds for license suspension or revocation set forth in G.S. 58-33-45(a). The "Appointment of North Carolina Agent" form must be received by the Division within 30 days of the appointment.
Before appointing an agent, an insurance company shall determine that:~~

- (1) The agent holds the proper license for each kind of authority for which the agent will be appointed; and
- (2) The agent has not committed any act that is a ground for probation, suspension, nonrenewal, or revocation set forth in G.S. 58-33-46.

Authority G.S. 58-2-40; 58-33-40; 58-33-46; 18 U.S.C. 1033.

11 NCAC 06A .0413 LICENSING OF BUSINESS ENTITIES

~~(a) An applicant must meet minimum qualifications as stated in G.S. 58-33-30. As used in this Rule, "business entity" has the same meaning as in G.S. 58-33-10(4).
 (b) An applicant shall A business entity may submit application forms with cash, a company check, certified check, cashier's check or money order.
 (c) A corporation making first time application and domiciled in North Carolina shall provide proof of corporate status by submitting a copy of its Articles of Incorporation certified by the North Carolina Secretary of State.
 (d) A foreign corporation making first time application shall provide proof of corporate status by submitting a copy of its application for Certificate of Authority certified by the North Carolina Secretary of State.
 (e) Partnerships making first time application shall submit a copy of the filing with the Registrar of Deed's office of the county where the partnership business is being conducted. This copy shall be certified by the Registrar of Deeds or notarized by a notary public.
 (c) A business entity registered with the North Carolina Secretary of State applying for the first time shall provide the Division with proof of its business entity status by submitting a copy of the appropriate document issued and certified by the Secretary of State.
 (f)(d) An applicant A business entity shall file with the Division a list of all insurance companies contracted with the firm with which it contracts along with the names and social security numbers of the agents representing each company.
 (g)(e) Any A business entity shall submit an addition or deletion of an agent or insurance company to the Division shall be submitted on a form prescribed by the Commissioner within 30 days of any such after the change. in the corporate representation.
 (h) For licensing purposes a Limited Liability Corporation (LLC) and a Limited Liability Partnership (LLP) shall qualify to be licensed as a Corporation. A LLC or LLP applying to be licensed shall submit a copy of its Certificate of Existence issued by the North Carolina Secretary of State.~~

Authority G.S. 58-2-40; 58-33-31.

11 NCAC 06A .0414 ADJUSTER'S LEARNER'S PERMIT

A request for an adjuster's learner's permit ~~must shall~~ be made in writing and accompanied by ~~an "Adjuster and Appraiser N.C. License Application", the "Uniform Adjuster/Appraiser Application"~~. the "Uniform Adjuster/Appraiser Application". The request ~~must shall~~ be made by an authorized ~~company insurer~~ or independent adjusting firm. The applicant ~~must have registered shall register~~ to take the North Carolina adjuster's examination ~~prior to before~~ applying for a learner's permit. The permit is valid for 90 days from the date of issuance. Only one permit ~~will shall~~ be given to any individual.

Authority G.S. 58-2-40; 58-33-70.

11 NCAC 06A .0417 REQUIREMENTS FOR PRE NEED LIMITED REP. AGENT

Individuals applying to be licensed to sell prearrangement ~~insurance, insurance policies~~, as defined in G.S. 58-60-35(a)(2), shall submit a ~~North Carolina Uniform~~ Limited Insurance Representative Application and appropriate fees. Applicants

~~must shall~~ also submit evidence that they are licensed to sell ~~pre-need-preneed funeral~~ contracts under G.S. 90, Article 13D.

Authority G.S. 58-2-40; 58-33-26(g)(5);

SECTION .0500 - RENEWAL AND CANCELLATION OF LICENSES

11 NCAC 06A .0502 RENEWAL OF BROKERS' LICENSES

- ~~(a) The Division will mail to all brokers the appropriate renewal application.~~
- ~~(b) Brokers shall complete the form and return it to the Division by the date specified.~~
- ~~(c) Brokers shall submit the proper renewal fee as stated in G.S. 58-33-125(a). An agency check, company check, certified check, cashier's check or money order must be made payable to the North Carolina Department of Insurance.~~
- ~~(d) Broker bonds must be in force at the time of renewal.~~

Authority G.S. 58-2-40; 58-33-30(f); 58-33-125.

11 NCAC 06A .0503 RENEWAL: SELF-EMPLOYED ADJUSTER: MOTOR VEHICLE DAMAGE APPR

~~The Division will mail an appropriate renewal form to the self-employed adjuster or motor vehicle damage appraiser and will specify the last date that the Division will accept renewals. The renewal form and appropriate renewal fee as specified in G.S. 58-33-125(a) must be submitted to the Division within the time allowed. An adjusting company check, certified check, cashier's check or money order must be made payable to the North Carolina Department of Insurance.~~

Authority G.S. 58-2-40; 58-33-25(n); 58-33-125.

11 NCAC 06A .0506 CANCELLATION OF LICENSES ISSUED TO INDIVIDUALS

- ~~(a) An agent, broker, adjuster or motor vehicle damage appraiser. Any licensee~~ desiring to cancel a license shall submit a notarized written request to the Division ~~and return the license to the Division, along with the license.~~ If the license cannot be located, the licensee ~~must shall~~ furnish a statement explaining the reason for not returning the license.
- ~~(b) Cancellation of a license will automatically terminate terminates~~ all appointments for the kind of ~~authority insurance~~ covered by ~~such the~~ license.

Authority G.S. 58-2-40; 58-33-40(e).

11 NCAC 06A .0507 TERMINATION OF AGENT APPOINTMENT

- ~~Any company wishing to terminate an agent's appointment shall:~~
- ~~(1) Submit the Termination of North Carolina Agent Appointment form to the Division.~~
 - ~~(2) For termination other than at the renewal date, submit the termination form within 30 days of the date on which the agent's contract with the company was terminated.~~

Authority G.S. 58-33-40(e).

11 NCAC 06A .0508 RENTAL CAR COMPANY LICENSE RENEWAL

- ~~(a) The Division will mail the appropriate renewal form to each licensee.~~
- ~~(b) Each licensee shall complete and return the form by the specified date and submit the proper renewal fee. The fee must be paid by a company check, certified check, money order, or cashier's check payable to the N.C. Department of Insurance.~~
- ~~(c) Any license that is not renewed by the specified renewal date will expire as of that date.~~

Authority G.S. 58-2-40; 58-33-17; 58-33-25(n); 58-33-125.

SECTION .0600 - DENIAL OF LICENSE

11 NCAC 06A .0601 BASIS FOR DENIAL OF LICENSE

~~For purposes of determining that a licensee has committed forgery under G.S. 58-33-45(a)(12) an "Application for Insurance" shall be considered to be the application form, underwriting form and any policy servicing or claim form that affects any funds, rights or privileges of the policyowner, beneficiary or insured.~~

Authority G.S. 58-2-40; 58-33-45.

11 NCAC 06A .0602 COURT RECORDS AND AFFIDAVITS REQUIRED

An individual who has been convicted of an offense specified in G.S. 58-33-46(a)(6) misdemeanor involving moral turpitude, or a felony, shall submit to the Division the following information with the application for licensure and examination:

- (1) a copy of the entire court record including the judgment, as well as a complete criminal history check;
- (2) a copy of unconditional release or unconditional discharge from the Board of Paroles, ~~where if~~ applicable, on the forms provided by the North Carolina Department of Correction;
- (3) if the applicant or licensee is currently employed or expects to be employed by an insurer, agency, company or firm in the business of insurance, the applicant or licensee shall submit a letter from ~~such the~~ employer or potential employer stating that the applicant or licensee has disclosed to the employer information ~~concerning about~~ the conviction;
- (4) a notarized affidavit from the applicant ~~concerning about~~ the conviction; ~~and~~
- (5) ~~when if~~ applicable, a statement from the applicant's probation officer.
- ~~(6) any additional supportive information that the Division deems necessary and proper.~~

Authority G.S. 58-2-40; 58-33-46(6).

SECTION .0700 - PRELICENSING EDUCATION

11 NCAC 06A .0702 PRELICENSING EDUCATION SCHOOLS

PROPOSED RULES

(a) This Rule applies to all classroom and correspondence schools offering a preclicensing course prescribed by General Statute G.S. 58-33-30. All schools desiring to conduct a preclicensing course shall be approved by the Commissioner ~~prior to before~~ commencement of the courses.

(b) A school seeking approval to conduct a preclicensing course shall make written application to the Commissioner ~~upon a form prescribed by the Commissioner~~.

(c) ~~After due investigation and consideration, approval shall be granted to the school when it is shown to the satisfaction of the Commissioner that:~~ The Division shall approve a school when:

- (1) the school has submitted all information required by the Commissioner;
- (2) the course to be conducted complies with 11 NCAC 06A .0704;
- (3) the program director has been approved by the Commissioner in accordance with 11 NCAC 06A .0703;
- (4) the school has an approved instructor to teach each line-kind of insurance for which they are seeking approval; and
- (5) ~~schools~~ a school requesting approval to operate as a correspondence school ~~must also have and maintain~~ has and maintains an approved active classroom schedule.

~~(d) The following guidelines shall apply to the approval of classroom and correspondence schools:~~

- ~~(1) Approval extends only to the course and location reported in the application for approval.~~
- ~~(2) Approval shall terminate on June 30 next following the date of issuance.~~
- ~~(3) A school must renew annually its approval to conduct preclicensing courses by submitting an application for approval not later than May 31 of each year.~~

~~(e)(d)~~ The Commissioner shall deny, revoke, suspend, or terminate approval of any school upon finding that:

- (1) the school has refused or failed to comply with any of the provisions of 11 NCAC 6A .0702, .0703, .0704, or .0705; or
- (2) any school official or instructor has obtained or used, or attempted to obtain or use, in any manner or form, Examination examination questions; or
- (3) the school's students have a first-time licensing examination performance record that is below the average examination performance record of all first-time examination candidates; or
- (4) the school has not conducted at least one preclicensing course during any 12-month period; or
- (5) the school has refused or failed to submit information or properly completed forms prescribed by the Commissioner ~~Commissioner within the required time frames~~.

~~(f)(e)~~ In all proceedings to deny, revoke, suspend, or terminate approval of a school, the provisions of Chapter 150B of the General Statutes shall be applicable.

~~(g)(f)~~ When a school's approval is discontinued, the procedure for reinstatement shall be to apply as a new school, with a statement of the reasons that the school is now eligible for reconsideration. ~~The Commissioner may require an investigation before new approval is granted.~~

~~(h)(g)~~ If a school's approval has been suspended upon the Commissioner's finding that the school has not conducted at least one preclicensing course during any 12-month period, that school may reapply after one year of suspension. At such time, the Commissioner shall give the school ~~will be given 6 six~~ months to conduct at least one preclicensing course.

~~(i)(h)~~ The following guidelines shall apply for changes during any approved year:

- (1) A school shall notify the Commissioner of any change of course location or schedule information no fewer than five business days before the change. Notification of such changes shall be in writing.
- (2) An approved school that intends to terminate its preclicensing program, other than during the annual renewal period, shall notify the Commissioner in writing.
- (3) A school shall notify the Commissioner in writing of a change of textbook.

~~(j)(i)~~ An approved school may ~~utilize, use,~~ use for advertising or promotional purposes, examination performance data made available to the school by the Commissioner, provided that any data disclosed by the school shall be accurate, shall be presented in a manner that is not misleading, and shall:

- (1) be limited to the annual examination performance data for the particular school and for all examination candidates in the state; State;
- (2) include the type of examination, the time period covered, the number of first-time candidates examined, and either the number or percentage of first-time candidates passing the examination; and
- (3) be reviewed and approved by the Commissioner in writing ~~prior to before~~ publication.

~~(k)(j)~~ A classroom school's facilities and equipment shall have been found by appropriate local code building, heating and fire inspectors to be in compliance with all applicable local, state State and federal laws and regulations regarding safety, sanitation, and access by handicapped persons.

~~(l)(k)~~ The school shall designate one person as the program director. The program director shall be responsible for administrative matters such as recruiting, evaluating and certifying the qualifications of instructors, developing programs, scheduling of classes, advertising, maintaining facilities and equipment, recordkeeping and supervising of the preclicensing program.

~~(m)(l)~~ A school shall publish and provide to all preclicensing students ~~prior to before~~ enrollment a ~~bulletin or similar official~~ publication of that school that contains the following information:

- (1) name of school and publication date;
- (2) name of sponsor;
- (3) all associated costs; and

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(4) ~~detailed~~an outline or description of all preclicensing courses offered.

~~(a)(m)~~ With the exception of correspondence courses, a school shall file with the Commissioner information giving exact dates, times, locations, and instructor name for each scheduled preclicensing course. This information may be submitted either at the beginning of each ~~quarter/semester, quarter or semester~~ or no later than one week ~~prior~~before to the first class meeting of each preclicensing course.

~~(e)(n)~~ Classroom schools shall retain the following material on file at one location for a minimum of three years:

- (1) class schedules;
- (2) advertisements;
- (3) bulletins, catalogues, and other official publications;
- (4) grade reports, showing a numeric grade for each student;
- (5) attendance records;
- (6) master copy of each final course examination, indicating the answer key, the school name, course location, course dates and name of instructor;
- (7) list of student names, with social security numbers, for each course, and the name of the Instructor; and
- (8) student registration information.

All files shall be made available to the Commissioner upon request.

~~(f)(o)~~ Correspondence schools shall retain the following material on file at one location for a minimum of three years:

- (1) advertisements;
- (2) bulletins, catalogues and other official publications;
- (3) grade reports;
- (4) a list of student names, with social security numbers, for each course, and the name of the instructor; and
- (5) student registration information that must be obtained prior to the distribution of course material.

All files shall be made available to the Commissioner upon request.

~~(g)(p)~~ In the event of illness, injury or death of an instructor, the program director may ~~utilize~~ use a non-approved instructor to complete a course. The school shall thereafter suspend operation of ~~its that~~ preclicensing ~~courses~~course until an approved instructor is available.

Authority G.S. 58-2-40; 58-33-30(d); 58-33-130; 58-33-132.

SECTION .0800 - CONTINUING EDUCATION

11 NCAC 06A .0805 CALCULATION OF ICECS

The following standards shall be used to evaluate courses submitted for continuing education approval:

- (1) Programs requiring meeting or classroom attendance:
 - (a) Courses or clusters of courses of less than ~~400~~ 50 minutes shall not be evaluated for continuing education ICECs.

(b) Courses shall not be approved for less than one ICEC.

(c) One ICEC shall be awarded for each 50 minutes of instruction unless the Commissioner assigns fewer ICECs based upon the evaluation of the submitted course materials. Courses shall only be approved for whole ICECs.

(d) Course providers ~~must~~shall monitor participants for attendance and attention.

(2) Independent study programs:

(a) Independent study programs qualify for continuing education only when there is a supervised examination. No examination administered or graded by insurance company personnel for its own employees shall be considered to be administered by a disinterested third party.

(b) Each course shall be assigned ICECs, which shall be awarded upon the passing of the supervised examination.

(3) Distance Learning Programs:

(a) Distance learning qualifies only when an instructor is available to respond to questions and to maintain attendance records.

(b) Any organization sponsoring a teleconference shall have an on-site instructor.

Authority G.S. 58-2-40; 58-33-130.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Code Officials Qualification Board/NC Dept. of Insurance intends to amend the rule cited as 11 NCAC 08.0706. Notice of Rule-making Proceedings was published in the Register on May 15, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 22, 2002

Time: 2:00 p.m.

Location: 410 N. Boylan Avenue, Raleigh, NC

Reason for Proposed Action: Reflects changes made in occupancy classifications in the State Building Code.

Comment Procedures: Written comments should be submitted to Mike Page, NC Department of Insurance, 410 N. Boylan Avenue, Raleigh, NC 27603. Phone (919) 733-3901. Comments should be received by October 31, 2002.

Fiscal Impact

State

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

(a) Qualification Levels

CHAPTER 08 - ENGINEERING AND BUILDING CODES

SECTION .0700 - QUALIFICATION BOARD-STANDARD CERTIFICATE

11 NCAC 08 .0706 REQUIRED QUALIFICATIONS: TYPES AND LEVELS

Occupancy Classification	Level I	Level II	Level III
Assembly	1 story/7,500 sf	1 story/20,000 sf	Unlimited
Business	1 story/20,000 sf	1 story/60,000 sf	Unlimited
Education	1 story/7,500 sf	Multi-story: 4 stories max/20,000 sf per floor 1 story/20,000 sf	Unlimited
Hazardous	1 story/3,000 sf (See Note)	Multi-story: 2 stories max/20,000 sf per floor 1 story/20,000 sf	Unlimited
<u>Factory Industrial</u>	1 story/20,000 sf	1 story/60,000 sf	Unlimited
Institutional	1 story/7,500 sf	Multi-story: 4 stories max/20,000 sf per floor 1 story/10,000 sf	Unlimited
Mercantile	1 story/20,000 sf	Multi-story: 3 stories max/10,000 sf per floor 1 story/60,000 sf	Unlimited
Residential		Multi-story: 4 stories max/20,000 sf per floor	
Multi-unit	1 story /7,500 sf	3 stories max/no restriction on floor area	Unlimited
1 & 2 family dwellings, townhouses	Unlimited	Unlimited	Unlimited
Storage	1 story/20,000 sf	1 story/60,000 sf per floor	Unlimited
<u>Utility and Miscellaneous</u>	<u>Unlimited</u>	Multi-story: 4 stories max/20,000 sf per floor <u>Unlimited</u>	<u>Unlimited</u>

See [Volume I of NC State the](#) Building Code for Occupancy classifications.

Note: *Electrical Inspector, Level I shall not be authorized to inspect wiring or equipment in hazardous locations as defined by Article 500 of the National Electrical Code with the exception of service stations and service pumps.

(3) Limitation on occupancy classifications of buildings for Fire Inspectors, Levels I, II and III:

Certification Levels For Fire Inspectors

Level I: - Occupancy:

- Business
- ~~Small~~ Assembly - 1 story, 20,000 sf
- Mercantile
- Residential
- Storage S-2
- Factory-Industrial F-2
- Utility and Miscellaneous
- Excluding Highrise *
- No Plan Review

Level II: - Occupancy:

- Everything in Level I
- ~~Large~~ Assembly - unlimited
- Educational
- Factory Industrial F-1
- Storage S-1
- Plan Review of all Occupancies in Level II
- Excluding Highrise *

Level III: - Occupancy:

- Everything in Levels I and II
- Hazardous
- Institutional
- Highrise
- Plan Review of all Occupancies
(Unlimited Occupancies)

* The term "excluding highrise" is listed because some of the acceptable occupancies for the levels could be located in a highrise (defined in ~~Volume I of the State the~~ Building Code) building.

(b) Whenever a provision of this Rule requires a supporting letter (maximum of two per level), the letter(s) shall be notarized, shall state the author's qualifications (i.e., what type and level of certificate or license he holds), shall state that the applicant has worked under his direct supervision for a specified period of time, and shall recommend certification of the applicant as a specified type and level of inspector upon satisfaction of other required qualifications. Whenever a provision of this Rule requires the possession of a license other than those certificates that are issued by the Board, if the status of the license is inactive, the applicant must provide documentation from the appropriate licensing board. Whenever a provision of this Rule requires a high school education or other education and experience qualifications, the Board may in its discretion approve equivalent requirements. Every applicant for certification as a code administrator or a building, electrical, mechanical, plumbing, or fire inspector shall, in addition to satisfying the appropriate education and experience qualifications prescribed by this Rule:

- (1) provide documentation that the applicant possesses a minimum of a high school education; and
- (2) provide certification by a city or county manager or clerk that the applicant is the administrative head of or is performing "code enforcement", as defined in G.S. 143-151.8(a)(3), as an employee of that city or county; or provide certification by the head of the Engineering and Building Codes Division of the North Carolina Department of Insurance that the applicant is performing "code enforcement", as defined in G.S. 143-151.8(a)(3), for a state department or agency; and
- (3) make a passing grade on short courses specified by the Board or equivalent courses approved by the Board; and
- (4) if required, take and make a passing grade on the written examination administered by the Board.

(c) Code Administrator. A standard certificate, code administrator, shall be issued to any applicant who:

- (1) possesses a standard certificate as a building, electrical, mechanical, plumbing, or fire inspector; and
- (2) has had at least one year of experience supervising inspections for the state or a city or county inspection department.

(d) Building Inspector, Level I. A standard certificate, building inspector, Level I, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) completion of at least one year of technical or trade school training or an apprenticeship program in building construction; or an approved four-year nontechnical degree;
- (2) at least six months of work under the direct supervision of a standard certified building inspector I, II, or III, licensed engineer, architect, or general contractor, with a supporting letter from such supervisor;
- (3) a limited license as a building contractor;
- (4) at least one year of building construction or inspection experience while working under a limited licensed building contractor;
- (5) certification by the Board as an electrical inspector I, mechanical inspector I, plumbing inspector I, or fire inspector I; at least one year of experience as such certified inspector; and completion of at least one year of building construction technology courses approved by the Board;
- (6) at least two years of experience as an active principal in a home building firm;
- (7) at least two years of experience as a subcontractor in the building trades or work in building construction under the supervision of a home builder who at that time had at least three years of experience; or
- (8) at least two continuous years of experience inspecting construction of Level I buildings for a city or county inspection department.

(e) Building Inspector, Level II. A standard certificate, building inspector, Level II, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as an engineer or architect with experience outside of civil or architectural design or inspection of buildings;
- (2) completion of at least two years of technical or university training in the field of civil or architectural engineering or building construction technology; or an approved four-year nontechnical degree and at least two years of design, construction, or inspection experience on Level II buildings while working under a certified building inspector II or III, licensed engineer, architect, or intermediate or unlimited building contractor;

- (3) certification by the Board as an electrical inspector II, mechanical inspector II, plumbing inspector II, or fire inspector II; at least three years of experience as such certified inspector; and completion of at least one year of building construction technology courses approved by the Board;
 - (4) a limited or intermediate license as a building contractor with experience on Level II buildings;
 - (5) at least three years of design, construction, or inspection experience on Level II buildings while working under the direct supervision of a certified building inspector II or III, licensed engineer, architect, or intermediate building contractor, with a supporting letter from such supervisor;
 - (6) certification by the Board as a building inspector I; at least three years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of building construction technology courses approved by the Board; or
 - (7) at least four continuous years of experience inspecting construction of Level II buildings for a city or county inspection department.
- (f) Building Inspector, Level III. A standard certificate, building inspector, Level III, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as an engineer or architect with preprofessional qualifications, experience, and professional practice in architectural, structural, or fire protection design or inspection of buildings and current specialization in architectural, civil, or fire protection engineering;
 - (2) completion of at least four years of technical or university training in the field of civil or architectural engineering; and at least one year of building design, construction, or inspection experience while working under a certified building inspector III, licensed engineer, architect, or unlimited building contractor, at least at the level of supervisor or journeyman building trades craftsman and in responsible charge of a wide variety of types of Level III buildings;
 - (3) completion of at least two years of technical or university training in the field of civil or architectural engineering or building construction technology; and at least three years of building design, construction, or inspection experience while working under a certified building inspector III, licensed engineer, architect, or unlimited building contractor, with at least one year in responsible charge of a wide variety of types of Level III buildings;
- (4) certification by the Board as an electrical inspector III, mechanical inspector III, plumbing inspector III, or fire inspector III; at least four years of experience as such certified inspector; and completion of at least one year of building construction technology courses approved by the Board;
 - (5) an unlimited license as a building contractor with experience on Level III buildings;
 - (6) at least four years of design, construction, or inspection experience while working under the direct supervision of a certified building inspector III, licensed engineer, architect, or unlimited building contractor, two years of which have been performed in responsible charge of a wide variety of types of Level III buildings, with a supporting letter from such supervisor;
 - (7) certification by the Board as a building inspector II; at least four years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of building construction technology courses approved by the Board; or
 - (8) at least five continuous years of experience inspecting the construction of a wide variety of types of Level III buildings for a city or county inspection department.
- (g) Electrical Inspector, Level I. A standard certificate, electrical inspector, Level I, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) completion of at least one year of technical or trade school training or an apprenticeship program in electrical construction; or an approved four-year nontechnical degree;
 - (2) at least six months of work under the direct supervision of a standard certified electrical inspector I, II, or III, licensed engineer, or electrical contractor, with a supporting letter from such supervisor;
 - (3) a limited restricted (one family dwelling) or limited license as an electrical contractor;
 - (4) at least one year of electrical installation or inspection experience while working under a limited licensed electrical contractor;
 - (5) certification by the Board as a building inspector I, mechanical inspector I, plumbing inspector I, or fire inspector I; at least one year of experience as such certified inspector; and completion of at least one year of electrical construction technology courses approved by the Board;
 - (6) at least two years of experience in electrical installation;
 - (7) a current license (3q) as a county electrical inspector issued by the Commissioner of Insurance pursuant to G.S. 153A-351; or
 - (8) at least two continuous years of experience inspecting electrical installations in Level I

buildings for a city or county inspection department.

(h) Electrical Inspector, Level II. A standard certificate, electrical inspector, Level II, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as an engineer with experience outside of electrical design or inspection of buildings;
- (2) completion of at least two years of technical or university training in the field of electrical engineering or electrical construction technology; or an approved four-year nontechnical degree and at least two years of design, installation, or inspection experience on Level II buildings while working under a certified electrical inspector II or III, licensed engineer, or intermediate or unlimited electrical contractor;
- (3) certification by the Board as a building inspector II, mechanical inspector II, plumbing inspector II, or fire inspector II; at least three years of experience as such certified inspector; and completion of at least one year of electrical construction technology courses approved by the Board;
- (4) a limited or intermediate license as an electrical contractor with experience on Level II buildings;
- (5) at least three years of design, installation, or inspection experience on Level II buildings while working under the direct supervision of a certified electrical inspector II or III, licensed engineer, or intermediate electrical contractor, with a supporting letter from such supervisor;
- (6) certification by the Board as an electrical inspector I; at least three years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of electrical construction technology courses approved by the Board;
- (7) a current license (2q) as a county electrical inspector issued by the Commissioner of Insurance pursuant to G.S. 153A-351; or
- (8) at least four continuous years of experience inspecting electrical installations in Level II buildings for a city or county inspection department.

(i) Electrical Inspector, Level III. A standard certificate, electrical inspector, Level III, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as an engineer with preprofessional qualifications, experience, and professional practice in electrical design or inspection of buildings and current specialization in electrical engineering;
- (2) completion of at least four years of technical or university training in the field of electrical

engineering; and at least one year of electrical design, installation, or inspection experience while working under a certified electrical inspector III, licensed engineer, or unlimited electrical contractor, at least at the level of supervisor or journeyman building trades craftsman and in responsible charge of a wide variety of types of Level III buildings;

- (3) completion of at least two years of technical or university training in the field of electrical engineering or electrical construction technology; and at least three years of electrical design, installation, or inspection experience while working under a certified electrical inspector III, licensed engineer, or unlimited electrical contractor, with at least one year in responsible charge of a wide variety of types of Level III buildings;
- (4) certification by the Board as a building inspector III, mechanical inspector III, plumbing inspector III, or fire inspector III; at least four years of experience as such certified inspector; and completion of at least one year of electrical construction technology courses approved by the Board;
- (5) an unlimited license as an electrical contractor with experience on Level III buildings;
- (6) at least four years of design, installation, or inspection experience while working under the direct supervision of a certified electrical inspector III, licensed engineer, or unlimited electrical contractor, two years of which have been performed in responsible charge of a wide variety of types of Level III buildings, with a supporting letter from such supervisor;
- (7) certification by the Board as an electrical inspector II; at least four years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of electrical construction technology courses approved by the Board;
- (8) a current license (1q) as a county electrical inspector issued by the Commissioner of Insurance pursuant to G.S. 153A-351; or
- (9) at least five continuous years of experience inspecting the electrical installations in a wide variety of types of Level III buildings for a city or county inspection department.

(j) Mechanical Inspector, Level I. A standard certificate, mechanical inspector, Level I, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) completion of at least one year of technical or trade school training or an apprenticeship program in mechanical construction; or an approved four-year nontechnical degree;
- (2) at least six months of work under the direct supervision of a standard certified mechanical inspector I, II, or III, licensed engineer, or

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- (3) mechanical contractor, with a supporting letter from such supervisor;
 - (4) an H-2 or H-3 license as a mechanical contractor;
 - (5) at least one year of mechanical installation or inspection experience while working under an H-2 or H-3 licensed mechanical contractor;
 - (6) certification by the Board as a building inspector I, electrical inspector I, plumbing inspector I, or fire inspector I; at least one year of experience as such certified inspector; and completion of at least one year of mechanical construction technology courses approved by the Board;
 - (7) at least two years of experience in mechanical installation; or
 - (7) at least two continuous years of experience inspecting mechanical installations in Level I buildings for a city or county inspection department.
- (k) Mechanical Inspector, Level II. A standard certificate, mechanical inspector, Level II, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as an engineer with experience outside of mechanical design or inspection of buildings;
 - (2) completion of at least two years of technical or university training in the field of mechanical engineering or mechanical construction technology; or an approved four-year nontechnical degree and at least two years of design, installation, or inspection experience on Level II buildings while working under a certified mechanical inspector II or III, licensed engineer, or H2 or H-3 mechanical contractor;
 - (3) certification by the Board as a building inspector II, electrical inspector II, plumbing inspector II, or fire inspector II; at least three years of experience as such certified inspector; and completion of at least one year of mechanical construction technology courses approved by the Board;
 - (4) an H-2 or H-3 license as a mechanical contractor with experience on Level II buildings;
 - (5) at least three years of design, installation, or inspection experience on Level II buildings while working under the direct supervision of a certified mechanical inspector II or III, licensed engineer, or H2 or H-3 mechanical contractor, with a supporting letter from such supervisor;
 - (6) certification by the Board as a mechanical inspector I; at least three years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of mechanical construction technology courses approved by the Board; or
 - (7) at least four continuous years of experience inspecting mechanical installations in Level II buildings for a city or county inspection department.
- (l) Mechanical Inspector, Level III. A standard certificate, mechanical inspector, Level III shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as an engineer with preprofessional qualifications, experience, and professional practice in mechanical design or inspection of buildings and current specialization in mechanical engineering;
 - (2) completion of at least four years of technical or university training in the field of mechanical engineering; and at least one year of mechanical design, installation, or inspection experience while working under a certified mechanical inspector III, licensed engineer, or H-1, H-2, and H-3 mechanical contractor, at least at the level of supervisor or journeyman building trades craftsman and in responsible charge of a wide variety of types of Level III buildings;
 - (3) completion of at least two years of technical or university training in the field of mechanical engineering or mechanical construction technology; and at least three years of mechanical design, installation, or inspection experience while working under a certified mechanical inspector III, licensed engineer, or H-1, H-2, and H-3 mechanical contractor, with at least one year in responsible charge of a wide variety of types of Level III buildings;
 - (4) certification by the Board as a building inspector III, electrical inspector III, plumbing inspector III, or fire inspector III; at least four years of experience as such certified inspector; and completion of at least one year of mechanical construction technology courses approved by the Board;
 - (5) H-1, H2, and H-3 licenses as a mechanical contractor with experience on Level III buildings;
 - (6) at least four years of design, installation, or inspection experience while working under the direct supervision of a certified mechanical inspector III, licensed engineer, or H1, H2, and H-3 mechanical contractor, two years of which have been performed in responsible charge of a wide variety of types of Level III buildings, with a supporting letter from such supervisor;
 - (7) certification by the Board as a mechanical inspector II; at least four years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of mechanical construction technology courses approved by the Board; or

- (8) at least five continuous years of experience inspecting the mechanical installations in a wide variety of types of Level III buildings for a city or county inspection department.
- (m) Plumbing Inspector, Level I. A standard certificate, plumbing inspector, Level I, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) completion of at least one year of technical or trade school training or an apprenticeship program in plumbing construction; or an approved four-year nontechnical degree;
 - (2) at least six months of work under the direct supervision of a standard certified plumbing inspector I, II, or III, licensed engineer, or plumbing contractor, with a supporting letter from such supervisor;
 - (3) a license as a plumbing contractor;
 - (4) at least one year of plumbing installation or inspection experience while working under a licensed plumbing contractor;
 - (5) certification by the Board as a building inspector I, electrical inspector I, mechanical inspector I, or fire inspector I; at least one year of experience as such certified inspector; and completion of at least one year of plumbing construction technology courses approved by the Board;
 - (6) at least two years of experience in plumbing installation; or
 - (7) at least two continuous years of experience inspecting plumbing installations in Level I buildings for a city or county inspection department.
- (n) Plumbing Inspector, Level II. A standard certificate, plumbing inspector, Level II, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as an engineer with experience outside of plumbing design or inspection of buildings;
 - (2) completion of at least two years of technical or university training in the field of mechanical engineering or plumbing construction technology; or an approved four-year nontechnical degree and at least two years of design, installation, or inspection experience on Level II buildings while working under a certified plumbing inspector II or III, licensed engineer, or plumbing contractor;
 - (3) certification by the Board as a building inspector II, electrical inspector II, mechanical inspector II, or fire inspector II; at least three years of experience as such certified inspector; and completion of at least one year of plumbing construction technology courses approved by the Board;
 - (4) a license as a plumbing contractor with experience on Level II buildings;
- (5) at least three years of design, installation, or inspection experience on Level II buildings while working under the direct supervision of a certified plumbing inspector II or III, licensed engineer, or plumbing contractor, with a supporting letter from such supervisor;
- (6) certification by the Board as a plumbing inspector I; at least three years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of plumbing construction technology courses approved by the Board; or
- (7) at least four continuous years of experience inspecting plumbing installations in Level II buildings for a city or county inspection department.
- (o) Plumbing Inspector, Level III. A standard certificate, plumbing inspector, Level III shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as an engineer with preprofessional qualifications, experience, and professional practice in plumbing design or inspection of buildings and current specialization in mechanical engineering;
 - (2) completion of at least four years of technical or university training in the field of mechanical engineering; and at least one year of plumbing design, installation, or inspection experience while working under a certified plumbing inspector III, licensed engineer, or plumbing contractor, at least at the level of supervisor or journeyman building trades craftsman and in responsible charge of a wide variety of types of Level III buildings;
 - (3) completion of at least two years of technical or university training in the field of mechanical engineering or plumbing construction technology; and at least three years of plumbing design, installation, or inspection experience while working under a certified plumbing inspector III, licensed engineer, or plumbing contractor, with at least one year in responsible charge of a wide variety of types of Level III buildings;
 - (4) certification by the Board as a building inspector III, electrical inspector III, mechanical inspector III, or fire inspector III; at least four years of experience as such certified inspector; and completion of at least one year of plumbing construction technology courses approved by the Board;
 - (5) a license as a plumbing contractor with experience on Level III buildings;
 - (6) at least four years of design, installation, or inspection experience while working under the direct supervision of a certified plumbing inspector III, licensed engineer, or plumbing contractor, two years of which have been performed in responsible charge of a wide

- (7) variety of types of Level III buildings, with a supporting letter from such supervisor; certification by the Board as a plumbing inspector II; at least four years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of plumbing construction technology courses approved by the Board; or
- (8) at least five continuous years of experience inspecting the plumbing installations in a wide variety of types of Level III buildings for a city or county inspection department.

(p) Fire Inspector, Level I. A standard certificate, fire inspector, Level I, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) completion of at least one year of technical or trade school training or an apprenticeship program in fire science; or an approved four-year nontechnical degree;
- (2) at least six months of work under the direct supervision of a standard certified fire inspector I, II, or III, licensed engineer, or architect, with a supporting letter from such supervisor;
- (3) at least three years of construction, maintenance, or inspection experience in fire protection systems while working under a limited licensed contractor;
- (4) certification by the Board as a building inspector I, electrical inspector I, mechanical inspector I, or plumbing inspector I; at least one year of experience as such certified inspector; and completion of at least one year of fire protection technology courses approved by the Board;
- (5) at least two continuous years of experience conducting fire inspections in Level I Occupancy buildings for a city, county, or other governmental fire inspection department;
- (6) at least four continuous years of experience in fire suppression activities for a city, county, volunteer, or other governmental fire department; or
- (7) Firefighter Level III certification under the North Carolina State Fire and Rescue Commission with at least one year of fire inspection experience in Level I Occupancy buildings.

(q) Fire Inspector, Level II. A standard certificate, fire inspector, Level II, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as an engineer or architect with experience outside of design or inspection of fire protection systems;
- (2) completion of at least two years of technical or university training in the field of civil or architectural engineering, building

- (3) construction technology, or fire science; or an approved four-year nontechnical degree and at least two years of design, installation, or inspection experience in fire protection systems on Level II Occupancy buildings while working under a certified fire inspector II or III, licensed engineer, or architect;
- (4) certification by the Board as a building inspector II, electrical inspector II, mechanical inspector II, or plumbing inspector II; at least three years of experience as such certified inspector; and completion of at least one year of fire protection technology courses approved by the Board;
- (5) at least three years of design, installation, or inspection experience in fire protection systems on Level II Occupancy buildings while working under the direct supervision of a certified fire inspector II or III, licensed engineer, or architect, with a supporting letter from such supervisor;
- (6) certification by the Board as a fire inspector I; at least three years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of fire protection technology courses approved by the Board;
- (7) at least four continuous years of experience conducting fire inspections in Level II Occupancy buildings for a city, county, or other governmental fire inspection department; or
- (8) completion of the basic, intermediate, and advanced classes of the North Carolina Fire Prevention School, with at least three years of fire inspection experience in Level II Occupancy buildings.

(r) Fire Inspector, Level III. A standard certificate, fire inspector, Level III, shall be issued to any applicant who complies with Paragraph (b) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as an engineer or architect with preprofessional qualifications, experience, and professional practice in architectural, structural, or fire protection design or inspection of buildings and current specialization in architectural, civil, or fire protection engineering;
- (2) completion of at least four years of technical or university training in the field of civil, architectural, or fire protection engineering; and at least one year of fire inspection experience while working under a certified fire inspector III, licensed engineer, or architect and in responsible charge of a wide variety of types of Level III Occupancy buildings;
- (3) completion of at least two years of technical or university training in the field of civil, architectural, or fire protection engineering; and at least three years of fire protection

design, installation, or inspection experience while working under a certified fire inspector III, licensed engineer, architect, or unlimited contractor, with at least one year in responsible charge of a wide variety of types of Level III Occupancy buildings;

- (4) certification by the Board as a building inspector III, electrical inspector III, mechanical inspector III, or plumbing inspector III; at least four years of experience as such certified inspector; and completion of at least one year of fire protection technology courses approved by the Board;
- (5) at least four years of design, installation, or inspection experience in fire protection systems while working under the direct supervision of a certified fire inspector III, licensed engineer, or architect, two years of which have been performed in responsible charge of a wide variety of types of Level III Occupancy buildings, with a supporting letter from such supervisor;
- (6) certification by the Board as a fire inspector II; at least four years of experience approving plans and making inspections as such certified inspector; and completion of at least one year of fire protection technology courses approved by the Board; or
- (7) at least five continuous years of experience conducting fire inspections in a wide variety of types of Level III Occupancy buildings for a city, county, or other governmental fire inspection department.

Commission may adopt temporary rules on October 4, 2002 based upon the text submitted here for these rules.

Comment Procedures: Written comments should be submitted to Joan Troy, WRC, 1701 Mail Service Center, Raleigh, NC 27699-1701. Comments should be submitted by December 2, 2002.

Fiscal Impact

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10B - HUNTING AND TRAPPING

SECTION .0100 - GENERAL REGULATIONS

THE NORTH CAROLINA WILDLIFE RESOURCES COMMISSION MAY ADOPT TEMPORARY RULES IN OCTOBER 2002 BASED UPON THE TEXT IN THESE RULES.

This rule was amended as a temporary rule effective May 17, 2002 AND PUBLISHED IN THE NORTH CAROLINA REGISTER VOLUME 16, ISSUE 24, PAGE 2745. The text in bold represents the original amendments of that action.

15A NCAC 10B .0101 IMPORTATION OF WILD ANIMALS

(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~~**provided** 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) establishes a Chronic Wasting Disease (CWD) program that includes a test of cervid tissue or blood test to detect Chronic Wasting Disease, along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm with which the tested animal has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are approved for application to wild animals by the Southeastern Conference on Wildlife Disease Control.

(c) Cervids imported into North Carolina must be individually identified by both a visible external tag and an internal electronic tag which shall be provided by the Wildlife Resources Commission, and shall be affixed by the licensee to each animal as set forth in these rules.

Authority G.S. 113-134; 113-274; 113-291.3; 113-292; 106.549-97(b).

This rule was amended as a temporary rule effective May 17, 2002 AND PUBLISHED IN THE NORTH CAROLINA

Authority G.S. 143-151.12(1); 143-151.13.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend the rules cited as 15A NCAC 10B .0101; 10H .0301-.0303. Notice of Rule-making Proceedings was published in the Register on June 17, 2002.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: November 7, 2002

Time: 2:00 p.m.

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

Reason for Proposed Action: The immediate purpose of amending these rules is to respond to the potential threat of chronic wasting disease in cervid wildlife in North Carolina. 15A NCAC 10B .0101 and 10H .0301 were amended as temporary rules effective May 27, 2002. The text in bold in these two rules represent the original amendments of those temporary rules. The North Carolina Wildlife Resources

REGISTER VOLUME 16, ISSUE 24, PAGE 2745-2747. The text in bold represents the original amendments of that action.

SECTION .0300 - TRAPPING

15A NCAC 10H .0301 GENERAL REQUIREMENTS IS PROPOSED FOR AMENDMENT AS FOLLOWS:

- (a) Captivity Permit or License Required
 - (1) Requirement. The possession of any species of wild animal ~~which that~~ is or once was native to this State or any species of wild bird, native or migratory, which that naturally occurs or historically occurred in this State, 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 ~~except~~ as provided by this Rule.
 - ~~(2) Injured, Crippled or Orphaned Wildlife. Notwithstanding the preceding Subparagraph (1), a crippled, injured or orphaned wild animal or wild bird, except 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.~~
 - (2) Deer, Wild Turkey, Black Bear, Bear, Deer, Elk and other Cervids. 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. wild turkey, black bear, deer, elk or any other member of the family Cervidae.~~
 - (3) Injured, Crippled or Orphaned Wildlife. When an individual has taken possession of an injured, crippled or orphaned wild animal or wild bird, that individual shall apply to the Wildlife Resources Commission or a wildlife enforcement officer of the Commission for a captivity permit, provided, however, that under no circumstances shall an individual take possession of an injured, crippled or orphaned wild turkey, black bear, deer, elk or any other member of the family Cervidae.
- (b) Captivity Permit. (3) Application and Term. A captivity permit ~~will be issued without charge and may be issued upon informal request shall be requested~~ by mail, telephone, phone, facsimile or electronic transmission 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 of the animal or bird 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)(c) Captivity License~~
 - ~~(1) Requirement. Except as provided in Paragraph (a) of this Rule, no person shall keep any member of the family Cervidae; or any coyote, wolf, or other non-indigenous 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.
 - (1) Denial of captivity license. Circumstances or purposes for which a captivity license shall not be issued include but are not limited to the following:
 - (A) If the wild animal or wild bird was acquired unlawfully
 - (B) If the wild animal or wild bird was acquired as a pet.
 - (C) For the purpose of holding exotic wild animals, non-indigenous wild animals, or native big game species to release for hunting.
 - (D) For the purpose of holding wild turkey or black bear.
 - (E) For the purpose of holding deer, elk or any other member of the family Cervidae on a facility constructed after May 17, 2002.
 - (2) Renewal of captivity license for cervids. Existing captivity licenses for the possession of cervids at existing facilities may be renewed as long as the applicant for renewal continues to meet all Commission requirements for the license, provided however, that no renewal of an existing license shall permit the expansion of pen size or number of pens on the licensed facility to increase the holding capacity of that facility.
 - ~~(2)(3)~~ 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 that shall comply

~~complies~~ with the ~~minimum~~ standards set forth in Rule .0302 of this ~~Section, Section and the adequacy of such facility has been verified on inspection by a representative of the Commission.~~

~~(3)(4)~~ 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 that~~ is issued shall be for a period less than one year as rehabilitation may ~~require 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~~ bird, ~~regardless of the term specified~~, shall ~~be operative operate~~ to authorize retention thereof for a longer period than is allowed by any concurrent federal permit that may be required for ~~it's the bird's or animal's~~ retention.

~~(D) Holders of Captivity License for Cervids. All captivity licensees holding cervids shall tag all currently held cervids, newborn cervids within five days of their birth, and any lawfully acquired cervids within five days of acquisition, with both a visible external tag and an internal tag. These tags shall be provided by the Wildlife Resources Commission, and shall be affixed by the licensee to each animal in the manner prescribed by the Commission.~~

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

~~(4)(e) Sale or Transfer~~ ~~Sale, Transfer or Release~~ of Captive Wildlife.

(1) It is unlawful for any person to transfer or receive any wild animal or wild bird ~~which that~~ 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.

(2) 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 Cervidae~~ **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 provided~~ to the Wildlife Resources Commission.

(3) 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 non-indigenous~~ 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(e); 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].~~

~~(f) Transportation Permit.~~

~~(1) Except as otherwise provided herein, no transportation permit shall be required to move any lawfully held wild animal or wild bird within the State.~~

~~(2) Except as provided in Section (e)(3), no transportation permits shall be issued for deer, elk, or other species in the family Cervidae until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test of cervid tissue or blood to detect Chronic Wasting Disease, along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm with which the tested animal has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are approved for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.~~

(3) A permit to transport deer, elk, or other species in the family Cervidae may be issued by the Commission to an applicant for the purpose of transporting the animal or animals to a slaughterhouse for slaughter or to a veterinary medical facility for treatment provided that the animal for which the permit is issued does not exhibit clinical symptoms of chronic wasting disease. An applicant seeking to transport a cervid for emergency veterinary treatment shall contact the Wildlife Resources Commission Communications Center at (919) 662-4381 to obtain verbal authorization to transport.

Authority G.S. 113-134; 113-272.5; 113-274; 113-292.

15A NCAC 10H .0302 MINIMUM STANDARDS

(a) Exemptions. Publicly financed zoos, scientific and biological research facilities, and institutions of higher education are exempt from ~~all of the minimum standards put set~~ forth in this Rule for all birds and animals ~~except the black bear, bear, provided, however, that they shall comply with the requirements listed in this Rule for holding black bear in captivity.~~

~~(b) The following are deemed the minimum standards for holding the species indicated in captivity by all other licensees. All holders of captivity licenses other than those named in Paragraph (a) shall comply with the following requirements for the species indicated:~~

~~(b)(1) Deer, Elk and other species of the family Cervidae~~

~~(A) Enclosure. The enclosure shall be on a well-drained site containing trees or brush for shade. The minimum size of the enclosure shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal held. The enclosure shall be surrounded by a sturdy fence at least 10 feet high, dog-proof to a height of at least six feet. No exposed barbed wire or protruding nails shall be permitted within the enclosure. All woody vegetation or brush shall be cleared for a distance of 20 feet from the fence inside the enclosure, and 20 feet from the fence outside the enclosure or to the property line of adjoining property, whichever is less. All trees over six inches in diameter at a height of four feet shall be removed for a distance of 20 yards from the fence inside the enclosure, and 20 yards from the fence outside the enclosure or to the property line of adjoining property, whichever is less. A roofed building large enough to provide shelter in both a standing ~~or~~ and a lying position for each deer ~~must~~ shall be provided. This building shall~~

be closed on three sides and provided with a wooden floor. It shall be constructed at least 10 feet from the fence. The licensee shall make all enclosures at each licensed facility available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of CWD is suspected or confirmed within five miles of the facility or within the facility itself.

~~(B) Sanitation and Care. Permittees Licensees shall provide an ample supply of clear water and salt at all times. Food shall be placed in the enclosure as needed, but in any case, not less than three times weekly. Straw and leaf litter, replenished every week, litter shall be used as a floor covering in the shelter, shelter and shall be replenished every week. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. The animal must shall be protected against fright. Domestic livestock, poultry, other captive, native, or exotic wild birds or animals, and including dogs shall be excluded from the enclosure.~~

~~(C) Chronic Wasting Disease (CWD) Testing. Each Licensee shall immediately notify the Commission if any cervid within the facility exhibits clinical symptoms of CWD. The Commission shall notify the North Carolina Department of Agriculture & Consumer Services (NCDA & CS). If NCDA & CS quarantines the facility, all captive cervids exhibiting symptoms of CWD shall be tested for CWD at the expense of the Commission. If Chronic Wasting Disease (CWD) is confirmed in any cervid held in a licensed facility, all cervids held in that facility shall be forfeited and tested for CWD. If any cervid has been moved from another facility within this State to such facility, or if any cervid has been moved from such facility to another facility within this State, all cervids held in such facility shall also be forfeited and tested for CWD.~~

~~(e)(2) Wild Boars~~

~~(A) Enclosure. The enclosure shall be on a site containing trees or brush for shade. The minimum size of the enclosure shall be not less than one-half acre for the first three animals and an additional one-fourth acre for~~

each additional animal held. The enclosure shall be surrounded by a sturdy fence at least five feet high. No exposed barbed wire or protruding nails shall be permitted within the enclosure. A roofed building large enough to provide shelter in both a standing or a lying position for each boar must be provided. This building shall be closed on three sides and provided with a wooden or concrete floor. A pool of water for wallowing or a sprinkler system shall be provided on hot days.

~~(2)~~(B) Sanitation and Care. Permittees Licensees shall provide an ample supply of clear water at all times. Food shall be placed in the enclosure as needed, but ~~in any case,~~ not less than three times weekly. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

~~(4)~~(3) Wild Birds

~~(1)~~(A) Enclosure. The enclosure shall be large enough for the bird or birds to assume all natural postures. The enclosure shall be designed in such a way that the birds cannot injure themselves and are able to maintain a natural plumage. Protection from excessive sun, weather, and ~~predation~~ predators shall also be provided.

~~(2)~~(B) Sanitation and Care. The cage shall be kept clean, dry, and free from molded or damp feed. Ample food and clean water shall be available at all times.

~~(e)~~(4) Alligators

~~(1)~~(A) Enclosure. The enclosure shall be surrounded by a sturdy fence so as to prevent contact between the observer and alligator. The enclosure shall contain a pool of water large enough for the animal to completely submerge itself. If more than one animal is kept, the pool must be large enough for all animals to be able to submerge themselves at the same time. A land area with both horizontal dimensions ~~being~~ at least as long as the animal shall also be provided. In case of more than one animal, the land area shall have both horizontal dimensions at least as long as the longest animals to occupy the land area at the same time without overlap.

~~(2)~~(B) Sanitation and Care. The water area ~~must shall~~ be kept clean and adequate

ample food provided. Protection shall be provided at all times from extremes in temperature.

~~(4)~~(5) Black Bear

~~(1)~~(A) Educational Institutions and Zoos Operated or Established by Governmental Agencies

~~(A)~~(i) Enclosure. A permanent, stationary metal cage, at least eight feet wide by 12 feet long by six feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor in which a drainable pool one and one-half feet deep and not less than four by five feet has been constructed. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage must contain a den at least five feet long by five feet wide by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.

~~(B)~~(ii) Sanitation and Care. ~~Adequate~~ Ample food shall be provided daily; and clean, clear drinking water shall be available at all times. In hot weather, the floor of the cage and the food trough shall be flushed with water and the water in the pool changed daily. The den shall be flushed and cleaned at least once each week in hot weather. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

Brush, canvas, or other suitable material shall be placed over the cage to provide additional shade when necessary. The use of collars, tethers or stakes to restrain the bear is prohibited, except as a temporary safety device.

~~(2)~~(B) Conditions Simulating Natural Habitat. Black bears held in captivity by other than educational institutions or governmental zoos ~~must shall~~ be held without caging under conditions simulating a natural ~~habitat habitat approved by the Wildlife Resources Commission. For a holding facility to be deemed in simulation of a natural habitat, the following conditions must exist: All of the following conditions must exist to simulate a natural habitat in a holding facility:~~

~~(A)~~(i) The method of confinement is by chain link fence, wall, moat, or a combination of such, without the use of chains or tethers.

~~(B)~~(ii) The area of confinement is at least one acre in extent for one or two bears and an additional one-eighth acre for each additional bear.

(iii) Bears are free, under normal conditions, to move throughout ~~such area—the area of confinement;~~

~~(C)~~(iv) At least one-half of the area of confinement is wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind.

~~(D)~~(v) The area of confinement contains a pool not less than one and one-half feet deep and not less than four by five feet in size.

~~(E)~~(vi) Provision is made for a den for each bear to which the bear may retire for rest, shelter from the elements, or respite from public observation.

~~(F)~~(vii) The area of confinement presents an overall appearance of a natural habitat and affords the bears protection from harassment or annoyance.

~~(G)~~(viii) Provisions are made for ~~adequate—ample~~ food and water and for maintenance of sanitation.

~~(H)~~ ~~No circumstance exists which is calculated to avoid, circumvent, defeat or subvert the purpose of the law or these regulations.~~

~~(I)~~(ix) The applicant ~~demonstrates by—satisfactory—shall document that the applicant owns or has long-term control—a lease~~ of the real property upon which the holding facility is ~~located. located, provided that if the applicant is a lessee, the lease is for a duration of at least five years from the point of stocking the facility.~~

~~(g)~~(6) Cougar

~~(1)~~(A) Educational or Scientific Research Institutions and ~~Bona Fide Publicly Supported—~~Zoos supported by public funds.

~~(A)~~(i) Enclosure. A permanent, stationary metal cage, at least nine feet wide by 18 feet long by nine feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage ~~must shall~~ contain a den at least five feet long by five feet wide by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.

~~(B)~~(ii) Sanitation and Care. ~~Adequate—Ample~~ food shall

be provided daily; and clean, clear drinking water shall be available at all times. In hot weather, the floor of the cage and the food trough shall be flushed with water and the water in the pool changed daily. The den shall be flushed and cleaned at least once each week in hot weather. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. Brush, canvas, or other suitable material shall be placed over the cage to provide additional shade when necessary. The use of collars, tethers or stakes to restrain the cougar is prohibited, except as a temporary safety device.

~~(2)(B)~~ Application. — The following specifications are required for the development of plans for holding cougars in captivity as prescribed by G.S. 113-272.5(e)(4). Applicants for a Wildlife Captivity License for cougar must apply on forms supplied by the Commission and include copies of proposed plans for confining cougars in conditions simulating natural habitats. Cougars held in captivity by other than educational or scientific institutions or bona fide publicly supported zoos must shall be held without caging under conditions simulating a natural habitat. habitat approved by the Wildlife Resources Commission. Applicants for a captivity license to hold cougar shall apply to the Wildlife Resources Commission on forms provided by the Commission, and shall provide plans that describe how the applicant's facility will comply with the requirement to simulate a natural habitat. For a holding facility to be deemed in simulation of a natural habitat, the following conditions must be satisfied: All of the following conditions must exist to simulate a natural habitat in a holding facility:

~~(A)(C)~~ The method of confinement is by chain link fence, without the use of chains or tethers. tethers, provided that:

- (i) Nine gauge chain link fencing shall be at least 12 feet in height with a four foot fence overhang at a 45 degree angle on the inside of the pen to prevent escape from climbing and jumping.
- (ii) Fence posts and at least six inches of the fence skirt shall be permanently imbedded in a six inch wide by one foot deep concrete footer to prevent escape by digging.

~~(B)(D)~~ The area of confinement shall be at least one acre for ~~one or~~ two cougars with an additional one-eighth acre for each additional cougar, except that smaller areas containing terrain and topographical features ~~which~~ that ~~offer adequate~~ escape cover and refuge and meeting all other specifications ~~are allowed~~ may be permitted under special approval by the Wildlife Resources Commission, following site evaluation by the Wildlife Resources Commission.

~~(E)~~ Cougars shall be free under normal conditions to move throughout ~~such area~~ the area of confinement.

~~(C)(F)~~ At least one-half of the area of confinement shall be wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind; and a 20 foot wide strip along the inside of the fence shall be maintained free of trees, shrubs and any other obstructions which could provide a base from which escape through leaping could occur.

~~(D)(G)~~ The area of confinement shall contain a pool not less than one and one-half feet deep and not less than four by five feet in size.

~~(E)(H)~~ Each cougar shall be provided a den to which the cougar may retire for rest, shelter from the elements, or respite from public observation. Each den shall be four feet wide by four feet high by four feet deep. Each den shall be enclosed entirely within at least an eight feet wide by ten feet deep by 12 feet high security cage. The security cage shall be completely within the confines of the facility, cement-floored, shall have nine gauge fencing on all sides and the top, and shall have a four foot, 45 degree fence overhang around the outside top edge to prevent cougar access to the top of the security cage.

PROPOSED RULES

- ~~(F)(1)~~ The area of confinement shall ~~present an overall appearance of a natural habitat and afford the cougars protection~~ protect the cougar from harassment or annoyance.
- (3) Provisions shall be made for ~~adequate~~ ample food and water and for maintenance of sanitation.
- ~~(4) No circumstance shall exist which is calculated to avoid, circumvent, defeat or subvert the purpose of the law or these recommendations.~~
- ~~(5)(4)~~ The applicant ~~must demonstrate by satisfactory evidence~~ shall document that ~~he the applicant~~ owns or has ~~some other long-term legal interest in a lease~~ of the real property upon which the holding facility is ~~located~~ located, provided that if the applicant

- is a lessee, the lease is for a duration of at least five years from the point of stocking the facility.
 - (h) Other Wild Animals
 - (1) Enclosure. The enclosure ~~must~~ shall provide protection from excessive sun, weather and free-ranging animals. A den area in which the animal can escape from view and large enough for the animal to turn around and lie down must be provided for each animal within the enclosure. No tethers or chains ~~will~~ shall be used to restrain the animal. Either a tree limb, exercise device, or shelf large enough to accommodate the animal ~~must~~ shall be provided to allow for exercise and climbing.
- The single-animal enclosure for the animals listed in this Subparagraph shall be a cage with the following minimum dimensions and horizontal areas:

Animal	Dimensions in Feet			Sq. Ft. Per Animal
	Length	Width	Height	
Bobcat, Otter	10	5	5	50
Raccoon, Fox, Woodchuck	8	4	4	32
Opossum, Skunk, Rabbit	6	3	3	18
Squirrel	4	2	2	8

For animals not listed above or mentioned elsewhere in this Rule, single animal enclosures shall be a cage with one horizontal dimension being at least four times the nose-rump length of the animal and the other horizontal dimension being at least twice the nose-rump length of the animal. The vertical dimensions shall be at least twice the nose-rump length of the animal. Under no circumstances shall a cage be less than four feet by two feet by two feet.

For multiple animal enclosures, the minimum area of horizontal space shall be determined by multiplying the required square footage for a single animal by a factor of 1.5 for one additional animal and the result by the same factor, successively, for each additional animal. The vertical dimension for multiple animal enclosures shall remain the same as for single animal enclosures. The young of any animal may be kept with the parent in a single-animal enclosure only until weaning. After weaning, if the animals are kept together, the requirements for multiple-animal enclosures ~~must be met~~ shall apply.

- (2) Sanitation and Care. Fresh food shall be provided daily, and clean water shall be available at all times. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

Authority G.S. 19A-11; 113-134; 113-272.5.

15A NCAC 10H .0303 FORFEITURE

Upon failure to meet any of the requirements set forth in this ~~Section or Section~~, failure to maintain the animal in good physical health, or confirmation of chronic wasting disease in any captive animal held within the licensed facility, or any captive animal held by any facility to or from which any cervid has been transported by the licensed facility, the holder of a permit or license to keep wildlife in captivity shall lose custody

of ~~the all~~ animals ~~concerned~~ held within the licensed facility, shall forfeit the right to keep them, and shall turn them over to a representative of the Wildlife Resources Commission upon request. In addition, the Wildlife Resources Commission shall revoke the permit or license of the holder. Any of the following may be considered evidence of poor physical health: obvious undernourishment or weakness, bare spots in fur or feather covering, persistent diarrhea, unusual nasal discharges, sores or open wounds on the skin, broken bones or other physical injuries.

Authority G.S. 113-134; 113-272.5; 113-292.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as 15A NCAC 21D .0411, amend the rules cited as 15A NCAC 21D .0202, .0410, .0501, .0503, .0702-.0704, .0706, .0802, .0804, .0806, .0902-.0911, and repeal the rule cited as 15A NCAC 21D .0805. Notice of Rule-making Proceedings was published in the Register on March 15, 2002.

Proposed Effective Date: July 1, 2003

Public Hearing:

Date: October 16, 2002

Time: 1:00 p.m.

Location: Room G-1A, 1330 St. Mary's St., Raleigh, NC

Reason for Proposed Action: *These proposed rules are required to meet new federal regulations (7 CFR 246) dealing with the Food Service Delivery of the WIC Program. The regulations are designed to strengthen WIC vendor management*

in the retail food delivery system. They specifically include establishing mandatory selection criteria for vendors, training requirements, and criteria for identifying high-risk vendors. The regulations also strengthen food accountability and sanctions for participants who violate program requirements. Temporary rules were adopted on July 1, 2002 and September 1, 2002. The federal deadline to implement these regulations is October 1, 2002.

Comment Procedures: Written comments should be sent to Chris Hoke, 1915 Mail Service Center, Raleigh, NC 27699-1915. Email: chris.hoke@ncmail.net.

Fiscal Impact

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

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21D - WIC/NUTRITION

SECTION .0200 - WIC PROGRAM GENERAL INFORMATION

15A NCAC 21D .0202 DEFINITIONS

For the purposes of this Subchapter, all definitions set forth in 7 C.F.R. Part 246.2 are hereby incorporated by reference, including subsequent amendments and additions, with the following additions and modifications:

- (1) An "administrative appeal" is ~~a procedure to be followed when an appeal in accordance with Section .0800 of this Subchapter through which~~ a local WIC agency, potential local WIC agency, ~~or authorized WIC vendor or potential authorized WIC vendor wishes to may appeal the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and (a)(3)(i).an action by the local WIC agency or the state agency which affects participation in the WIC program by the agency or vendor. An administrative appeal may also be called a fair hearing.~~
- (2) An "authorized store representative" includes an owner, manager, assistant manager, head cashier, or chief fiscal officer.
- (3) An "authorized WIC vendor" is a food ~~vendor retailer or free-standing~~ pharmacy that has executed a currently effective North Carolina WIC Vendor Agreement DHHS Form 2768.
- (4) A "chain store" is a store that is owned or operated by a corporation, partnership, cooperative association, or other business entity that has twenty or more stores owned or operated by the business entity.
- (4)(5) A "competent health professional" is a physician, registered nurse, nutritionist, registered dietitian, or nutrition trainee or home economist (who is under the supervision of a nutritionist), or other qualified individuals

approved by the Nutrition Services Branch. These individuals must be on the staff of the local WIC agency or designated by the local WIC agency in order to certify and prescribe the food package.

~~(5)(6)~~ A "fair hearing" is the ~~procedure to be followed when a person or his her parent or guardian wishes to appeal a decision made by a local WIC agency or the state agency which affects the individual's participation in the program. informal dispute resolution process in Section .0900 of this Subchapter through which any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued benefits or results in the individual's denial of participation or disqualification from the WIC Program. This process must be complied with prior to making a formal appeal in accordance with G.S. 150B.~~

~~(6)(7)~~ A "food instrument" means a voucher, check, electronic benefits transfer card (EBT), coupon or other document which is used to obtain supplemental foods.

~~(7)(8)~~ "FNS" means the Food and Nutrition Service of the U.S. Department of Agriculture.

(9) "Free-standing pharmacy" means a pharmacy that does not operate within another retail store. Free-standing pharmacy includes free-standing pharmacies that are chain stores and free-standing pharmacies participating under a WIC corporate agreement.

~~(8)(10)~~ The "local WIC agency" is the local agency which enters into an agreement with the Division of Public Health to operate the Special Supplemental Nutrition Program for Women, Infants and Children.

~~(9)(11)~~ A "local WIC program plan" is a written compilation of information on the local WIC agency policies concerning program operation, including administration, nutrition education, personnel functions, costs and other information prepared by the local WIC agency and submitted to the Nutrition Services Branch in accordance with instructions issued by the Branch.

(12) "Redemption" is the process by which a vendor deposits a food instrument for payment and the state agency (or its financial agent) makes payment to the vendor for the food instrument.

(13) "Shelf price" is the price a vendor charges a non-WIC customer for a WIC supplemental food.

~~(40)(14)~~ The "state agency" is the Nutrition Services Branch, Women's and Children's Health Section, Division of Public Health, Department of Health and Human Services.

- (15) "Store" means the physical building located at a permanent and fixed site that operates as a food retailer or free-standing pharmacy.
- ~~(14)~~(16) "Supplemental food" or "WIC supplemental food" is a food which satisfies the requirements of 15A NCAC 21D .0501 and is included in the WIC Vendor Manual.
- ~~(12)~~(17) "Support costs" are clinic costs, administrative costs, and nutrition education costs.
- (18) "Transaction" is the process by which a WIC customer tenders a food instrument to a vendor in exchange for authorized supplemental foods.
- (19) "Vendor applicant" is a store that is not yet authorized as a WIC vendor.
- (20) A "vendor overcharge" is intentionally or unintentionally charging more for supplemental food provided to a WIC customer than to a non-WIC customer or charging more than the current shelf price for supplemental food provided to a WIC customer.
- (21) A "WIC corporate agreement" is a single WIC Vendor Agreement with a corporate entity that has twenty or more stores authorized as WIC vendors under the Agreement.
- (22) "WIC customer" means a WIC participant, parent or caretaker of an infant or child participant, proxy or compliance investigator who tenders a food instrument to a vendor in exchange for WIC supplemental food.
- ~~(13)~~(23) "WIC program" means the special supplemental nutrition program for women, infants and children authorized by 42 U.S.C. 1786 of the Child Nutrition Act of 1966 as amended.

A copy of 7 C.F.R. Part 246.1 through 246.28 is available for inspection at the Department of Health and Human Services, Division of Public Health, Women's and Children's Health Section, Nutrition Services Branch, 1330 St. Mary's Street, Raleigh, North Carolina. Copies are available at no cost from the Supplemental Nutrition Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 540, Alexandria, Virginia 22302 by calling (703) 305-2730 or access <http://www.access.gpo.gov/nara/cfr/index.html>.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

SECTION .0400 - ELIGIBILITY FOR WIC PROGRAM PARTICIPATION

15A NCAC 21D .0410 PARTICIPANT VIOLATIONS AND SANCTIONS

(a) The State agency shall assess a claim for the full value of Program benefits that have been obtained or disposed of improperly as the result of a participant violation. "Participant violation" means those violations listed in 7 C.F.R. 246.2 which are incorporated by reference in Rule .0202 of this Subchapter. A claim shall not be paid by offsetting the claim against future Program benefits. The state agency may delegate to the local agency the responsibility for collecting participant claims.

(b) The following participant violations committed by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a one-year disqualification of the participant from the WIC Program, except as provided in Paragraphs (c) and (d) of this Rule:

- (1) Exchanging food instruments or supplemental food for cash;
- (2) Exchanging food instruments or supplemental food for alcohol, alcoholic beverages, tobacco products, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802;
- (3) A claim for dual participation resulting from intentional misrepresentation;
- (4) Intentionally making false or misleading statements or intentionally misrepresenting, concealing, or withholding facts to obtain Program benefits;
- (5) Any participant violation for which a claim of one hundred dollars (\$100.00) or more is assessed;
- (6) A second or subsequent claim assessed for any participant violation, regardless of the dollar amount; The second or subsequent claim does not have to be for the same participant violation as the initial claim to result in a one-year disqualification; and
- (7) Physical harm to clinic or vendor staff.

(c) The one-year disqualification referenced in Paragraph (b) of this Rule will not be imposed against the participant if a claim is assessed and full payment is made or a repayment schedule satisfactory to the state agency is agreed upon within 30 days of receipt of a written demand for repayment of the claim for the improperly obtained or disposed of Program benefits.

(d) The one year disqualification referenced in Paragraph (b) of this Rule will not be imposed against the participant if the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant.

(e) Except as provided in Subparagraphs (b)(5) and (b)(6) of this Rule, the following participant violations committed by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a written warning for the first violation and the assessment of a claim for the full amount of any improperly obtained or disposed of Program benefits:

- (1) Exchanging food instruments or supplemental food for credit;
- (2) Exchanging food instruments or supplemental food for non-food items, other than alcohol, alcoholic beverages, tobacco products, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802; and
- (3) Exchanging food instruments or supplemental food for unauthorized food items, including supplemental foods in excess of those listed on the participant's food instrument.

For the violations listed in this Paragraph, failure to pay a claim in full or agree to a repayment schedule satisfactory to the state agency within 30 days of receipt of a written demand for repayment of a claim, shall result in a 90-day disqualification of

the participant, unless the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant.

(f) The occurrence of a second or subsequent participant violation listed in Paragraph (e) of this Rule shall result in a one-year disqualification of the participant and the assessment of a claim for the full amount of any improperly obtained or disposed of Program benefits. The second or subsequent violation does not have to be the same as the initial violation to result in a one-year disqualification. The one-year disqualification will not be imposed against the participant if full payment is made or a repayment schedule satisfactory to the state agency is agreed upon within 30 days of receipt of a written demand for repayment of a claim. Additionally, the one year disqualification will not be imposed against the participant if the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant.

(g) Threatening physical harm to or verbal abuse of clinic or vendor staff by a participant, parent or caretaker of an infant or child participant, or proxy shall result in a written warning for the first occurrence of this violation. A second occurrence within a 12-month period shall result in a 90-day disqualification of the participant, unless the participant is an infant, child, or under age 18 and the state or local agency approves the designation of a proxy for the participant.

(h) For any disqualification imposed under this Rule, a participant can reapply for Program participation if during the period of the disqualification full payment is made or a repayment schedule satisfactory to the state agency is agreed upon, or in the case of a participant who is an infant, child, or under age 18, the state or local agency approves the designation of a proxy.

~~(a) The local WIC agency may disqualify a participant from participation in the WIC program for a period not to exceed three months if the local agency makes a finding of participant abuse.~~

~~(b) The local WIC agency may give a warning prior to disqualifying a participant for participant abuse.~~

~~(c)(i) The participant has a right to a fair hearing in accordance with Section .0900 of this Subchapter for sanctions imposed under this Rule, prior to disqualification from the WIC program.~~

~~(d) For the purposes of this Subchapter, "participant abuse" includes, but is not limited to, knowing and deliberate misrepresentation of circumstances to obtain benefits; sale of supplemental foods or food instruments to, or exchange with, other individuals or entities; receipt from food vendors of cash or credit toward purchase of unauthorized food or other items of value in lieu of authorized supplemental foods; and physical abuse, or threat of physical abuse, of clinic or vendor staff.~~

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

15A NCAC 21D .0411 DUAL PARTICIPATION

(a) A participant shall not participate simultaneously in the WIC Program in one or more than one WIC clinic, or participate in the WIC Program and the Commodity Supplemental Food Program ("CSFP") during the same period of time. For purposes of this Rule, participate means certification as a WIC participant for the receipt of WIC food instruments or certification as a CSFP participant for the receipt of CSFP food.

(b) The state agency shall immediately terminate the participation in one of the clinics or Programs, or the simultaneous participation in a single clinic, in accordance with 7 C.F.R. 246.7(1)(1)(iii) when a participant is found to be in violation of Paragraph (a) of this Rule.

(c) In the case of dual participation resulting from intentional misrepresentation, the participant, parent or caretaker of an infant or child participant, or proxy shall be responsible for repaying Program benefits improperly issued as a result of the dual participation, and the participant shall be disqualified from participation in both Programs or clinic(s) in accordance with 7 C.F.R. 246.7(1)(1)(iv) and Paragraph (b) of Rule .0410 of this Section. For purposes of this Paragraph, receiving WIC food instruments under two or more participant identities in a single WIC clinic during the same issuance period and transacting one or more of the food instruments received under two or more of the identities constitutes dual participation based on intentional misrepresentation. Receiving WIC food instruments from more than one WIC clinic during the same issuance period and transacting one or more of the food instruments received from two or more of the clinics constitutes dual participation based on intentional misrepresentation. Additionally, receiving WIC food instruments and CSFP food during the same time period and transacting one or more of the WIC food instruments constitutes dual participation based on intentional misrepresentation.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

SECTION .0500 - WIC PROGRAM FOOD PACKAGE

15A NCAC 21D .0501 SUPPLEMENTAL FOODS

(a) The foods which may be provided to WIC program participants are specified in 7 C.F.R. 246.10, which is incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of ~~Environment, Health, and Natural Resources, Health and Human Services~~, Division of ~~Maternal and Child Health, Nutrition Services Section, Public Health~~, 1330 Saint Mary's Street, Raleigh, North Carolina and may be obtained from Nutrition Services at no cost.

(b) The following exclusions from the food package have been adopted by the North Carolina WIC program and approved by the United States Department of Agriculture, Food and Nutrition service:

- (1) shredded cheese;
- (2) eggs other than grade A large or extra-large fresh and "cholesterol reducing";
- (3) infant cereal-fruit and cereal-formula combinations;
- (4) cheese in excess of four pounds per month, unless a physician documents that the recipient is lactose intolerant, or is a postpartum woman who is breast feeding exclusively;
- (5) all formulas other than standard milk-based iron fortified infant formulas, unless a physician prescribes a formula and documents the presence of a medical condition, the reason for the specific formula prescribed, and the duration of its use;
- (6) if the WIC program executes a sole source contract for an infant formula, that formula

shall be specified in the vendor ~~contract agreement~~ and on the food instrument, and all other formulas shall be excluded from the food package, unless a physician prescribes a different formula and documents the presence of a medical condition, the reason for the specific formula prescribed, and the duration of its use;

- (7) infant juice;
- (8) peanut butter other than plain, smooth, crunchy or whipped;
- (9) dried beans and peas other than mature and unflavored;
- (10) tuna other than chunk light in water; and
- (11) carrots other than raw, canned or frozen.

(c) The state agency may waive application of this Rule and exclude foods other than those described in Paragraph (b) of this Rule if it determines such foods to be inappropriate for provision as supplemental foods through the WIC program as a result of their composition, packaging or promotion in a manner which is contrary to the purpose of the program as contained in Rule .0601(a) of this Subchapter.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

15A NCAC 21D .0503 USE OF WIC SUPPLEMENTAL FOODS

WIC supplemental foods shall be provided for consumption by the participant and not be distributed for use by institutions such as child and day care centers.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

SECTION .0700 - WIC PROGRAM FOOD DISTRIBUTION SYSTEM

15A NCAC 21D .0702 ISSUANCE OF FOOD INSTRUMENTS

(a) Local WIC agencies shall issue WIC program food instruments to program participants in a manner which ensures that participants can receive the appropriate supplemental foods that have been prescribed for them.

(b) Local WIC agencies shall issue food instruments in a manner which ensures maintenance of adequate security and retention of adequate documentation of the disposition of the food instruments. The documentation of issuance shall include the dated signature of the authorized individual receiving the food instruments unless the food instruments are mailed.

(c) The authorized individual receiving the food instrument shall sign it on the "signature" line. The person who so signs the food instrument is the only individual who can ~~redeem-transact~~ it.

(d) Participants shall be given appointments to receive food instruments in a manner which promotes coordination with WIC program certification, nutrition education, other health services and the services being received by other family members without placing an undue burden on the participant.

(e) Food instruments shall be issued only to the participant, the participant's parent, the participant's ~~guardian, caretaker~~, an authorized proxy, or a compliance investigator.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

15A NCAC 21D .0703 USE OF FOOD INSTRUMENTS

(a) Participants may ~~redeem-transact~~ food instruments on any day on or between the "date of issue" and "participant must use by" dates assigned to the food instrument.

(b) North Carolina WIC program food instruments shall be ~~redeemed-transacted~~ only at authorized WIC vendors in accordance with the terms of the signed WIC Vendor Agreement (DHHS Form 2768). Neither an agency of the United States government, the State of North Carolina, the local WIC agency nor a past or present WIC participant, ~~parent, guardian, parent or caretaker of an infant or child participant~~, or proxy is under any obligation to pay for food instruments accepted by a ~~vendor who store that~~ was not an authorized WIC vendor on the date of ~~redemption-transaction~~ of the food instrument.

(c) Only the individual who has received the food instrument at the local or state agency or through the mail and has signed the signature line may countersign the food instrument. Vendors shall assume full responsibility for food instruments not properly countersigned.

(d) North Carolina WIC food instruments shall be deposited at the vendor's bank. These food instruments shall not be assigned, transferred, sold or otherwise negotiated.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

15A NCAC 21D .0704 VALIDITY OF WIC FOOD INSTRUMENTS

(a) North Carolina WIC food instruments shall not be valid if:

- (1) the instrument has not been legibly imprinted with an authorized WIC vendor stamp;
- (2) the instrument has been counterfeited or the signature forged;
- (3) the instrument has been mutilated, defaced or otherwise tampered with or altered;
- (4) the instrument is not deposited in the vendor's bank within 60 days of the "date of issue" assigned to the instrument;
- ~~(5) the "pay exactly" amount exceeds the "void if exceeds amount";~~
- ~~(5) the "pay exactly" amount (i.e. purchase price) is not recorded on the food instrument;~~
- ~~(6) the "pay exactly" amount (i.e. purchase price) exceeds the maximum price set by the state agency for the food instrument;~~
- ~~(6)(7)~~ the signature and countersignature do not match or the countersignature is missing;
- ~~(7)(8)~~ the "date ~~redeemed-transacted~~" entered on the instrument is not on or between the "date of issue" and "participant must use by" dates assigned to the instrument;
- ~~(8)(9)~~ the instrument is not completed in indelible ink.

Invalid food instruments will be stamped with the reason for invalidity and returned to the vendor without payment. A vendor may attempt to justify or correct an invalid food instrument and will receive payment if the agency is satisfied with the justification or correction.

(b) A local WIC agency may revalidate invalid food instruments when:

- (1) the "pay exactly" amount has been altered and the vendor provides a receipt ~~or WIC Price List~~ that confirms the altered amount is the correct "pay exactly" amount;
- ~~(2) the "pay exactly" amount is greater than the "void if exceeds" amount and the vendor provides a receipt or WIC Price List that shows the prices used to determine the "pay exactly" amount were based on the vendor's actual prices;~~
- ~~(3)~~(2) the food instrument is not deposited in the vendor's bank within 60 days of the "date of issue" assigned to the instrument and the State WIC office gives approval to the local WIC agency to revalidate.

or more authorized vendors under one agreement), military commissaries, and stores exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales; and Peer Group V - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement.

(3) Annual WIC supplemental food sales is the dollar amount in sales of WIC supplemental foods at the store within a 12-month period.

(4) In determining a vendor's peer group designation based on annual WIC supplemental food sales, the state agency will look at the most recent 12-month period for which sales data is available. If the most recent available 12-month period of WIC sales data ends more than one year prior to the time of designation, the peer group designation will be based on the number of cash registers in the store.

(5) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.

(6) A vendor applicant that is being reauthorized following the nonrenewal or termination of its Agreement or disqualification from the WIC Program will be placed into the peer group the store was in at the time of the nonrenewal, termination or disqualification, provided that no more than one year has passed since the nonrenewal, termination or disqualification. All other vendor applicants will be placed into peer groups in accordance with Subparagraphs (a)(1) and (a)(2) of this Rule.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

15A NCAC 21D .0706 AUTHORIZED WIC VENDORS

(a) Vendor applicants and authorized vendors will be placed into peer groups as follows:

(1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, will be placed into peer groups based on the number of cash registers in the store until annual WIC supplemental food sales become available. The following are the peer groups based on the number of cash registers in the store:

- Peer Group I - - zero to two cash registers;
- Peer Group II - - three to five cash registers; and
- Peer Group III - - six or more cash registers;

(2) Authorized vendors for which annual WIC supplemental food sales is available, and chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, will be placed into peer groups as follows, except as provided in Subparagraph (a)(6) of this Rule.

- Peer Group I - - two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;
- Peer Group II - - greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;
- Peer Group III - - greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store;
- Peer Group IV - - chain stores, stores under a WIC corporate agreement (20

(a)(b) An applicant to ~~To~~ become authorized as a WIC vendor vendor, a vendor applicant shall comply with the following: following vendor selection criteria:

(1) Accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant must submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List;

(2) At the time of application and throughout the term of authorization, ~~Submit~~ submit all completed forms to the local WIC program, except that a corporate ~~WIC Vendor with 20 or more WIC stores~~ entity operating under a WIC corporate agreement shall submit one completed WIC Vendor Agreement ~~corporate agreement~~ and the WIC Price List ~~Lists~~ to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a

- WIC corporate agreement may submit a single WIC Price List for those stores that have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store;
- (3) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the State agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(3)(B) of this Rule:
- (A) The most recent WIC Price Lists submitted by authorized vendors within the same peer group will be used to determine the maximum price for each supplemental food. The maximum price will be based on the average of the current highest shelf price for each supplemental food within a vendor peer group, plus a factor to reflect fluctuations in wholesale prices. The state agency will reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency will use the WIC Price Lists which must be submitted by all vendors by January 1 and July 1 each year in accordance with Subparagraph (c)(30) of this Rule. The other two price assessments will be based on WIC Price Lists requested from a sample of vendors within each peer group in March and September of each year;
- (B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant will be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant will be deemed to have met the requirements of Subparagraph (b)(3) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application will be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the
- written denial to reapply for authorization;
- ~~(3)~~(4) Pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph ~~(b)(15)~~ ~~(c)~~ ~~(23)~~ of this ~~Rule~~; Rule. An A vendor applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 ~~days;~~ ~~days.~~ If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application;
- ~~(4)~~(5) Attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements;
- (6) Mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case at all times;
- ~~(5)~~(7) The ~~applicant's vendor site store~~ shall be located at a permanent and fixed location within the State of North Carolina. The ~~vendor site store~~ shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC ~~participant, parent, guardian or proxy;~~ customer;
- ~~(6)~~(8) The ~~applicant's vendor site store~~ shall be open throughout the year for business with the public at least ~~five-six~~ days a week for a minimum of ~~four hours per day~~ 40 hours per week between 8:00 a.m. and 11:00 p.m.;
- ~~(7)~~(9) ~~An A vendor~~ applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local agency;
- ~~(8)~~ ~~A vendor site for which the applicant is applying shall not have an owner with 25 percent or more financial interest who has committed a misdemeanor involving fraud, misuse or theft of state or federal funds or any felony;~~
- ~~(9)~~(10) ~~An~~ ~~The owner(s), officer(s) or manager(s) of a vendor~~ applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. ~~An A vendor~~ applicant shall not have an employee who handles, transacts, ~~redeems,~~ deposits, or ~~stores or processes~~ WIC food instruments who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. ~~business;~~ ~~For~~

~~purposes of this Subparagraph, the term "applicant" means a sole proprietorship, partnership, corporation, other legal entity, and any person who owns or controls more than a 10 percent interest in the partnership, corporation, or other legal entity;~~

~~(11) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including, but not limited to, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, a verdict or finding of guilt by a jury, magistrate, or other duly constituted, established, and recognized adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Rule is the same as a conviction for purposes of this Subparagraph.~~

~~(12) A vendor applicant shall not be authorized if it is currently disqualified from the Food Stamp Program or it has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired;~~

~~(10)(13) An applicant shall not hold 25 percent or more. A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:~~

~~(A) any a Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or~~

~~(B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph ~~(f)~~, ~~(k)~~, or Paragraph ~~(k)~~ ~~(l)~~ of this Rule as the result of violation of Paragraphs ~~(f)~~, ~~(g)~~, ~~(g)(1)(A)~~, ~~(h)(1)(A)~~, ~~(g)(1)(B)~~, ~~(h)(1)(B)~~, ~~(g)(1)(C)~~, ~~(h)(1)(C)~~, ~~(h)(1)(D)~~ or ~~(g)(2)(D)~~ ~~(h)(2)(D)~~ of this Rule, and~~

if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.

~~The requirement—requirements of this provision—this Subparagraph shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Subparagraph shall not be met even if such transfer or conveyance of financial interest in a Food Stamp vendor under Part (b)(13)(A) of this Subparagraph prematurely ends the disqualification period applicable to that Food Stamp vendor. The requirements of this Subparagraph will apply until the time the Food Stamp vendor disqualification otherwise would have expired;~~

~~(14) A vendor applicant, excluding free-standing pharmacies, must have Food Stamp Program authorization for the store as a prerequisite for WIC vendor authorization and must provide its Food Stamp Program authorization number to the state agency; and~~

~~(14)(15) An—A vendor applicant shall not become authorized as a WIC vendor if the vendor site for which the applicant is applying—store has been disqualified from participation in the WIC Program and the disqualification period has not expired.~~

~~(b)(c) By signing the WIC Vendor Agreement, the applicant vendor agrees to:~~

~~(1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;~~

~~(2) Accept WIC program food instruments in consideration—exchange for the purchase of WIC supplemental food—items, foods. Supplemental food items—foods are those food items—foods which satisfy the requirements of 15A NCAC 21D .0501. The food items, foods, specifications and product identification are described in the WIC Vendor Manual;~~

~~(3) Provide only the authorized supplemental foods; food items as specified listed on the food instrument, accurately determine the charges to the WIC program, and clearly complete the "Pay Exactly" box on the food instrument prior to obtaining the countersignature by—the participant, parent, guardian, proxy or compliance investigator; of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument;~~

~~(4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food items actually provided and shall not charge or~~

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- collect sales taxes for the supplemental food items provided;
- (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
- (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument will be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(3)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price will be invalid and returned to the vendor. The vendor may receive a replacement food instrument through the local agency for up to the maximum price set by the state agency for that food instrument;
- (7) Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(3)(A) of this Rule for each supplemental food within the vendor's peer group;
- (8) For non-contract brand milk-based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC Program only up to the maximum price established for contract brand infant formulas under Part (b)(3)(A) of this Rule for the vendor's peer group;
- (9) For free-standing pharmacies, provide only infant formula and WIC-eligible medical foods;
- (10) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
- (5)(11) Accept WIC program food instruments only on or between the "Date of Issue" and the "Participant Must Use By" dates;
- (6)(12) Prior to obtaining the countersignature, enter in the "Date Redeemed-Transacted" box the month, day and year the WIC food instrument is ~~accepted in consideration~~ exchanged for the purchase of supplemental food items; food;
- (13) Ensure that the food instrument is countersigned in the presence of the cashier;

- (7)(14) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;
- (8)(15) Not ~~redeem-transact~~ food instruments in whole or in part for cash, credit, unauthorized foods, or non-food items;
- (16) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
- (9)(17) Clearly imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument;
- (40)(18) Clearly imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
- (44)(19) Promptly deposit WIC program food instruments in the vendor's ~~bank~~ bank. All North Carolina WIC program food instruments must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument;
- (42)(20) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and assume full responsibility for the unauthorized use of the authorized WIC vendor stamp;
- (43)(21) Maintain secure storage for the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;
- (44)(22) Notify the local agency of misuse (attempted or actual) of the WIC program food instrument(s);
- (45)(23) Maintain a minimum inventory of supplemental ~~foods~~ food items in the store for ~~purchase~~ purchase. Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental ~~food items for stores classified 1-4~~ foods for vendors in Peer Groups I through III of Subparagraph (a)(1) and vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule;

Food Item
Milk

Type of Inventory
Whole fluid: gallon
~~and half gallon~~
-and-

Quantities Required
Total of 6 gallons
fluid milk

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	Skim/low fat fluid: gallon or half-gallon	
	Nonfat dry: quart package	Total of 5 quarts when reconstituted
	-or-	
	Evaporated: 12 oz. can	5 cans
Cheese	2 varieties in 8 or 16 oz. package	Total of 6 pounds
Cereals	4 types (minimum package size 12 oz.)	Total of 12 packages
Eggs	Grade A, large or extra-large: white or brown: one dozen size carton	6 dozen
Juices		
	Frozen: 11.5-12 oz. container	10 containers
	Single strength: 46oz container	10 containers
	Orange juice must be available in frozen and single strength. A second flavor must be available in frozen or single strength.	
Dried Peas and Beans	2 varieties: one pound package	3 packages
or		
Peanut Butter	Plain (smooth, crunchy, or whipped; No reduced fat): 18 oz. container	3 containers
Infant Cereal	Plain-no fruit added: 2 cereal grains (one must be rice); 8-oz. box; brand specified in Vendor Agreement	6 boxes
Infant Formula	milk and soy-based as specified in Vendor Agreement; 13 oz. concentrate	62 can combination
Tuna	Chunk light in water: 6-6.5 oz. can	4 cans
Carrots	Raw, canned or frozen 14.5-16 oz. size	2 packages/cans

All vendors ~~(classifications 1 through 5) in Peer Groups I through III of Subparagraph (a)(1) and in Peer Groups I through V of Subparagraph (a)(2) of this Rule~~ shall supply milk, soy based, or lactose-free infant formula in 32 oz. ready-to-feed or powder ~~upon~~within 48 hours of request ~~of~~by the state or local agency;

- ~~(16)~~(24) Ensure that all supplemental ~~foods~~food items in the store for purchase are within the manufacturer's expiration date;
- ~~(17)~~(25) Permit the purchase of supplemental food ~~items~~ without requiring other purchases;
- ~~(18)~~(26) Attend, or cause a manager or other authorized store representative to attend, annual vendor

- training class upon notification of class by the local agency;
- ~~(19)~~(27) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- ~~(20)~~(28) Be accountable for the actions of vendor's its owners, officers, managers, agents, and employees in the processing of WIC food instruments and the provision of WIC supplemental food items; who commit vendor violations;
- ~~(21)~~(29) Allow reasonable monitoring and inspection of the store premises and procedures to ensure compliance with this agreement and state and federal WIC Program rules, regulations and law. This includes, but shall not be limited to,

allowance of access to all WIC food instruments at the store and vendor records pertinent to the purchase of WIC supplemental ~~foods, food items~~, vendor records of all deductions and exemptions allowed by law or claimed in filing sales and use tax returns, and vendor records of all WIC supplemental ~~foods, food items~~ purchased by the vendor, including ~~invoices—~~invoices, and copies of purchase ~~orders; orders, and any other proofs of purchase.~~ These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records, or providing false records for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;

- ~~(22)~~(30) Submit a current accurately completed WIC Price List ~~to the local agency~~ when signing this agreement, and by January 1 and July 1 of each year. The ~~applicant-vendor~~ also agrees to submit a WIC Price List within one week of any written request by the state or local ~~agency; agency.~~ Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;
- ~~(23)~~(31) Reimburse the state agency within 30 days of written notification ~~for amounts paid by the state agency on WIC Program food instruments processed by the vendor which did not satisfy the conditions set forth in the WIC Vendor Agreement and for amounts paid by the state agency on WIC food instruments as the result of the unauthorized use of the authorized WIC vendor stamp; of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the authorized WIC vendor stamp.~~ The state agency has the authority to deny payment or assess a claim in the amount of the full purchase price of each food instrument affected by the vendor violation. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor will also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s);
- ~~(24)~~(32) Not seek restitution from the ~~participant, parent, guardian or proxy WIC customer~~ for ~~reimbursements paid—~~reimbursement paid by the vendor to the state agency or for WIC food instruments not paid or partially paid by the state ~~agency; agency.~~ Additionally, the vendor may not charge the WIC customer for

authorized supplemental foods obtained with food instruments;

- ~~(25)~~(33) Not contact a ~~participant, parent, guardian, or proxy—~~WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
- ~~(26)~~(34) Notify the local agency ~~and return the authorized WIC vendor stamp to the local agency in writing at least 30 days prior to when the vendor ceases operations or the ownership changes—a change of ownership, change in location, cessation of operations, or withdrawal from the WIC Program.~~ Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing vendor operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the vendor site; store;
- ~~(27)~~(35) Return the authorized WIC vendor stamp to the local agency upon termination of this agreement or disqualification from the WIC Program;
- ~~(28)~~(36) Offer WIC ~~participants—~~customers the same courtesies as offered to other customers; ~~and~~
- ~~(37)~~ The WIC Vendor Agreement does not constitute a license or a property interest. A vendor must reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant will be subject to the vendor selection criteria of Paragraph (b) of this Rule; and
- ~~(29)~~(38) Comply with all the requirements for vendor applicants of Subparagraphs (a)(5) through (9) (b)(3) and (b)(6) through (b)(14) of this Rule throughout the term of authorization—authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(3), (b)(7), (b)(8), (b)(10), (b)(11) or (b)(13) of this Rule during the vendor's period of authorization, and sanction and/or terminate the Agreement of any vendor that fails to comply with Subparagraphs (b)(6), (b)(9), (b)(12) or (b)(14) of this Rule during the vendor's period of authorization.

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~~(e)~~(d) By signing the WIC Vendor Agreement, the local agency agrees to the following:

- (1) Provide at a minimum annual vendor training classes on WIC procedures and regulations;
- (2) Monitor the vendor's performance under this agreement in a reasonable manner to ensure compliance with the agreement, state and federal WIC program rules, regulations and policies, and applicable law. A minimum of ~~50 percent~~ one-third of all authorized vendors shall be monitored within a state fiscal year (July 1 through June 30) and all vendors shall be monitored at least once within ~~two~~ three consecutive state fiscal years. Any vendor shall be monitored within one week of written request by the state agency;
- (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement;
- (4) Assist the vendor with questions which may arise under this agreement or the vendor's participation in the WIC Program; and
- (5) Keep records of the transactions between the parties under this agreement pursuant to 15A NCAC 21D .0206.

~~(d)~~(e) In order for a food retailer or free-standing pharmacy to participate in the WIC Program a current WIC Vendor Agreement must have been signed by the vendor, the local WIC agency, and the state agency.

~~(e)~~(f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.

~~(f)~~(g) Title 7 C.F.R. 246.12(1)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions.

- (1) In accordance with 7 CFR 246.12(1)(1)(i), the State agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified.
- (2) A pattern, as referenced in 7 C.F.R. 246.12(1)(1)(iii)(B) through (F) and 246.12(1)(2)(iv), shall be established as follows:
 - (A) ~~two occurrences of~~ claiming reimbursement for the sale of an amount of a specific supplemental food item over a 60-day period which exceeds the store's documented inventory of that supplemental food item within a 12-month period; by 10 percent or more. Failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(1)(1)(iii)(B) and Part (g)(2)(A) of this Rule;
 - (B) two occurrences of charging participants more for supplemental

~~food than non-WIC customers or charging participants more than the current shelf or contract price vendor overcharging~~ within a 12-month period;

- (C) two occurrences of receiving, transacting and/or redeeming food instruments outside of authorized channels, including the use of an ~~authorized~~ unauthorized vendor and/or an unauthorized person within a 12-month period;
- (D) two occurrences of charging for supplemental food not received by the ~~participant~~ WIC customer within a 12-month period;
- (E) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments within a 12-month period; or
- (F) three occurrences of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.

~~(g)~~(h) Title 7 C.F.R. Section 246.12(1)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (1)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph ~~(h)~~(i) of this Rule.

- (1) When a vendor commits any of the following violations, the state-established disqualification period shall be:
 - (A) 90 days for each occurrence of failure to properly ~~redeem~~ transact a WIC food instrument by not completing the date and purchase price on the WIC food instrument before obtaining the ~~countersignature~~ countersignature, by not obtaining the countersignature in the presence of the cashier, or by accepting a WIC food instrument prior to the "Date of Issue" or after the "Participant Must Use By" dates on the food instrument;
 - (B) 60 days for each occurrence of requiring a cash purchase to ~~redeem~~ transact a WIC food instrument;
 - (C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC

- supplemental food brand is ~~available~~
~~available~~; and
- (D) ~~30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule.~~
- (2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as ~~follows~~: follows for each occurrence:
- (A) 2.5 points for stocking WIC supplemental foods outside of the manufacturer's expiration date.
- (B) 5 points for:
- (i) failure to attend annual vendor training;
- ~~(ii) failure to submit a current and accurately completed WIC Price List by January 1 and July 1 of each year or within seven days of request by the state or local agency; and~~
- ~~(iii)(ii)~~ (ii) failure to stock minimum inventory; inventory; or
- ~~(iii)~~ (ii) failure to mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case.
- (C) 7.5 points for:
- (i) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.); or
- (ii) contacting a WIC ~~participant, parent, guardian, or proxy customer~~ in an attempt to recoup funds for food instrument(s) or contacting a WIC ~~participant, parent, guardian, or proxy customer~~ outside the store regarding the transaction or redemption of WIC food instruments.
- (D) 15 points for:
- (i) failure to allow monitoring of a store by WIC staff when required;
- (ii) failure to provide WIC food instrument(s) for review when requested;
- (iii) failure to provide store inventory records when requested by WIC ~~staff~~; staff, except as provided in Subparagraph (c)(29) and Part (g)(2)(A) of this Rule for failure or inability to
- provide records for an inventory audit;
- (iv) nonpayment of a claim made by the State agency; or
- (v) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring ~~forms~~). ~~forms~~. except as provided in Subparagraph (c)(29) and Part (g)(2)(A) of this Rule for providing false records for an inventory audit.
- (3) For the violations listed in Subparagraph ~~(g)(2)~~ (h)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph ~~(g)(2)~~ (h)(2), are used to calculate the period of disqualification. The formula used to calculate the disqualification period is: the number of points of the worst offense multiplied by 18 days. 18 days shall be added to the disqualification period for each point over 15 points.
- ~~(h)(i)~~ For investigations pursuant to this Section, a single investigation is:
- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
- (A) buying or selling food instruments for cash (trafficking);
- (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
- (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments;
- (D) ~~charging participants more for supplemental food than non-WIC customers or charging participants more than the current shelf or contract price; vendor overcharging;~~
- (E) receiving, transacting, and/or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor and/or an unauthorized person;
- (F) charging for supplemental food not received by the ~~participant~~; WIC customer;
- (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash,

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- firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
- (H) providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument;
- (I) failure to properly ~~redeem-transact~~ a WIC food instrument;
- (J) requiring a cash purchase to ~~redeem transact~~ a WIC food instrument; or
- (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available;
- (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
 - (A) failure to stock minimum inventory;
 - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
 - (C) failure to allow monitoring of a store by WIC staff when required;
 - (D) failure to provide WIC food instrument(s) for review when requested;
 - (E) failure to provide store inventory records when requested by WIC staff; or
 - ~~(F) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time; or~~
 - (F) failure to mark the current shelf prices of all WIC supplemental foods clearly on the foods or have the prices posted on the shelf or display case;
- (3) Any other method used by the State or local agency to detect the following violations by a vendor within a 12-month period:
 - (A) failure to attend annual vendor training;
 - (B) failure to submit ~~a current and accurately completed WIC Price List by January 1 and July 1 of each year or within seven days of request by the state or local agency; a WIC Price List as required by Subparagraph (c)(30) of this Rule;~~
 - (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.);
 - (D) contacting a WIC ~~participant, parent, guardian or proxy customer~~ in an attempt to recoup funds or food instrument(s) or contacting a WIC ~~participant, parent, guardian, or proxy~~

- customer outside the store regarding the transaction or redemption of WIC food instruments;
- (E) nonpayment of a claim made by the State agency;
- (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring ~~forms~~); forms; or
- (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit.

~~(j)~~ The Food Stamp Program disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.

~~(k)~~ The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Subparagraphs (l)(3)(A), (l)(3)(B) or (l)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.

~~(l)~~ The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:

- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
- (2) The State agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph ~~(g)~~ (h) of this Rule when the State agency determines that disqualification of a vendor would result in undue participant hardship in accordance with Subparagraph ~~(k)(3)~~ (l)(3) of this Rule.
- (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph ~~(g)~~(h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of undue hardship, are found to exist:

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- (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
 - (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
 - (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments.
- (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.

~~appeal procedure~~ procedures shall be in accordance with 15A NCAC 21D .0800.

Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786.

SECTION .0800 - WIC PROGRAM ADMINIS TRATIVE APPEALS

15A NCAC 21D .0802 APPEALS

(a) The appeal provisions for vendors and local agencies found in 7 C.F.R. ~~246.18(a)–246.18(a)~~ and (b)(1) ~~and (b)(9)~~ are incorporated by reference with all subsequent amendments and editions. The appeal procedures in 7 C.F.R. 246.18(b)(1) and (b)(9) shall apply to the adverse actions listed in 7 C.F.R. 246.18(a)(1)(i), (a)(1)(ii) and (a)(3)(i).

(b) All administrative appeals under this Section shall be made in accordance with G.S. 150B and G.S. 130A-24.

Authority G.S. 130A-361; 7 C.F.R. 246.18; 42 USC 1786.

15A NCAC 21D .0804 CONTINUATION OF PARTICIPATION

Except as provided in 42 U.S.C. 1786(o)(2) and 7 C.F.R. 246.18(a)(2) and (a)(3)(iii), the participation of a local WIC agency or authorized WIC vendor in the WIC program ~~shall may~~ continue during an administrative appeal ~~the appeal procedure if the decision being appealed is a decision by a local WIC agency or the state agency to suspend or terminate participation during the contract period.~~ Except as provided in 42 U.S.C. 1786(o)(2) and 7 C.F.R. 246.18(a)(2) and (a)(3)(iii), the adverse action shall become effective upon issuance of a final agency decision pursuant to G.S. 150B-36 which upholds the adverse action.

Authority G.S. 130A-361; 7 C.F.R. 246.18; 42 U.S.C. 1786.

15A NCAC 21D .0805 DECISION

~~The final decision rendered in an administrative appeal held in accordance with this Section shall be sent to all parties to the appeal within 60 days of the hearing request.~~

Authority G.S. 130A-361; 7 C.F.R. 246.18; 42 U.S.C. 1786.

15A NCAC 21D .0806 CONTINUING RESPONSIBILITIES

An appeal shall not relieve the local agency or ~~food~~ authorized WIC vendor that is permitted to continue Program operations while its appeal is in process from the responsibility of continued compliance with the terms of any written agreement or contract with the state or local ~~agency.~~ agency and WIC Program rules, regulations, and law.

Authority G.S. 130A-361; 7 C.F.R. 246.18; 42 U.S.C. 1786.

SECTION .0900 - WIC PROGRAM PARTICIPANT FAIR HEARINGS

15A NCAC 21D .0902 GENERAL CONDITIONS

(a) This Section shall be carried out in accordance with 7 C.F.R. 246.9 and G.S. 150B-22. The fair hearing procedures set out in this Section establish an informal dispute resolution process

~~(h)(m)~~ The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.

~~(m)(n)~~ The provision in 7 C.F.R. 246.12(l)(3) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.

~~(n)(o)~~ The state agency reserves the right to set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph ~~(b)(23)~~ (c)(31) of this Rule.

~~(o)(p)~~ In accordance with 7 C.F.R. 246.12(l)(7) and 246.12(u)(5), North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law.

~~(p)(q)~~ Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments accepted by ~~a non-authorized WIC vendor, the store, a current WIC vendor~~ an agreement for a one-time payment need only be signed by the ~~vendor-store manager~~ and the state agency. The ~~vendor-store~~ may request such one-time payment directly from the state agency. The ~~vendor-store manager~~ shall sign ~~a statement–an agreement~~ indicating that ~~he–the store~~ has provided foods as prescribed on the food instrument, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the ~~participant–WIC customer.~~ For the purposes of effecting such a WIC vendor agreement, the vendor is exempt from the inventory requirement and the requirement for an on-site visit by the local WIC agency. Any ~~WIC vendor~~ agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question.

After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments accepted thereafter.

~~(q)(r)~~ Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeals

which must be complied with prior to making a formal appeal in accordance with G.S. 150B.

(b) For the purposes of this Section, agency official shall mean the ~~section chief~~ Branch Head of the Nutrition Services ~~Section Branch~~ or his or her designee.

Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9;
42 U.S.C. 1786.

15A NCAC 21D .0903 AVAILABILITY

~~Every current or potential WIC participant or their parent, guardian or any other person acting on their behalf may appeal any decision of ineligibility, termination or suspension from the program made by the local WIC agency. Any individual may appeal a state or local agency action which results in a claim against the individual for repayment of the cash value of improperly issued Program benefits or results in the individual's denial of participation or disqualification from the WIC Program by requesting a fair hearing.~~

Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9;
42 U.S.C. 1786.

15A NCAC 21D .0904 NOTIFICATION OF THE RIGHT TO A FAIR HEARING

(a) Every current or potential WIC participant shall be informed by the local WIC agency of their right to a fair hearing:

- (1) in writing at the time of application;
- (2) in writing whenever they are determined ineligible;
- (3) in writing if ~~suspended~~ disqualified due to abuse of the program;
- (4) in writing at the time of assessment of a claim for repayment of the cash value of improperly issued Program benefits; and
- ~~(4)~~(5) orally or in writing at least 15 days before the expiration of each certification period.

(b) Content of notification of fair hearings shall include:

- (1) a statement of the right to a fair hearing;
- (2) the method by which a fair hearing may be requested, including the time limit;
- (3) who may represent the individual.

(c) Written documentation of all notification of the right to a fair hearing shall be recorded on the North Carolina Application for the Special Supplemental ~~Food-Nutrition~~ Program for Women, Infants and Children (DEHNR Form 2767).

(d) In order to notify current and potential participants of the fair hearing process, a simplified summary of the steps involved in obtaining a fair hearing shall be posted in a visible place at every WIC site where certifications are performed, food instruments are issued or applications are accepted. This notification shall contain:

- (1) notice of right to a fair hearing;
- (2) a simplified explanation of the definition and purpose of a fair hearing;
- (3) the method by which a fair hearing may be requested, including the time limit;
- (4) who may represent the individual at the fair hearing and in requesting a fair hearing.

Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9;

42 U.S.C. 1786.

15A NCAC 21D .0905 REQUEST FOR A FAIR HEARING

(a) A request for a fair hearing is any clear expression of desire to present a case contesting ~~a decision or an~~ action which results in an individual's denial of ~~participation, suspension, or termination~~ participation or disqualification from the ~~program-program or a claim against an individual for repayment of the cash value of improperly issued Program benefits.~~ This request may be made to any of the following:

- (1) the agency official;
- (2) the agency director of the local WIC agency;
- (3) the WIC director of the local WIC agency;
- (4) any person serving in one of the above three roles in the absence of the agency official, agency director or WIC director.

(b) If the request is not made directly to the agency official, the individual receiving the request shall immediately notify the agency official of the request by telephone.

(c) All requests shall be documented in writing.

- (1) If the original request is made in writing, the individual receiving the request shall retain a photocopy and send the original to the agency official immediately following the telephone call.

- (2) If a verbal request is received, the individual receiving the request shall document the request in writing, including as a minimum:
 - (A) the applicant's or participant's name;
 - (B) the name of the individual making the request:
 - (i) their mailing address,
 - (ii) telephone number,
 - (iii) relation to the applicant or participant;
 - (C) the date of the request;
 - (D) the cause for the request along with the name, title, and signature of the person writing the documentation.

The original copy of this documentation shall be sent to the agency official immediately following the telephone call with a copy being retained by the sender.

(d) The request for a fair hearing may be made by the individual affected by the ~~decision or~~ action or the individual's parent, ~~guardian, caretaker,~~ or any other person acting on their behalf.

(e) ~~If a participant or the participant's~~ an individual or an individual's parent, ~~guardian, caretaker,~~ or any other person acting on their behalf ~~express~~ expresses verbally the desire for a fair hearing to a state or local agency staff member not authorized to accept a request, that staff member shall provide assistance in contacting the individuals who can accept a fair hearing request.

(f) The request for a fair hearing must be made within 60 days from the date the applicant or participant is given notice of the action. If the notification is mailed, this time period shall begin on the date the notification was mailed.

Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9;
42 U.S.C. 1786.

15A NCAC 21D .0906 DENIAL OR DISMISSAL OF A REQUEST

Denial or dismissal of hearing may be made if:

- (1) the request is not received within 60 days of the date of notification of the action;
- (2) the request is withdrawn in writing by the appellant or their representative;
- (3) the request is verbally withdrawn by the appellant or the appellant's parent, guardian, caretaker, or any other person acting on their behalf during conversation with the agency ~~official~~-Official. Within 10 days of this verbal withdrawal request the agency official shall send a letter to the appellant and the local WIC agency summarizing the events which lead to the withdrawal of the request. This letter shall include notification of the appellant's right to reinstate the request for a fair ~~hearing~~-hearing;
- (4) the appellant or the appellant's parent, guardian, caretaker, or any other person acting on their behalf fails to appear at the scheduled hearing;
- (5) the request is made in reference to the tailoring of the food package; or
- (6) the initial ~~local agency decision of ineligibility, termination or suspension action assessing a claim for the cash value of improperly issued Program benefits or denying participation or disqualifying~~ from the program has been reversed by the local WIC agency or the state agency, resulting in the provision of program benefits to the appellant.

Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786.

15A NCAC 21D .0907 CONTINUATION OF BENEFITS

(a) WIC program benefits shall be continued during the appeal ~~procedure when a decision is appealed of the following actions when the request for a hearing is received~~ within 15 days of notification of the ~~following actions:~~ action:

- (1) suspension disqualification from the program for abuse during a certification period;
- (2) determination of ineligibility during a certification period due to categorical ineligibility or residential ineligibility; or
- (3) other terminations during a certification period.

(b) WIC program benefits shall not be continued when a fair hearing is requested:

- (1) in any of the situations in Paragraph (a) of this Rule if the request is made more than 15 days after the date of ~~notification~~-notification; or
- (2) by applicants who are denied benefits at the initial or subsequent determination of WIC eligibility if the previous certification period has expired.

(c) When benefits are continued due to a request for a fair hearing as specified above, the individual shall continue to receive benefits until ~~the hearing is dismissed or~~ an adverse

hearing decision is ~~reached~~-reached or the certification period expires, whichever occurs first.

Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786.

15A NCAC 21D .0908 NOTICE OF HEARING

(a) The agency official shall notify the aggrieved party, the local WIC agency and the ~~nutrition and dietary services branch~~ Nutrition Services Branch in writing that a request for a hearing has been received and shall appoint a time, date, and place for the hearing within 10 days of receipt of the request.

(b) Notice shall be given to all parties at least D days in advance of the hearing.

(c) The notice to the aggrieved party shall include a stamped envelope with the return address of the agency official with a request that it be returned indicating whether the time and place for the hearing is satisfactory. If a response is not received at least 24 hours prior to the time proposed for the hearing, it will be assumed that the time and place are satisfactory.

(d) The notice shall contain:

- (1) a simplified explanation of the procedure for the hearing;
- (2) a statement of the date, hour, place and nature of the hearing;
- (3) a reference to the particular sections of the statutes and rules involved;
- (4) a short and plain statement of the factual allegations.

(e) If the aggrieved party indicates that he-she desires another time and date, the agency official shall consider the request and set a new time and date for the hearing. The hearing shall be accessible to the appellant.

(f) The hearing shall be held within three weeks from the date of the receipt of the request.

Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786.

15A NCAC 21D .0909 HEARING OFFICER

The Director of the Division of ~~Maternal & Child Health Public Health~~ shall designate a representative who did not participate in ~~making the decision taking the action~~ under appeal to be the hearing officer. The hearing officer shall:

- (1) preside over the informal proceeding;
- (2) ensure that all relevant issues are considered;
- (3) request, receive and insert into the hearing record all evidence determined necessary to reach a decision;
- (4) conduct the meeting in accordance with due process and ensure an orderly hearing;
- (5) order, if relevant and necessary, an independent medical assessment or professional evaluation for the appellant from a source mutually satisfactory to all parties to the hearing;
- (6) issue ~~a decision to the agency official a proposal for decision, or, if authorized by the agency official and agreed to by the parties in writing or at the hearing, render a final decision which will resolve the dispute.~~

Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786.

15A NCAC 21D .0910 HEARING PROCEDURE AND RIGHTS OF THE AGGRIEVED PARTY

- (a) Any party to the hearing may be assisted or represented by an attorney or other person.
(b) Any party to the hearing may examine, prior to and during the hearing, the documents and records presented to support the decision-action under appeal.
(c) The hearing shall be open to the public, and the aggrieved party or-and the state and local agency may have witnesses.
(d) Any party to the hearing may present any oral or documentary evidence and arguments.
(e) Any party to the hearing may question or refute any testimony or other evidence.
(f) Any party to the hearing may submit evidence to establish pertinent facts and circumstances in the case.
(g) Participants-The appellant or his or her representative shall have the right to request a continuance if they-notify-the appellant or representative notifies the hearing officer by telephone or in writing at least 48 hours before the original hearing date. If the participant-appellant or representative fails to attend the scheduled hearing or fails to request a continuance from the hearing officer by telephone or in writing at least 48 hours before the original hearing date, the participant-appellant waives any right to a hearing and the original decision-action of the agency shall become final.

Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786.

15A NCAC 21D .0911 DECISION

- (a) The fair hearing decision shall be made by the agency hearing official and shall be based only on the oral and documentary evidence presented at the hearing and applicable state statutes, federal laws, regulations or policy and shall be made a part of the hearing record by the hearing officer.
(b) The agency-hearing official shall notify in writing the aggrieved party, any designated representative of the aggrieved party, the local WIC agency and the Nutrition Services Section Branch of the decision within 45 days from the date of the request for the hearing.
(c) If the decision is in favor of the aggrieved party and benefits were denied or discontinued, benefits shall begin within the above-mentioned 45 day period-two business days after issuance of the decision.
(d) If the decision is in favor of the agency, as soon as administratively feasible any continued benefits shall be terminated as decided by the hearing official.
(e) The hearing officer shall prepare a recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing which, together with all papers and requests filed in the proceeding and the written fair hearing decision-decision, shall constitute the exclusive hearing record.
(f) The decision shall be binding on the local WIC agency.
(g) All hearing records shall be retained for five-three years.
(h) Upon request by any member of the public a copy of all hearing records and decisions in a form that does not identify individuals (appellant or local agency) shall be prepared by the

nutrition and dietary services branch-Nutrition Services Branch and be available for inspection and copying.

Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rule cited as 25 NCAC 01E .1410 and repeal the rule cited as 25 NCAC 01B .0107. Notice of Rule-making Proceedings was published in the Register on August 1, 2002.

Proposed Effective Date: April 1, 2003

Public Hearing:

Date: October 23, 2002

Time: 10:30 a.m.

Location: 3rd floor Conference Room, Administration Building, 116 W. Jones St., Raleigh

Reason for Proposed Action:

25 NCAC 01B .0107 – This Rule is proposed to be repealed in order to correct a rule that is out of date due to a change in the statute. In 1995, the General Assembly redefined "Career State Employee" by adding a new section G.S. 126-1.1 to the State Personnel Act. At the same time G.S. 126-1A was repealed.

25 NCAC 01E .1410 – The General Assembly added a provision to the State Personnel Act, G.S. 126-24.1(a)(11) to allow State employees, except ones in policy-making positions, to file a contested case for violations of the Family and Medical Leave Act.

Comment Procedures: Written comments may be submitted to Peggy Oliver, Hearing Officer, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. Oral comments will be received at the public hearing. Written comments must be received no later than October 31, 2002.

Fiscal Impact

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

CHAPTER 01 – OFFICE OF STATE PERSONNEL

SUBCHAPTER 01B - STATE PERSONNEL COMMISSION

SECTION .0100 - GENERAL PROVISIONS

25 NCAC 01B .0107 CAREER STATE EMPLOYEE CLASSIFICATION DESIGNATION

The term "career state employee" and the classes and positions covered by this term are defined in N.C.G.S. 126-1A. It is the responsibility of the Office of State Personnel, along with the agencies and universities to assign classes and positions to one of these definitions. Where the Office of State Personnel and the

~~agencies/universities cannot agree on a designation, the State Personnel Commission shall have final decision making authority in assigning the position and/or class to the definition. Following the designation of all positions and classes, the Office of State Personnel shall submit a master list of such designations to the State Personnel Commission for approval by June of 1993.~~

Authority G.S. 126-1A; 126-4.

SUBCHAPTER 01E - EMPLOYEE BENEFITS

SECTION .1400 - FAMILY AND MEDICAL LEAVE

25 NCAC 01E .1410 INTERFERENCE WITH RIGHTS

(a) Actions Prohibited-It is unlawful to interfere with, restrain, or deny any right provided by this Section or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this Section.

(b) Protected Activity-It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:

- (1) Files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this Section;

- (2) Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this Section; or
- (3) Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this Section.

(c) A violation of or denial of leave requested pursuant to the Family and Medical Leave Act of 1993 ~~is not a contested case and creates no right of grievance or is a grievable issue and employees, except for ones in exempt policy-making positions, may~~ appeal pursuant to the State Personnel Act (G.S. 126). Violations may also result in any of the following or a combination of any of the following and are enforced by the U.S. Secretary of Labor:

- (1) U.S. Department of Labor investigation; or
- (2) Civil liability with the imposition of court cost and attorney's fees; or
- (3) Administrative action by the U.S. Department of Labor.

Authority G.S. 126-4(5); P.L. 103-3.

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 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

Rule-making Agency: North Carolina State Board of Dental Examiners

Rule Citation: 21 NCAC 16Q .0101, .0201, .0301-.0303, .0401-.0403, .0501, .0503, .0602

Effective Date: Effective on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 16Q .0401.

Findings Reviewed and Approved by: Julian Mann, III

Authority for the rulemaking: G.S. 90-28; 90-30.1

Reason for Proposed Action: The General Assembly revised G.S. 90-30.1 to allow the Board to regulate reasonable education, training, and equipment standards for safe administration and monitoring of enteral sedation for outpatients in the dental setting. Monitoring of enteral sedation in the dental setting is necessary to protect the public health, safety, and welfare. There has been an increase in the use of enteral sedation in the dental setting over the past few years. Patient deaths have occurred nationwide due to lack of proper monitoring of the administration of enteral sedation. If the Board adhered to the notice and hearing requirements, these rules would not be effective until 2004. It is in the public interest to monitor the administration of enteral sedation in the dental setting as soon as possible.

Comment Procedures: Comments from the public shall be directed to Lisa Thompson, North Carolina State Board of Dental Examiners, 15100 Weston Parkway, Suite 101, Cary, NC 27513.

SUBCHAPTER 16Q - GENERAL ANESTHESIA AND SEDATION

SECTION .0100 – DEFINITIONS

21 NCAC 16Q .0101 GENERAL ANESTHESIA AND SEDATION DEFINITIONS

For the purposes of these Rules relative to the administration of general ~~anesthesia and sedation, anesthesia, parenteral conscious sedation, and enteral conscious sedation~~ by or under the direction of a dentist, the following definitions shall apply:

~~(1) "General anesthesia" is the intended controlled state of depressed consciousness produced by a pharmacologic agent and accompanied by a partial or complete loss of protective reflexes, including the inability to maintain an airway~~

~~and respond purposefully to physical stimulation or verbal commands.~~

~~(2) "Sedation" is the intravenous, intramuscular, subcutaneous, submucosal, or rectal administration of pharmacological agents with the intent to obtain a depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal commands.~~

~~(1) "Analgesia" - the diminution or elimination of pain.~~

~~(2) "Anti-anxiety sedative" - a sedative agent administered in a dosage intended to reduce anxiety without diminishing consciousness or protective reflexes.~~

~~(3) "Anxiolysis" - pharmacological reduction of anxiety through the administration of a minor tranquilizer, which allows for uninterrupted interactive ability in a totally awake patient with no compromise in the ability to maintain a patent airway continuously and without assistance.~~

~~(4) "Behavioral management" - the use of pharmacological or psychological techniques, singly or in combination, to modify behavior to a level that dental treatment can be performed effectively and efficiently.~~

~~(5) "Competent" - displaying special skill or knowledge derived from training and experience.~~

~~(6) "Conscious sedation" - a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, and that is produced by pharmacologic or non-pharmacologic agents, or a combination thereof. In accordance with this particular definition, the drugs or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely.~~

~~(7) "Deep sedation" - an induced state of depressed consciousness accompanied by partial loss of protective reflexes, including the ability to continually maintain an airway independently or respond purposefully to verbal command, and is produced by pharmacological agents.~~

~~(8) "Direct supervision" - the dentist responsible for the sedation/anesthesia procedure shall be physically present in the office and shall be continuously aware of the patient's physical status and well being.~~

- (9) "Enteral conscious sedation" is sedation that is achieved by administration of pharmacological agents through the alimentary tract either orally or rectally for conscious sedation administered primarily for behavioral management.
- (10) "Facility" - the office where a permit holder practices dentistry and provides anesthesia/sedation services.
- (11) "Facility inspection" - an on-site inspection to determine if a facility where the applicant proposes to provide anesthesia/sedation is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia/sedation services that meet the minimum standard of care; may be required by the Board prior to the issuance of a sedation/anesthesia permit or any time during the term of the permit.
- (12) "General anesthesia" is the intended controlled state of depressed consciousness produced by pharmacologic agents and accompanied by a partial or complete loss of protective reflexes, including the ability to maintain an airway and respond purposefully to physical stimulation or verbal commands.
- (13) "Immediately available" - on-site in the facility and available for immediate use.
- (14) "Local anesthesia" - the elimination of sensations, especially pain, in one part of the body by the regional application or injection of a drug.
- (15) "May" - indicates freedom or liberty to follow a reasonable alternative.
- (16) "Minor psychosedative" - pharmacological agents which allow for uninterrupted interactive ability in a patient with no compromise in the ability to maintain a patent airway continuously and without assistance and carry a margin of safety wide enough to render unintended loss of consciousness unlikely.
- (17) "Must" or "shall" - indicates an imperative need or duty or both; an essential or indispensable item; mandatory.
- (18) "Parenteral conscious sedation" is the intravenous, intramuscular, subcutaneous, submucosal, intranasal, or transdermal administration of pharmacological agents with the intent to obtain a depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal commands.
- (19) "Protective reflexes" - includes the ability to swallow and cough.
- (20) "Vested adult" - a responsible adult who is the legal parent or guardian, or designee of a legal parent or guardian, entrusted with the care of a minor following the administration of general anesthesia or conscious sedation.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Temporary Amendment Eff. on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 16Q .0401.

SECTION .0200 - GENERAL ANESTHESIA

21 NCAC 16Q .0201 CREDENTIALS AND PERMIT

(a) No dentist shall employ or use general anesthesia on an outpatient basis for dental patients unless the dentist possesses a permit issued by the Board. A dentist holding a permit shall be subject to review and shall only employ or use general anesthesia at a facility located in the State of North Carolina in accordance with 21 NCAC 16Q .0202. Such permit must be renewed ~~annually~~ annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) Any dentist who wishes to administer general anesthesia to patients must apply to the Board for the required permit on a prescribed application form, submit an application fee of fifty dollars (\$50.00), and produce evidence showing that he:

- (1) Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level; or
- (2) Has graduated from a program certified by the American Dental Association in Oral and Maxillofacial Surgery; or
- (3) Is a Diplomate of or eligible for examination by the American Board of Oral and Maxillofacial Surgery; or
- (4) Is a Fellow of the American Dental Society of Anesthesiology; or
- (5) Is a dentist who has been administering general anesthetics in a competent manner for the five years preceding the effective date of this Rule.

(c) A dentist who is qualified to administer general anesthesia in accordance with this Section and holds a general anesthesia permit is also authorized to administer parenteral or enteral conscious sedation without obtaining a separate sedation permit.

(d) The dentist involved with the administration of general anesthesia shall document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other Board-approved equivalent course and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. April 1, 2001; August 1, 2000; Temporary Amendment Eff. on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 16Q .0401.

SECTION .0300 - PARENTERAL CONSCIOUS SEDATION

21 NCAC 16Q .0301 PARENTERAL CONSCIOUS SEDATION CREDENTIALS AND PERMIT

(a) A dentist may administer or employ a certified registered nurse anesthetist to administer parenteral conscious sedation to dental patients on an outpatient basis provided he obtains a permit from the Board by submitting the appropriate information on an application form provided by the Board and pays a fee of fifty dollars (\$50.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) A dentist applying for a permit to administer parenteral conscious sedation must meet at least one of the following criteria:

- (1) Satisfactory completion of a minimum of 60 hours of didactic training and instruction in intravenous conscious sedation and satisfactory management of a minimum of 10 patients, under supervision, using intravenous sedation; or
- (2) Satisfactory completion of an undergraduate or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (b)(1) of this Rule; or
- (3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (b)(1) of this Rule; or
- (4) Authorization for the use of general anesthetics by holding a permit for the same issued by the Board; or
- (5) Utilization of a certified registered nurse anesthetist under his supervision to administer intravenous sedation to dental patients.

(c) To be eligible for a parenteral conscious sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, staffed with supervised auxiliary personnel who shall document annual, successful completion of basic life support (BLS) training and be capable of assisting with procedures, problems and emergencies incident thereto.

~~(d) The dentist seeking a permit shall meet one of the following criteria:~~

- ~~(1) document current, successful completion of advanced cardiac life support (ACLS) training or its age-specific equivalent, or other Board-approved equivalent course; or~~
- ~~(2) document annual, successful completion of basic life support (BLS) training and obtain three hours of continuing education each year in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:~~
 - ~~(A) sedation;~~
 - ~~(B) medical emergencies;~~
 - ~~(C) monitoring IV sedation and the use of monitoring equipment;~~

- ~~(D) pharmacology of drugs and agents used in IV sedation;~~
- ~~(E) physical evaluation, risk assessment, or behavioral management; or~~
- ~~(F) audit ACLS/PALS courses.~~

~~(e)(d)~~The Board may, based upon formal application, grant a permit authorizing the use of parenteral conscious sedation to a dentist who has been utilizing parenteral conscious sedation in a competent and effective manner for the past five years preceding the effective date of this Rule, but who has not had the benefit of formal training as outlined in Paragraph (b) of this Rule, provided that said dentist meets the requirements of Paragraphs (c) and (d) of this Rule.

(e) A dentist who holds a parenteral conscious sedation permit shall not intentionally administer deep sedation although deep sedation may occur briefly unintentionally. A dentist who is qualified to administer parenteral conscious sedation and holds a parenteral conscious sedation permit is also authorized to administer enteral conscious sedation without obtaining a separate enteral conscious sedation permit.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. April 1, 2001; August 1, 2000; January 1, 1994; Temporary Amendment Eff. on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 16Q.0401.

21 NCAC 16Q .0302 CLINICAL REQUIREMENTS AND EQUIPMENT

(a) A dentist administering parenteral conscious sedation is solely responsible for providing that the environment in which the parenteral conscious 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:

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- (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~~-area:
- (A) Epinephrine;
- (B) Atropine;
- ~~(C) Lidocaine;~~
- (C) Antiarrhythmic;
- (D) Narcotic antagonist;
- (E) Antihistamine;
- (F) Corticosteroid;
- (G) Nitroglycerin;
- (H) Bronchial dilator;
- (I) Antiemetic;
- ~~(J) Anectine;~~
- (J) Benzodiazepine antagonist;
- (K) Muscle ~~relaxant;~~ relaxant for intubation; and
- (L) 50% Dextrose;
- (5) Written emergency and patient discharge protocols are maintained and training to familiarize office personnel in the treatment of clinical emergencies ~~are~~ is 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:
- blood pressure;
 - pulse rate;
 - respiration;
 - duration of procedure;
 - documentation of complications or morbidity; and
 - 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 conscious 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 conscious sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide parenteral and enteral conscious 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 or enteral conscious 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 conscious 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;

Temporary Amendment Eff. on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 160 .0401.

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

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

conscious sedation for at least three years. Fees required by Rules .0202-.0205 of this Subchapter shall apply.

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

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

History Note: Authority G.S. 90-28; 90-30.1;

Eff. February 1, 1990;

Amended Eff. August 1, 2002; January 1, 1994;

Temporary Amendment Eff. on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 16Q .0401.

SECTION .0400 - ENTERAL CONSCIOUS SEDATION

21 NCAC 16Q .0401 ENTERAL CONSCIOUS SEDATION CREDENTIALS AND PERMIT

(a) Before a dentist licensed to practice in North Carolina may administer enteral conscious sedation, he or she shall obtain either a parenteral conscious sedation permit issued by the Board, a general anesthesia permit issued by the Board, or an enteral conscious sedation permit issued by the Board. A permit is not required for prescription administration of DEA controlled drugs prescribed for postoperative pain control intended for home use. A dentist may obtain an enteral conscious sedation permit from the Board by submitting the appropriate information on an application form provided by the Board and paying a fee of fifty dollars (\$50.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder. A dentist who holds an enteral conscious sedation permit shall not administer deep sedation or general anesthesia.

- (1) An enteral conscious sedation permit may be obtained by completing an application form approved by the Board, a copy of which may be obtained from the Board office, and meeting the requirements of Section .0400 of this Subchapter.
- (2) The application form must be filled out completely and appropriate fees paid.
- (3) Prior to issuance of an enteral conscious sedation permit the Board shall require that the applicant undergo a facility inspection or further review of credentials. The Board shall direct an evaluator to assist in this inspection or review. The applicant shall be notified in writing that an inspection is required and provided with the name of the evaluator who shall coordinate the inspection. The applicant shall be responsible for successful completion of inspection of his or her facility within three months of notification. An extension of no more than 90 days may be granted if the designated evaluator or applicant requests one.
- (4) An applicant for an enteral conscious sedation permit shall be licensed and in good standing with the Board in order to be approved. For purposes of these Rules "good standing" means that a licensee is not suspended,

whether or not the suspension is probated. Applications from licensees who are not in good standing will not be approved.

(b) Educational/Professional Requirements:

- (1) The dentist applying for an enteral conscious sedation permit shall meet one of the following criteria:
 - (A) successful completion of training consistent with that described in Part I or Part III of the American Dental Association (ADA) Guidelines for Teaching the
 - (B) Comprehensive Control of Pain and Anxiety in Dentistry, and have documented administration of enteral conscious sedation in a minimum of five cases;
 - (C) successful completion of an ADA accredited post-doctoral training program which affords comprehensive training necessary to administer and manage enteral conscious sedation;
 - (D) successful completion of a twelve hour enteral conscious sedation course approved by the Board which affords comprehensive training necessary to administer and manage enteral conscious sedation;
 - (E) successful completion of an ADA accredited postgraduate program in pediatric dentistry; or
 - (F) is a North Carolina licensed dentist in good standing who has been utilizing enteral conscious sedation in a competent manner for the five years preceding January 1, 2002, his or her office facility has passed an on-site inspection by a Board evaluator as required in Paragraph (a)(3) of this Rule, and has presented evidence of successful administration of enteral conscious sedation in a minimum of five clinical cases involving the administration of enteral conscious sedation.
- (2) Prior to administering enteral conscious sedation to minor children under the age of 13, a dentist who only qualifies for an enteral conscious sedation permit shall also successfully complete a six hour course in pediatric enteral conscious sedation developed by the Pediatric Dentistry Department at the University of North Carolina or a Board approved equivalent course and submit documentation showing successful completion of such course to the Board. The requirements of this paragraph shall not apply to Pediatric Dentists who meet the requirements of Paragraph (d)(1)(D) of this Rule nor to those dentists who otherwise meet the requirements

of Paragraph (d)(1)(E) of this Rule and in addition have administered enteral conscious sedation to minor children under the age of 13 in a competent manner for the five years preceding January 1, 2002 and have presented evidence of successful administration of enteral conscious sedation in a minimum of five clinical cases involving the administration of enteral conscious sedation to minor children under the age of 13.

History Note: Authority G.S. 90-28; 90-30.1; Temporary Adoption Eff. on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 16Q .0401.

21 NCAC 16Q .0402 PERMIT REQUIREMENTS, CLINICAL PROVISIONS AND EQUIPMENT

(a) Enteral conscious sedation may be induced and maintained by a permitted dentist licensed by the Board and practicing in North Carolina, a physician anesthesiologist licensed by the North Carolina Medical Board, or a Certified Registered Nurse Anesthetist (CRNA) licensed in North Carolina. When a Certified Registered Nurse Anesthetist (CRNA) is permitted to function under the supervision of a dentist, in the dental office, provision of enteral conscious sedation by a CRNA shall require the operating dentist to be permitted for its utilization.

(b) Enteral conscious sedation is indicated for use only for conscious sedation as defined in Rule .0101(9) of this Subchapter (relating to Definitions). Enteral conscious sedation is not indicated for use to achieve deep sedation in adults or minor children under the age of 13.

(c) Minor tranquilizers used for anxiolysis may be prescribed for administration outside of the dental office when pre-procedure instructions are likely to be followed. Medications such as chloral hydrate and all drugs included in the Drug Enforcement Administration (DEA) Controlled Substances Schedule II must not be administered outside of the dental office for sedation purposes. Medications other than minor tranquilizers used for anxiolysis administered outside of the office require a permit.

(d) Each dentist shall:

- (1) adhere to the clinical requirements as detailed in Paragraph (e) of this Rule;
- (2) maintain under continuous direct supervision auxiliary personnel who shall be capable of reasonably assisting in procedures, problems, and emergencies incident to the use of enteral conscious sedation or secondary to an unexpected medical complication;
- (3) utilize auxiliary personnel who shall document annual successful completion of basic life support training; and
- (4) not allow an enteral conscious sedation procedure to be performed in his or her office by a Certified Registered Nurse Anesthetist (CRNA) unless the dentist holds a permit issued by the Board for the procedure being performed. This provision addresses dentists and is not intended to address the scope of

practice of persons licensed by any other agency.

(e) Each dentist shall meet the following requirements:

(1) Patient Evaluation. Patients who are administered enteral conscious sedation must be suitably evaluated prior to the start of any sedative procedure. In healthy or medically stable individuals Physical Status I, II (ASA I, II, as defined by the American Society of Anesthesiologists), this may be simply a review of their current medical history and medication use. However, with individuals who may not be medically stable or who have a significant health disability Physical Status III (ASA III, as defined by the American Society of Anesthesiologists) consultation with their primary care physician or consulting medical specialist regarding potential procedure risk is required.

(2) Pre-procedure preparation, informed consent:

(A) The patient or guardian must be advised of the procedure associated with the delivery of the enteral conscious sedation.

(B) Equipment must be evaluated and maintained for proper operation.

(C) Baseline vital signs should be obtained at the discretion of the operator depending on the medical status of the patient and the nature of the procedure to be performed.

(D) Dentists administering enteral conscious sedation shall use sedative agents that he/she is competent to administer and shall administer such agents in a manner that is within the standard of care.

(f) In addition to the dentist, at least one member of the auxiliary personnel shall be present during the administration of enteral conscious sedation.

(g) (1) Patients who have been administered enteral conscious sedation shall be monitored during waiting periods prior to operative procedures. A responsible adult given appropriate written pre-procedural instruction may provide such monitoring. The patient shall be monitored for alertness, responsiveness, breathing and skin coloration.

(2) Dentists administering enteral conscious sedation shall maintain direct supervision of the patient during the operative procedure and for such a period of time necessary to establish pharmacologic and physiologic vital sign stability.

(A) Oxygenation. Color of mucosa, skin or blood shall be continually evaluated. Oxygen saturation shall be evaluated continuously by pulse oximetry, except as provided in Paragraph (g)(4) of this Rule.

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- (B) Ventilation. Shall perform observation of chest excursions or auscultation of breath sounds or both.
- (C) Circulation. Shall take and record an initial blood pressure and pulse and thereafter as appropriate except as provided in Paragraph (g)(4) of this Rule.
- (3) An appropriate time oriented anesthetic record of vital signs shall be maintained in the permanent record including documentation of individual administering the drug(s) and showing the name(s) of drug(s) and dosage(s) used.
- (4) If the dentist responsible for administering enteral conscious sedation must deviate from the requirements set out in this Rule, he or she shall document the occurrence of such deviation and the reasons for such deviation.
- (h) (1) Following the operative procedure, positive pressure oxygen and suction equipment shall be immediately available in the recovery area or operatory.
- (2) Vital signs shall be continuously monitored when the sedation is no longer being administered and the patient shall have direct continuous supervision until oxygenation, and circulation are stable and the patient is sufficiently responsive for discharge from the office.
- (3) Patients who have unusual reactions to enteral conscious sedation shall be assisted and monitored either in an operatory chair or recovery area until stable for discharge.
- (4) Recovery from enteral conscious sedation shall include:
- (A) cardiovascular function stable;
- (B) airway patency uncompromised;
- (C) patient easily arousable and protective reflexes intact;
- (D) state of hydration within normal limits;
- (E) patient can talk, if applicable;
- (F) patient can sit unaided, if applicable;
- (G) patient can ambulate, if applicable, with minimal assistance; and
- (H) for the child who is very young or disabled, and incapable of the usually expected responses, the pre-sedation level of responsiveness or the level as close as possible for that child should be achieved.
- (5) Prior to allowing the patient to leave the office, the dentist shall determine that the patient has met the recovery criteria set out in Paragraph (h)(4) of this Rule and the following discharge criteria:
- (A) oxygenation, circulation, activity, skin color and level of consciousness are sufficient and stable and have been documented;

(B) explanation and documentation of written postoperative instructions have been provided to the patient or a responsible adult and time of discharge;

(C) responsible individual is available for the patient to transport the patient after discharge

(D) for a patient who must use a child restraint system designed for use in a motor vehicle, a vested adult is available to transport the patient after discharge and an additional responsible individual is available to attend to the patient.

(i) The dentist, personnel and facility shall be prepared to treat emergencies that may arise from the administration of enteral conscious sedation, and shall have the ability to provide positive pressure ventilation with 100% oxygen with an age appropriate device.

History Note: Authority G.S. 90-28; 90-30.1;

Temporary Adoption Eff. on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 16Q .0401.

21 NCAC 16Q .0403 TEMPORARY APPROVAL PRIOR TO SITE INSPECTION

(a) If a dentist meets the requirements of Rule .0401 of this Section, he or she shall be granted temporary approval to administer enteral conscious sedation until a permit can be issued. Temporary approval may be granted based solely on credentials until all processing and investigation has been completed. Temporary approval may not exceed three months. An on-site inspection of the facilities shall be required prior to the issuance of an enteral conscious sedation permit.

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

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

History Note: Authority G.S. 90-28; 90-30.1;

Temporary Adoption Eff. on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 16Q .0401.

SECTION .0500 - RENEWAL OF PERMITS

21 NCAC 16Q .0401 .0501 ANNUAL RENEWAL REQUIRED

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

(b) ~~Anesthesia and~~ Anesthesia, parenteral conscious sedation, and enteral conscious sedation permits shall be subject to the same renewal deadlines as are dental practice licenses, in

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accordance with G.S. 90-31. If the permit renewal application is not received by the date specified in G.S. 90-31, continued administration of ~~anesthesia or anesthesia~~, parenteral ~~conscious sedation~~ sedation, or enteral conscious sedation shall be unlawful and shall subject the dentist to the penalties prescribed by Section ~~.0600~~ .0700 of this Subchapter.

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

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

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

(e) As a condition for renewal of the enteral conscious sedation permit, the permit holder shall ensure that the requirements of 21 NCAC 16Q .0402 are met and shall document annual, successful completion of basic life support (BLS) training and obtain six hours of continuing education every two years in one or more of the following areas, which may be counted toward fulfillment of the continuing education required each calendar year for license renewal:

- (1) pediatric or adult sedation;
- (2) medical emergencies;
- (3) monitoring sedation and the use of monitoring equipment;

- (4) pharmacology of drugs and agents used in sedation;
- (5) physical evaluation, risk assessment, or behavioral management; or
- (6) audit ACLS/PALS courses.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. February 1, 1990; Amended Eff. August 1, 2002; Transferred and Recodified from 16Q .0401 to 16Q .0501; Temporary Amendment Eff. on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 16Q .0401.

21 NCAC 16Q .0403-.0503 INSPECTION AUTHORIZED

Incident to the renewal of an anesthesia or sedation permit, the Board may, ~~in its discretion, for cause or routinely at reasonable time intervals in order to ensure compliance,~~ require an on-site inspection of the dentist's facility, equipment, personnel and procedures. Such inspection shall be conducted in accordance with Rules .0204, .0205, ~~and .0303-.0303,~~ and .0401 of this Subchapter.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. January 1, 1994; Transferred and Recodified from 16Q .0403 to .0503; Temporary Amendment Eff. on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 16Q .0401.

SECTION .0600 – REPORTING AND PENALTIES

21 NCAC 16Q .0502-.0602 FAILURE TO REPORT

If a dentist fails to report any incident as required by Rule ~~.0504~~ .0601 of this Section, he shall be subject to discipline in accordance with Section ~~.0600~~ .0700 of this Subchapter.

History Note: Authority G.S. 90-28; 90-30.1; 90-41; Eff. February 1, 1990; Transferred and Recodified from 16Q .0502 to .0602; Temporary Amendment Eff. on the 5th business day after the Board has consulted with the Joint Legislative Commission for Governmental Operations regarding the fee charged in 21 NCAC 16Q .0401.

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting September 19, 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 2002 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	38	.0701*	not required [G.S. 150B-21.5(a)(4) Eff. September 1, 2002]
07	NCAC	05	.0203	16:21 NCR
10	NCAC	03R	.1125*	16:20 NCR
10	NCAC	14J	.0206*	16:04 NCR
10	NCAC	14V	.3601-.3602*	16:13 NCR
10	NCAC	14V	.3604*	16:13 NCR
10	NCAC	14V	.4101-.4102*	16:14 NCR
10	NCAC	14V	.4103	16:14 NCR
10	NCAC	45H	.0205	16:12 NCR
11	NCAC	10	.1106	16:22 NCR
11	NCAC	11B	.0502-.0518*	not required [G.S. 150B-21.5(b)(1) Eff. September 1, 2002]
11	NCAC	12	.0327*	not required [G.S. 150B-21.5(b)(1) Eff. September 1, 2002]
11	NCAC	12	.0815	16:18 NCR
11	NCAC	12	.0820	16:18 NCR
11	NCAC	12	.0835	16:18 NCR
11	NCAC	12	.0842	16:18 NCR
11	NCAC	12	.1701-.1709	16:23 NCR
11	NCAC	12	.1710-.1714*	16:23 NCR
11	NCAC	12	.1715	16:23 NCR
11	NCAC	12	.1716*	16:23 NCR
11	NCAC	12	.1718-.1720*	16:23 NCR
11	NCAC	15	.0101-.0112*	not required [G.S. 150B-21.5(b)(1) Eff. September 1, 2002]
11	NCAC	17	.0103*	not required [G.S. 150B-21.5(a)(4) Eff. September 1, 2002]
12	NCAC	04E	.0104	16:20 NCR
13	NCAC	15	.0201	16:20 NCR
13	NCAC	20	.0101	16:20 NCR
15A	NCAC	02B	.0225*	16:15 NCR
15A	NCAC	02B	.0316*	16:15 NCR
15A	NCAC	02I	.0504	16:06 NCR
15A	NCAC	03I	.0101*	16:13 NCR
15A	NCAC	03I	.0120	16:13 NCR
15A	NCAC	03J	.0111*	16:13 NCR
15A	NCAC	03K	.0101*	16:13 NCR
15A	NCAC	03K	.0103*	16:13 NCR
15A	NCAC	03K	.0107*	16:13 NCR
15A	NCAC	03K	.0205	16:13 NCR
15A	NCAC	03K	.0207	16:13 NCR
15A	NCAC	03K	.0302*	16:13 NCR
15A	NCAC	03M	.0506*	16:14 NCR
15A	NCAC	03M	.0511	16:14 NCR
15A	NCAC	03O	.0201*	16:13 NCR
15A	NCAC	03O	.0208	16:13 NCR
15A	NCAC	03O	.0501*	16:13 NCR
15A	NCAC	13A	.0111	16:19 NCR

15A	NCAC	18A	.1801*	not required [G.S. 150B-21.5) Eff. September 1, 2002]
16	NCAC	06C	.0304*	Effective September 1, 2002
16	NCAC	06D	.0503	16:19 NCR
16	NCAC	06E	.0203	16:19 NCR
16	NCAC	06G	.0502	16:19 NCR
21	NCAC	32M	.0112*	16:12 NCR
23	NCAC	02D	.0326*	16:19 NCR
23	NCAC	02E	.0101*	16:19 NCR
23	NCAC	02E	.0404	16:19 NCR
25	NCAC	01E	.0802*	16:16 NCR
25	NCAC	01E	.0803	16:16 NCR
25	NCAC	01E	.0807-.0808	16:16 NCR
25	NCAC	01E	.0812	16:16 NCR
25	NCAC	01E	.0814-.0816	16:16 NCR
25	NCAC	01E	.0817*	16:16 NCR
25	NCAC	01E	.0818	16:16 NCR
25	NCAC	01E	.0819	16:16 NCR

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

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, "Liquefied Petroleum Gas Code," 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

- (f) valves in the event of a pull away; 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. September 1, 2002; August 1, 2002; January 1, 1994; June 1, 1993; December 1, 1988; December 1, 1987.

HUMAN SERVICES

10 NCAC 03R .1125 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to establish new nursing facility or adult care home beds shall project an occupancy level for the entire facility for each of the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.
- (b) An applicant proposing to establish new nursing facility or adult care home beds shall project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, shall be clearly stated.
- (c) An applicant proposing to establish new nursing facility or adult care home beds shall show that at least 85 percent of the anticipated patient population in the entire facility lives within a 45-mile radius of the facility, with the exception that this standard may be waived for facilities that are fraternal or religious facilities, or facilities that are part of licensed continuing care facilities which make services available to large or geographically diverse populations.
- (d) An applicant proposing to establish new nursing facility or adult care home beds shall specify the site on which the facility will be located. If the proposed site is not owned by or under the control of the applicant, the applicant shall specify at least one alternate site on which the services could be operated should acquisition efforts relative to the proposed site ultimately fail, and shall demonstrate that the proposed and alternate sites are available for acquisition.
- (e) An applicant proposing to establish new nursing facility or adult care home beds shall document that the proposed site and alternate sites are suitable for development of the facility with regard to water, sewage disposal, site development and zoning including the required procedures for obtaining zoning changes and a special use permit after a certificate of need is obtained.
- (f) An applicant proposing to establish new nursing facility or adult care home beds shall provide documentation to demonstrate that the physical plant will conform with all requirements as stated in 10 NCAC 03H or 10 NCAC 42D, whichever is applicable.

History Note: Authority G.S. 131E-175; 131E-176; 131E-177(1); 131E-183(b); S.L. 2001, c. 234; Eff. November 1, 1996; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2003.

10 NCAC 14J .0206 PROCEDURES: SECLUSION, PHYSICAL RESTRAINT OR ISOLATION TIME-OUT

- (a) This Rule delineates the procedures to be followed for use of seclusion, physical restraint or isolation time-out in addition to the procedures specified in Rule .0203 of this Section.
- (b) This Rule governs the use of physical or behavioral interventions which are used to terminate a behavior or action in which a client is in imminent danger of 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 which are used as a measure of therapeutic treatment. Such

interventions include seclusion, physical restraint and isolation time-out.

- (c) If determined to be acceptable for use within the state facility, the state facility director shall establish written policies and procedures that govern the use of seclusion, physical restraint or isolation time-out which shall include the following:
 - (1) techniques for seclusion, physical restraint or isolation time-out;
 - (2) provision for required debriefing for emergency use of seclusion, physical restraint or isolation time-out;
 - (3) provision, to both new clinical and habilitation staff as part of in-service training, and as a condition of continued employment, for those authorized to use or apply intrusive interventions which shall include, but not be limited to:
 - (A) competency-based training and periodic reviews on the use of seclusion, physical restraint or isolation time-out; and
 - (B) skills for less intrusive interventions specified in Rules .0203 and .0204 of this Section;
 - (4) process for identifying, training and assessing the competence of state facility employees who are authorized to use such interventions;
 - (5) provisions that a responsible professional shall:
 - (A) meet with the client and review the use of the intervention as soon as possible but at least within one hour after the initiation of its use;
 - (B) verify the inadequacy of positive alternatives and less restrictive intervention techniques;
 - (C) document in the client record evidence of approval or disapproval of continued use; and
 - (D) inspect to ensure that any devices to be used are in good repair and free of tears and protrusions;
 - (6) procedures for documenting the intervention which occurred to include, but not be limited to:
 - (A) consideration that was given to the physical and psychological well-being of the client prior to the use of the restrictive intervention;
 - (B) the rationale for the use of the intervention which addresses attempts at and inadequacy of positive alternatives and less restrictive intervention techniques; this shall contain a description of the specific behaviors justifying the use of seclusion, physical restraint or isolation time-out;
 - (C) notation of the frequency, intensity and duration of the behavior and any precipitating circumstances

- (D) contributing to the onset of the behavior;
 - (E) description of the intervention and the date, time and duration of its use;
 - (F) estimated amount of additional time needed in seclusion, physical restraint or isolation time-out;
 - (G) signature and title of the state facility employee responsible for the use of the intervention;
 - (H) the time the responsible professional met with the client; and
 - (I) description of the debriefing and planning with the client and the legally responsible person, if applicable, as specified in Subparagraph (c)(2) of this Rule, or Subpart (b)(6)(A)(xi) of Rule .0203 of this Section, to eliminate or reduce the probability of the future use of restrictive interventions; and
- (7) procedures for the notification of others to include:
- (A) those to be notified as soon as possible but no more than one working day after the behavior has been controlled to include:
 - (i) the treatment/habilitation team, or its designee, after each use of the intervention;
 - (ii) a designee of the State Facility Director; and
 - (iii) the internal client advocate, in accordance with the provisions of G.S. 122C-53(g); and
 - (B) immediate notification of the legally responsible person of a minor client or an incompetent adult client unless she/he has requested not to be notified.

(d) Seclusion, physical restraint and isolation time-out shall not be employed as coercion, punishment or retaliation or for the convenience of staff or due to inadequate staffing or be used in a manner that causes harm or pain to the client. Care shall be taken to minimize any physical or mental discomfort in the use of these interventions.

(e) Whenever a client is in seclusion, physical restraint or isolation time-out, the client's rights, as specified in G.S. 122C-62, are restricted. The documentation requirements in this Rule shall satisfy the requirements specified in G.S. 122C-62(e) for restriction of rights.

(f) Whenever seclusion, physical restraint or isolation time-out is used more than three times in a calendar month:

- (1) a pattern of behavior has developed and future emergencies can be reasonably predicted;
- (2) dangerous behavior can no longer be considered unanticipated; and
- (3) emergency procedures shall be addressed as a planned intervention in the treatment/habilitation plan.

(g) In addition to the requirements in this Rule, additional safeguards as specified in Rule .0210 of this Section shall be initiated whenever:

- (1) a client exceeds spending 40 hours in emergency seclusion, physical restraint or isolation timeout in a calendar month; or one episode in which the original order is renewed for up to a total of 24 hours in accordance with the limits specified in Subparagraph (1)(8) of this Rule; or
- (2) seclusion, physical restraint or isolation time-out is:
 - (A) used as a measure of therapeutic treatment as specified in G.S. 122C-60; and
 - (B) limited to specific planned behavioral interventions designed for the extinction of dangerous, aggressive or undesirable behaviors.

(h) The written approval of the State Facility Director or designee shall be required when the original order for seclusion, physical restraint or isolation time-out is renewed for up to a total of 24 hours in accordance with the limits specified in Subparagraph (1)(8) of this Rule.

(i) Standing orders or as needed (PRN) orders shall not be used to authorize the use of seclusion, physical restraint or isolation time-out.

(j) A state facility employee shall remove the client from seclusion, physical restraint or isolation time-out and seek medical attention immediately if monitoring of the physical and psychological well-being of the client indicates there is a risk to health or safety.

(k) The client shall be removed from seclusion, physical restraint or isolation time-out when the client no longer demonstrates the behavior which precipitated the seclusion, physical restraint or isolation time-out; however, if the client is unable to gain self-control within the time frame specified in the authorization, a new authorization shall be obtained.

(l) Whenever seclusion, physical restraint or isolation time-out are used on an emergency basis prior to inclusion in the treatment/ habilitation plan, the following procedures shall be followed:

- (1) A state facility employee authorized to administer emergency interventions may employ such procedures for up to 15 minutes without further authorization.
- (2) A qualified professional may authorize the continued use of seclusion, physical restraint or isolation time-out for up to one hour from the initial employment of the intervention if the qualified professional:
 - (A) has experience and training in the use of seclusion, physical restraint or isolation time-out; and
 - (B) has been approved to employ and authorize such interventions.
- (3) If a qualified professional is not immediately available to conduct a face-to-face assessment of the client, but after discussion with the state facility employee, the qualified professional concurs that the intervention is justified for

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- longer than 15 minutes, then the qualified professional:
- (A) may verbally authorize the continuation of the intervention for up to one hour;
 - (B) shall meet with and assess the client within one hour after authorizing the continued use of the intervention; and
 - (C) shall immediately consult with the professional responsible for the client's treatment/habilitation plan, if the intervention needs to be continued for longer than one hour.
- (4) The responsible professional shall authorize the continued use of seclusion, physical restraint or isolation time-out for periods over one hour.
- (5) If the responsible professional is not immediately available to conduct a clinical assessment of the client but, after consideration of the physical and psychological well-being of the client and discussion with the qualified professional, concurs that the intervention is justified for longer than one hour the responsible professional may verbally authorize the continuation of the intervention until an on-site assessment of the client can be made. However, if such authorization cannot be obtained, the intervention shall be discontinued.
- (6) If the responsible professional and the qualified professional are the same person, the documentation requirements of this Rule may be done at the time of the documentation required by Subparagraph .0206(d)(5) of this Section.
- (7) The responsible professional, or if the responsible professional is unavailable, the on-service or covering professional, shall meet with and assess the client within three hours after the client is first placed in seclusion, physical restraint or isolation time-out, and document:
- (A) the reasons for continuing seclusion, physical restraint or isolation time-out; and
 - (B) the client's response to the intervention. In addition, the responsible professional shall provide an evaluation of the episode and propose recommendations regarding specific means for preventing future episodes. Clients who have been placed in seclusion, physical restraint or isolation time-out and released in less than three hours shall be examined by the responsible professional who authorized the intervention no later than 24 hours after the episode.
- (8) Each written order for physical restraint, seclusion or isolation timeout 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 for up to a total of 24 hours.
- (9) Each incident shall be reviewed by the treatment team, which shall include possible alternative actions and specific means for preventing future episodes.
- (m) While the client is in seclusion, physical restraint or isolation time-out, the following precautions shall be followed:
- (1) Whenever a client is in seclusion:
 - (A) periodic observation of the client shall occur at least every 15 minutes to assure the safety of the client. Observation shall include direct line of sight or the use of video surveillance that ensures that the client is within the view of the state facility employee observing the client;
 - (B) attention shall be paid to the provision of regular meals, bathing and the use of the toilet; and
 - (C) such observation and attention shall be documented in the client record.
 - (2) Whenever a client is in physical restraint, the facility shall provide:
 - (A) the degree of observation needed to assure the safety of the client placed in physical restraint. The degree of observation needed is determined at the time of application of the physical restraint after consideration of the following:
 - (i) the type of physical restraint used;
 - (ii) the individual client's situation, including physical and psychological well-being; and
 - (iii) the existence of any specific manufacturer's warning concerning the safe use of a particular product.Observation shall include direct line of sight or the use of video surveillance that ensures that the client is within the view of the state facility employee observing the client. In no instance shall observation be less frequent than at 15-minute intervals.
 - (B) attention to the provision of regular meals, bathing and the use of the toilet; and

(C) documentation of the above observation and attention in the client record.

(3) Whenever a client is in isolation time-out there shall be:

(A) a state facility employee in attendance with no other immediate responsibility than to monitor the client who is placed in isolation time-out;

(B) continuous observation and verbal interaction with the client when necessary to prevent tension from escalating; and

(C) documentation of such observation and verbal interaction in the client record.

(n) After a restrictive intervention is utilized, staff shall conduct debriefing and planning with the client and the legally responsible person, if applicable, as specified in Subparagraph (d)(2) of this Rule, or Subpart (b)(6)(A)(xi) of Rule .0203 of this Section, 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.

(o) Reviews and reports on the use of seclusion, physical restraint or isolation time-out shall be conducted as follows:

(1) the State Facility Director or designee shall review all uses of seclusion, physical restraint or isolation time-out and investigate unusual patterns of utilization to determine whether such patterns are unwarranted. At least quarterly, the State Facility Director or designee shall review all uses of seclusion and physical restraint to monitor effectiveness, identify trends and take corrective action where necessary; and

(2) each State Facility Director shall maintain a log which includes the following information on each use of seclusion, physical restraint or isolation time-out:

(A) name of the client;
 (B) name of the responsible professional;
 (C) date of each intervention;
 (D) time of each intervention;
 (E) duration of each intervention;
 (F) name of the state facility employee who implemented the restrictive intervention;

(G) date and time of the debriefing and planning conducted with the client and the legally responsible person if applicable and staff to eliminate or reduce the probability of the future use of restrictive interventions; and

(H) negative effects of the restrictive intervention, if any, on the physical and psychological well-being of the client.

(p) 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:

(1) the type of procedure used and length of time employed;

(2) alternatives considered or employed; and

(3) 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 of the Department of Health and Human Services upon request.

(q) Nothing in this Rule shall be interpreted to prohibit the use of voluntary seclusion, physical restraint or isolation time-out at the client's request; however, the procedures in Paragraphs (a) through (p) of this Rule shall apply.

History Note: Authority G.S. 122C-51; 122C-53; 122C-57; 122C-60; 122C-62; 131E-67; 143B-147; Eff. October 1, 1984; Amended Eff. July 1, 1994; January 4, 1994; November 1, 1993; April 1, 1990; Temporary Amendment Eff. January 1, 2001; Temporary Amendment Expired October 13, 2001; Amended Eff. April 1, 2003.

10 NCAC 14V .3601 SCOPE

(a) An outpatient opioid treatment facility provides periodic services designed to offer the individual an opportunity to effect constructive changes in his lifestyle by using methadone or other medications approved for use in opioid treatment in conjunction with the provision of rehabilitation and medical services.

(b) Methadone and other medications approved for use in opioid treatment are also tools in the detoxification and rehabilitation process of an opioid dependent individual.

(c) For the purpose of detoxification, methadone and other medications approved for use in opioid treatment shall be administered in decreasing doses for a period not to exceed 180 days.

(d) For individuals with a history of being physiologically addicted to an opioid drug for at least one year before admission to the service, methadone and other medications approved for use in opioid treatment may also be used in maintenance treatment. In these cases, methadone and other medications approved for use in opioid treatment may be administered or dispensed in excess of 180 days and shall be administered in stable and clinically established dosage levels.

History Note: Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 1300; 42 C.F.R. Part 8; Eff. May 1, 1996; Temporary Amendment Eff. December 3, 2001; Amended Eff. April 1, 2003.

10 NCAC 14V .3602 DEFINITIONS

In addition to terms defined in G.S. 122C-3 and Rule .0103 of this Subchapter, the following definitions shall also apply:

(1) "Capacity management system" is a computerized database, maintained at the Office of the North Carolina State Authority

- for governing treatment of opioid addiction with an opioid drug, which ensures timely notification of the State whenever a program reaches 90 percent of its capacity to treat intravenous drug users, and to make any excess treatment capacity available. The requirement to have a capacity management system in 45 C.F.R. Part 96.126(a), the Substance Abuse Prevention and Treatment Block Grant, is incorporated by reference and includes all subsequent amendments and editions and may be obtained from the Substance Abuse Services Section of DMH/DD/SAS. The computerized system shall ensure that a continuous updated record of all such reports is maintained and that excess capacity information shall be available to all other programs.
- (2) "Central registry" is a computerized patient database, maintained at the Office of the North Carolina State Authority for governing treatment of opioid addiction with an opioid drug. The purpose of the database is to prevent multiple methadone treatment program enrollments; thereby lessening the possibility of methadone diversion for illicit use.
- (3) "Waiting list management system" is a component of the capacity management system whereby systematic reporting of treatment demand is maintained. The data required for the waiting list management component of the capacity shall include a unique patient identifier for each intravenous drug user seeking treatment, the date initial treatment was requested, and the date the drug user was removed from the waiting list. The waiting list management system requirement in 45 CFR 96.126(c) is incorporated by reference and includes subsequent amendments and editions of the referenced material. It may be obtained from the Substance Abuse Services Section of DMH/DD/SAS.
- (4) "Methadone hydrochloride" (hereafter referred to as methadone) is a synthetic narcotic analgesic with multiple actions quantitatively similar to those of morphine, most prominent of which involves the central nervous system and organs composed of smooth muscle. The principal actions of therapeutic value or analgesia and sedation are detoxification or temporary maintenance in narcotic addiction. The methadone abstinence syndrome, although quantitatively similar to that of morphine differs in that the onset is slower, the course more prolonged, and the symptoms are less severe.
- (5) "Other medications approved for use in opioid treatment" are those medications approved by the Food and Drug Administration for use in opioid treatment and also approved for accepted medical uses under the North Carolina Controlled Substances Act.
- (6) "Program compliance for purposes of take-home eligibility" is determined by:
- (a) absence of recent drug abuse;
 - (b) clinic attendance;
 - (c) absence of behavioral problems at the clinic;
 - (d) stability of the patient's home environment and social relationships;
 - (e) length of time in comprehensive maintenance treatment;
 - (f) assurance that take-home medication can be safely stored within the patient's home; and
 - (g) evidence the rehabilitative benefit the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion.
- (7) "Recent drug abuse for purposes of determining program compliance" is established by evidence of the misuse of either opioids, methadone, cocaine, barbiturates, amphetamines, delta-9-tetrahydrocannabinol (hereafter referred to as THC), benzodiazepines or alcohol documented in the results of two random drug tests conducted within the same 90-day period of continuous treatment.
- (8) "Counseling session in Outpatient Opioid Treatment" is a face-to-face or group discussion of issues related to and of progress toward a client's treatment goals that is conducted by a person as specified in Rule .3603, Paragraph (a) of this Section.

History Note: Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 1300; 42 C.F.R. Part 8; Eff. May 1, 1996; Temporary Amendment Eff. February 7, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. December 3, 2001; Amended Eff. April 1, 2003.

10 NCAC 14V .3604 OPERATIONS

- (a) Hours. Each facility shall operate at least six days per week, 12 months per year. Daily, weekend and holiday medication dispensing hours shall be scheduled to meet the needs of the client.
- (b) Compliance with The Substance Abuse and Mental Health Services Administration (SAMHSA) or The Center for Substance Abuse Treatment (CSAT) Regulations. Each facility shall be certified by a private non-profit entity or a State agency, that has been approved by the SAMHSA of the United State Department of Health and Human Services and shall be in compliance with all SAMHSA Opioid Drugs in Maintenance and Detoxification Treatment of Opioid Addiction regulations in 42 CFR Part 8, which are incorporated by reference to include subsequent amendments and editions. These regulations are

available from the CSAT, SAMHSA, Rockwall II, 5600 Fishers Lane, Rockville, Maryland 20857 at no cost.

(c) Compliance With DEA Regulations. Each facility shall be currently registered with the Federal Drug Enforcement Administration and shall be in compliance with all Drug Enforcement Administration regulations pertaining to opioid treatment programs codified in 21 C.F.R., Food and Drugs, Part 1300 to end, which are incorporated by reference to include subsequent amendments and editions. These regulations are available from the United States Government Printing Office, Washington, D.C. 20402 at the published rate.

(d) Compliance With State Authority Regulations. Each facility shall be approved by the North Carolina State Authority for Opioid Treatment, DMH/DD/SAS, which is the person designated by the Secretary of Health and Human Services to exercise the responsibility and authority within the state for governing the treatment of addiction with an opioid drug, including program approval, for monitoring compliance with the regulations related to scope, staff, and operations, and for monitoring compliance with Section 1923 of P.L. 102-321. The referenced material may be obtained from the Substance Abuse Services Section of DMH/DD/SAS.

(e) The State Authority shall base program approval on the following criteria:

- (1) compliance with all state and federal law and regulations;
- (2) compliance with all applicable standards of practice;
- (3) program structure for successful service delivery; and
- (4) impact on the delivery of opioid treatment services in the applicable population.

(f) Take-Home Eligibility. Any client in comprehensive maintenance treatment who requests unsupervised or take-home use of methadone or other medications approved for treatment of opioid addiction must meet the specified requirements for time in continuous treatment. The client must also meet all the requirements for continuous program compliance and must demonstrate such compliance during the specified time periods immediately preceding any level increase. In addition, during the first year of continuous treatment a patient must attend a minimum of two counseling sessions per month. After the first year and in all subsequent years of continuous treatment a patient must attend a minimum of one counseling session per month.

- (1) Levels of Eligibility are subject to the following conditions:
 - (A) Level 1. During the first 90 days of continuous treatment, the take-home supply is limited to a single dose each week and the client shall ingest all other doses under supervision at the clinic;
 - (B) Level 2. After a minimum of 90 days of continuous program compliance, a client may be granted for a maximum of three take-home doses and shall ingest all other doses under supervision at the clinic each week;
 - (C) Level 3. After 180 days of continuous treatment and a minimum

of 90 days of continuous program compliance at level 2, a client may be granted for a maximum of four take-home doses and shall ingest all other doses under supervision at the clinic each week;

- (D) Level 4. After 270 days of continuous treatment and a minimum of 90 days of continuous program compliance at level 3, a client may be granted for a maximum of five take-home doses and shall ingest all other doses under supervision at the clinic each week;
- (E) Level 5. After 364 days of continuous treatment and a minimum of 180 days of continuous program compliance, a client may be granted for a maximum of six take-home doses and shall ingest at least one dose under supervision at the clinic each week;
- (F) Level 6. After two years of continuous treatment and a minimum of one year of continuous program compliance at level 5, a client may be granted for a maximum of 13 take-home doses and shall ingest at least one dose under supervision at the clinic every 14 days; and
- (G) Level 7. After four years of continuous treatment and a minimum of three years of continuous program compliance, a client may be granted for a maximum of 30 take-home doses and shall ingest at least one dose under supervision at the clinic every month.

(2) Criteria for Reducing, Losing and Reinstatement of Take-Home Eligibility:

- (A) A client's take-home eligibility is reduced or suspended for evidence of recent drug abuse. A client who tests positive on two drug screens within a 90-day period shall have an immediate reduction of eligibility by one level of eligibility;
- (B) A client who tests positive on three drug screens within the same 90-day period shall have all take-home eligibility suspended; and
- (C) The reinstatement of take-home eligibility shall be determined by each Outpatient Opioid Treatment Program.

(3) Exceptions to Take-Home Eligibility:

- (A) A client in the first two years of continuous treatment who is unable to conform to the applicable mandatory schedule because of exceptional circumstances such as illness,

personal or family crisis, travel or other hardship may be permitted a temporarily reduced schedule by the State authority, provided she or he is also found to be responsible in handling opioid drugs. Except in instances involving a client with a verifiable physical disability, there is a maximum of 13 take-home doses allowable in any two-week period during the first two years of continuous treatment.

(B) A client who is unable to conform to the applicable mandatory schedule because of a verifiable physical disability may be permitted additional take-home eligibility by the State authority. Clients who are granted additional take-home eligibility due to a verifiable physical disability may be granted up to a maximum 30-day supply of take-home medication and shall make monthly clinic visits.

(4) **Take-Home Dosages For Holidays:** Take-home dosages of methadone or other medications approved for the treatment of opioid addiction shall be authorized by the facility physician on an individual client basis according to the following:

(A) An additional one-day supply of methadone or other medications approved for the treatment of opioid addiction may be dispensed to each eligible client (regardless of time in treatment) for each state holiday.

(B) No more than a three-day supply of methadone or other medications approved for the treatment of opioid addiction may be dispensed to any eligible client because of holidays. This restriction shall not apply to clients who are receiving take-home medications at Level 4 or above.

(g) **Withdrawal From Medications For Use In Opioid Treatment.** The risks and benefits of withdrawal from methadone or other medications approved for use in opioid treatment shall be discussed with each client at the initiation of treatment and annually thereafter.

(h) **Random Testing.** Random testing for alcohol and other drugs shall be conducted on each active opioid treatment client with a minimum of one random drug test each month of continuous treatment. Additionally, in two out of each three-month period of a client's continuous treatment episode, at least one random drug test will be observed by program staff. Drug testing is to include at least the following: opioids, methadone, cocaine, barbiturates, amphetamines, THC, benzodiazepines and alcohol. Alcohol testing results can be gathered by either urinalysis, breathalyzer or other alternate scientifically valid method.

(i) **Client Discharge Restrictions.** No client shall be discharged from the facility while physically dependent upon methadone or

other medications approved for use in opioid treatment unless the client is provided the opportunity to detoxify from the drug.

(j) **Dual Enrollment Prevention.** All licensed outpatient opioid addiction treatment facilities which dispense Methadone, Levo-Alpha-Acetyl-Methadol (LAAM) or any other pharmacological agent approved by the Food and Drug Administration for the treatment of opioid addiction subsequent to November 1, 1998, are required to participate in a computerized Central Registry or ensure that clients are not dually enrolled by means of direct contact or a list exchange with all opioid treatment programs within at least a 75-mile radius of the admitting program. Programs are also required to participate in a computerized Capacity Management and Waiting List Management System as established by the North Carolina State Authority for Opioid Treatment.

(k) **Diversion Control Plan.** Outpatient Addiction Opioid Treatment Programs in North Carolina are required to establish and maintain a diversion control plan as part of program operations and shall document the plan in their policies and procedures. A diversion control plan shall include the following elements:

- (1) dual enrollment prevention measures that consist of client consents, and either program contacts, participation in the central registry or list exchanges;
- (2) call-in's for bottle checks, bottle returns or solid dosage form call-in's;
- (3) call-in's for drug testing;
- (4) drug testing results that include a review of the levels of methadone or other medications approved for the treatment of opioid addiction;
- (5) client attendance minimums; and
- (6) procedures to ensure that clients properly ingest medication.

History Note: Authority G.S. 122C-26; 143B-147; 21 C.F.R. Part 1300; 42 C.F.R. Part 8; Eff. May 1, 1996; Temporary Amendment Eff. February 7, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. December 3, 2001; Amended Eff. April 1, 2003.

10 NCAC 14V .4101 SCOPE

(a) A 24-hour residential recovery program is a professionally supervised residential facility which provides trained staff who work intensively with individuals with substance abuse disorders who provide or have the potential to provide primary care for their children.

(b) These programs shall include, for each parent in the program, assessment/referral, individual and group therapy, therapeutic parenting skills, basic independent living skills, educational groups, child supervision, aftercare, follow-up and access to preventive and primary health care.

(c) Goals for parent-child interaction shall be established and progress towards meeting these goals shall be documented in the parent's service record.

(d) The facility may utilize services from another facility providing treatment, support or medical services.

(e) Services shall be designed to provide a safe and healthy environment for clients and their children.

(f) Each facility shall assist the individual with the development of independent living skills in preparation for community based living.

History Note: Authority G.S. 143B-147; Eff. May 1, 1996; Temporary Amendment Eff. February 15, 2002; Amended Eff. April 1, 2003.

10 NCAC 14V .4102 STAFF

(a) Each individual and child admitted to a facility shall receive services as appropriate to his or her needs from a qualified professional who has responsibility for the client's treatment program. Each individual and child shall receive age-appropriate, therapeutic professional services.

(b) A minimum of one staff member shall be present in the facility with an individual at all times unless the designated qualified professional has documented in the individual client plan certain clearly delineated instances in which the client may be without supervision. In the case of multi-unit facilities which are licensed under the same license, a staff person shall be on the facility premises at all times when an individual is on the premises unless the designated qualified professional has assessed and documented in the individual client plan certain clearly delineated instances in which the client may be without supervision.

(c) A minimum of one staff member shall be present when one or more children are in the facility. In the case of multi-unit facilities which are licensed under the same license, a staff person shall be on the facility premises at all times when one or more children are in the facility. In circumstances when the child's parent is not present, the staff member must be in the unit with the child or children.

(d) Each individual identified as a residential staff member shall receive pre-service training in the following areas:

- (1) confidentiality;
- (2) client rights;
- (3) crisis management;
- (4) developmentally appropriate child behavior management;
- (5) medication education and administration;
- (6) symptoms of secondary complications to substance abuse or drug addiction;
- (7) signs and symptoms of pre-term labor; and
- (8) signs and symptoms of post-partum complications.

(e) Adequate training to support the therapeutic process shall also be provided to all residential staff in the following areas within 60 days of employment:

- (1) therapeutic parenting skills;
- (2) dynamics and needs of emotionally disturbed and substance abusing individuals and their children;
- (3) multi-cultural and gender specific issues;
- (4) issues of substance abuse and the process of recovery;
- (5) HIV/AIDS;
- (6) sexually transmitted diseases;
- (7) drug screening;
- (8) domestic violence, sexual abuse, and sexual assault;

- (9) pregnancy, delivery and well child care; and
- (10) infant feeding, including breast feeding.

History Note: Authority G.S. 143B-147; Eff. May 1, 1996; Temporary Amendment Eff. February 15, 2002; Amended Eff. April 1, 2003.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 11B .0502 FOREIGN PROMOTING: HOLDING COMPANIES LICENSED SUBSIDIARIES

11 NCAC 11B .0503 FOREIGN AND HOLDING COMPANIES: UNLICENSED SUBSIDIARIES

11 NCAC 11B .0504 SALE OF SECURITIES BY FOREIGN CORPORATION

11 NCAC 11B .0505 FOREIGN PROMOTING AND HOLDING COMPANIES DEFINITIONS

History Note: Authority G.S. 58-2-40; 58-18-1 to 58-18-25; 58-120 to 58-124; Eff. February 28, 1978; Amended Eff. April 1, 1993; Repealed Eff. September 1, 2002.

11 NCAC 11B .0506 FOREIGN COMPANY SECURITIES SALE: "POSITION LETTER"

11 NCAC 11B .0507 FOREIGN COMPANY SECURITIES: PRIVATE PLACEMENT

11 NCAC 11B .0508 FOREIGN COMPANY SECURITIES: VERIFIABLE CAPITAL/SURPLUS

11 NCAC 11B .0509 FOREIGN COMPANY SECURITIES: INCONSEQUENTIAL INSURANCE RATIOS

11 NCAC 11B .0510 FOREIGN COMPANY SECURITIES: CONFIDENTIALITY OF MATERIAL

11 NCAC 11B .0511 FOREIGN COMPANY SECURITIES: SHELF REGISTRATION

11 NCAC 11B .0512 FOREIGN COMPANY SECURITIES: DISCLAIMER OFFSHORE

11 NCAC 11B .0513 FOREIGN COMPANY SECURITIES: DISCLAIMER GENERAL

11 NCAC 11B .0514 FORMATION OF DOMESTIC COMPANIES: PROCEDURAL HANDLING STEP 1

11 NCAC 11B .0515 FOREIGN COMPANY SECURITIES: INSTITUTIONAL INVESTORS

11 NCAC 11B .0516 DOMESTIC COMPANY: PROJECTION

11 NCAC 11B .0517 DOMESTIC COMPANY: BACKGROUND INVESTIGATION REPORT

11 NCAC 11B .0518 DOMESTIC COMPANY: ESCROW AGREEMENT

History Note: Authority G.S. 58-2-40; 58-2-100; 58-2-133; 58-18-1 to 58-18-25; 78A-17-(8); Eff. April 1, 1993; Repealed Eff. September 1, 2002.

11 NCAC 12 .0327 Y2K INTERIM CLAIM PAYMENTS

*History Note: Authority G.S. 58-2-40; 58-2-235;
Temporary Adoption Eff. January 1, 2000;
Amended Eff. July 1, 2000;
Repealed Eff. September 1, 2002.*

11 NCAC 12 .1710 DEFINITIONS

- (a) The definitions contained in G.S. 58-58-205 apply to this Section.
- (b) The following definitions shall apply to this Section:
 - (1) "Division" means the Life and Health Division of the Department of Insurance.
 - (2) "Insured" means the person covered under the policy being considered for viatication.
 - (3) "Life expectancy" means the mean of the number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the viatical settlement provider considering medical records and appropriate experiential data.
 - (4) "Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.
 - (5) "Patient identifying information" includes an insured's name, address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, or social security number.

*History Note: Authority G.S. 58-2-40; 58-58-300;
Temporary Adoption Eff. April 1, 2002;
Eff. April 1, 2003.*

11 NCAC 12 .1711 LICENSE REQUIREMENTS

- (a) In addition to the information required by G.S. 58-58-210, applicants for provider licenses shall submit the following:
 - (1) A plan of operation, including the manner in which the provider proposes to operate in North Carolina and the type or types of insurance policies or contracts it intends to viaticate.
 - (2) The provider's plan of operation shall be a narrative overview of the provider's business and shall include the following information:
 - (A) A certified copy of the provider's charter and by-laws, if a corporation or limited liability company, and a copy of the partnership agreement, if a partnership.
 - (B) A chart showing the relationship of the provider to any parent, affiliated, or subsidiary corporation.
 - (C) A description of the provider's marketing techniques, including a description of training programs for those individuals who will have direct contact with viators.
 - (D) A list of the names of the provider's directors and management personnel, including job titles and descriptions of the job duties.

- (E) A schedule listing the names of financial institutions with which the provider has escrow trust agreements.
 - (F) A description of what steps through which the viator will have access to funds, including the source that will make such funds available.
 - (G) A financing plan.
 - (H) A statement disclosing the identities of all stockholders holding 10% or more of the provider, and all partners, directors, officers and members of the provider, depending on whether the provider is a partnership, corporation, or limited liability company.
 - (I) An antifraud plan, as specified in G.S. 58-58-268(b).
- (3) Each provider shall notify the Division of any change in the items listed in Paragraph (a)(2) of this Rule within 30 business days after the change.
 - (4) Every nonresident provider shall file a power of attorney designating the Commissioner as the provider's agent for service of legal process in accordance with G.S. 58-58-210(g).

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

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

- (1) Renew or maintain its current license status until the earlier of the following events:
 - (A) The date the provider properly assigns, sells or otherwise transfers the viatical settlements where the insured has not died; or
 - (B) The date that the last insured covered by viatical settlement transaction has died; or
- (2) Appoint, in writing, the broker who received commissions from the viatical settlement, if applicable, or any other provider or broker licensed in this State to make all inquiries to the viator, or the viator's designee, regarding health status of the viator or any other matters.

*History Note: Authority G.S. 58-2-40; 58-58-210;
58-58-300;
Temporary Adoption Eff. April 1, 2002;
Eff. April 1, 2003.*

11 NCAC 12 .1712 VIATICAL SETTLEMENT BROKERS

- (a) Applications for broker licenses shall be made with the Agent Services Division of the Department of Insurance.
- (b) A broker shall not, without the written agreement of the viator obtained before performing any services in connection

with a viatical settlement, seek or obtain any compensation from the viator.

History Note: Authority G.S. 58-2-40; 58-16-30; 58-58-300; Temporary Adoption Eff. April 1, 2002; Eff. April 1, 2003.

11 NCAC 12 .1713 STANDARDS FOR EVALUATION OF REASONABLE PAYMENTS

(a) Insureds who are terminally or chronically ill shall receive no less than the following payouts for viaticating a policy. The percentage may be reduced by 5% for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

Insured's Life Expectancy	Minimum Percentage of Face Value Less Outstanding Loans Received by Viator
Less than 6 months	[80%]
At least 6 but less than 12 months	[70%]
At least 12 but less than 18 months	[65%]
At least 18 but less than 25 months	[60%]
25 months or more	Viator must receive at least the greater of the cash surrender value or accelerated death benefit for the policy

(b) Insureds who are not terminally or chronically ill shall receive at least the cash surrender value of the policy.

History Note: Authority G.S. 58-2-40; 58-58-300; Temporary Adoption Eff. April 1, 2002; Eff. April 1, 2003.

11 NCAC 12 .1714 REPORTING REQUIREMENTS

(a) On June 1 of each calendar year, each licensed provider shall make a report of all viatical settlement transactions in which the viators are residents of this State. The report shall contain the following information for the previous calendar year:

- (1) For each viatical settlement entered into during the reporting period:
 - (A) Date of viatical settlement contract;
 - (B) Viator's state of residence at the time of the contract;
 - (C) Life expectancy of the insured at the time of contract in months;
 - (D) Face amount of policy viaticated;
 - (E) Net death benefit viaticated;
 - (F) Estimated total premiums to keep policy in force for mean life expectancy;
 - (G) Net amount paid to viator;
 - (H) Source of policy (B-Broker; D-Direct Purchase; O-Purchased from individual or entity other than the original viator);
 - (I) Type of coverage (I-Individual or G-Group);

- (J) Whether or not the viatical settlement was entered into during the policy's contestable or suicide period, or both;
- (K) Classification of the viator's or insured's diseases or injuries:
 - (i) Cardiovascular diseases;
 - (ii) Diseases of the central nervous system;
 - (iii) Diseases of the peripheral nervous system;
 - (iv) Elders with nonspecific disease processes;
 - (v) Infectious diseases and autoimmune diseases;
 - (vi) Liver and renal diseases;
 - (vii) Neoplasms;
 - (viii) Non-neoplastic pulmonary diseases;
- (L) Type of funding (P-purchaser; L-licensee; I-accredited investor; F-financing entity; S-special purpose entity; R-related provider trust); and
- (M) Rating of insurer that issued the policy at the time the policy was viaticated.
- (2) For viatical settlements where death has occurred during the reporting period:
 - (A) Date of viatical settlement contract;
 - (B) Viator's state of residence at the time of the contract;
 - (C) Life expectancy of the insured at the time of contract in months;
 - (D) Net death benefit collected;
 - (E) Total premiums paid to maintain the policy (WP-Waiver of Premium; NA-Not Applicable);
 - (F) Net amount paid to viator;
 - (G) Classification of the viator's or insured's diseases or injuries:
 - (i) Cardiovascular diseases;
 - (ii) Diseases of the central nervous system;
 - (iii) Diseases of the peripheral nervous system;
 - (iv) Elders with nonspecific disease processes;
 - (v) Infectious diseases and autoimmune diseases;
 - (vi) Liver and renal diseases;
 - (vii) Neoplasms;
 - (viii) Non-neoplastic pulmonary diseases;
 - (H) Date of death;
 - (I) Amount of time between date of contract and date of death in months;
 - (J) Difference between the number of months that passed between the date of contract and the date of death and the mean life expectancy in months as determined by the reporting company;

- (K) Type of coverage (I-Individual or G-Group); and
- (L) Whether or not the viatical settlement was entered into during the policy's contestable or suicide period, or both;
- (3) Name and address of each viatical settlement broker through whom the reporting provider purchased a policy from a viator who resided in this State at the time of contract; and
- (4) Number of policies purchased from an individual or entity other than the original viator as a percentage of total policies purchased.

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

History Note: Authority G.S. 58-2-40; 58-58-225; 58-58-300; Temporary Adoption Eff. April 1, 2002; Eff. April 1, 2003.

11 NCAC 12 .1716 CONTRACTS AND PAYMENT OF PROCEEDS

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

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

- (1) If the viator elects the right to rescind the contract, the provider's rights or interest in the policy will terminate immediately upon the viator giving notice of the rescission and tendering of the settlement proceeds together with any escrow interest received by the viator.
- (2) The amount of the fee or fees to be paid by the viator to the provider in conjunction with the contract shall be clearly stated, along with any conditions of payment or receipt of the fee or fees.
- (3) The contract together with the application constitutes the entire agreement between the parties.
- (4) If the contract provides for the payment of an additional settlement amount to the viator upon the exercise of a guaranteed insurability option by the viator, the contract shall disclose the amount of the additional settlement and the terms upon which it shall be payable.
- (5) If the policy to be viaticated provides a guaranteed insurability option, the option may only be exercised for the benefit of a person who has an insurable interest in the life to be insured.

(c) Every application for a contract shall:

- (1) Contain the viator's printed name and signature;

- (2) Be witnessed and notarized by a person who does not have a financial interest in the policy or viatical settlement contract; and
- (3) Provide for an acknowledgment by the viator of receipt of the information booklet required by G.S. 58-58-245(a)(8).

History Note: Authority G.S. 58-2-40; 58-58-220; 58-58-300; Temporary Adoption Eff. April 1, 2002; Eff. April 1, 2003.

11 NCAC 12 .1718 DISCLOSURE

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

- (1) Amount of death benefit to be viaticated;
- (2) Policy cash value before deducting any loan;
- (3) Policy net cash value after deducting any loan;
- (4) Policy death benefit less net cash value;
- (5) Amount offered to viator;
- (6) Whether any supplemental benefit or benefits including the following benefits, are present, will be continued and, if so, the source of premium payment and the beneficiary of the proceeds of such supplemental benefit, and the provider's interest in each benefit:
 - (A) Accidental death and dismemberment benefit, including the amount of the benefit;
 - (B) Disability income;
 - (C) Waiver of premium or of monthly deduction waiver;
 - (D) Guaranteed insurability options; or
 - (E) Children or spouse coverage;
- (7) Name of the insurer, and whether the insurer does or does not have an accelerated death benefit program for which the viator qualifies;

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

History Note: Authority G.S. 58-2-40; 58-58-225; 58-58-245; 58-58-300; Temporary Adoption Eff. April 1, 2002; Eff. April 1, 2003.

11 NCAC 12 .1719 PROHIBITED PRACTICES

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

(b) If a provider or broker is compelled by a court of competent jurisdiction by order or subpoena to produce records containing

patient identifying information, the provider or broker shall notify the viator and the insured in writing at their last known addresses within five business days after receiving notice of the court's order or subpoena.

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

(d) A viatical settlement provider shall not use a longer life expectancy than is reasonable, based on all medical and actuarial information available at the time of a viatical settlement transaction, in order to reduce the payout to which the viator is entitled. A life expectancy that is determined by a trained life underwriter, or an independent company in the business of providing life expectancy estimates and which may be determined, in part, by reference to proprietary financial or actuarial models, shall be deemed to be "reasonable" for the purpose of this Rule.

History Note: Authority G.S. 58-2-40; 58-58-225; 58-58-245; 58-58-300; Temporary Adoption Eff. April 1, 2002; Eff. April 1, 2003.

11 NCAC 12 .1720 INSURANCE COMPANY PRACTICES

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

- (1) A current authorization signed by the insured;
- (2) If the policy to be viaticated is an individual policy, a verification of coverage form, completed by the provider or broker, substantially similar to the format prescribed by the NAIC in Appendix B of the NAIC Viatical Settlements Model Regulation; and
- (3) If the viatication involves a group insurance certificate, a verification of coverage form, completed by the provider or the broker, substantially similar to the format prescribed by the NAIC in Appendix C of the NAIC Viatical Settlements Model Regulation.

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

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

(d) Copies of the formats described in this Rule are on file at the Division.

History Note: Authority G.S. 58-2-40; 58-6-6; 58-58-250; 58-58-300; Temporary Adoption Eff. April 1, 2002;

Eff. April 1, 2003.

11 NCAC 15 .0111 FEES AND CHARGES FOR DATA

History Note: Authority G.S. 131E-211(k); 131E-212(b)(7); Eff. November 1, 1993; Repealed Eff. September 1, 2002.

11 NCAC 15 .0112 SUCCESSOR FORMS

History Note: Authority G.S. 131E-212(b); Temporary Adoption Eff. January 1, 1994 For a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner; Eff. April 1, 1994; Amended Eff. November 1, 1994; Repealed Eff. September 1, 2002.

11 NCAC 17 .0103 LOCATION, MAILING ADDRESS, AND TELEPHONE

(a) The primary location of SHIIP is 111 Seaboard Avenue, Raleigh, N.C. 27604.

(b) The mailing address of SHIIP is Post Office Box 26387, Raleigh, North Carolina, 27611.

(c) The telephone numbers for SHIIP are toll-free 1-800-443-9354 and 1-919-733-0111.

History Note: Authority G.S. 58-2-5; 58-2-25; 58-2-40(1); 58-54-25; 58-55-30; Eff. July 1, 1992; Amended Eff. September 1, 2002.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02B .0225 OUTSTANDING RESOURCE WATERS

(a) General In addition to the existing classifications, the Commission may classify unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

- (1) that the water quality is rated as excellent based on physical, chemical or biological information;
- (2) the characteristics which make these waters unique and special may not be protected by the assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

- (1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;
- (2) there is an unusually high level of water-based recreation or the potential for such recreation;

- (3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters, National Wildlife Refuge, etc, which do not provide any water quality protection;
- (4) the waters represent an important component of a state or national park or forest; or
- (5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW

- (1) **Freshwater:** Water quality conditions shall clearly be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site specific basis during the proceedings to classify waters as ORW. At a minimum, no new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program shall be required to follow the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 02H .1007.
- (2) **Saltwater:** Water quality conditions shall clearly be maintained to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site-specific basis during the proceedings to classify waters as ORW. At a minimum, new development shall comply with the stormwater provisions as specified in 15A NCAC 02H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 02H .1007. New non-discharge permits shall meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis. No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of submerged aquatic vegetation or a reduction of shellfish producing habitat as defined in 15A NCAC 03I .0101(b)(20)(A) and (B), except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters

as ORW and shall be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the commission. The commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 02B .0302 through 02B .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Water Quality.

(d) **Petition Process.** Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee shall initiate public proceedings to classify waters as ORW or shall inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to: Director, DENR/Division of Water Quality, 1617 Mail Service Center, Raleigh, North Carolina 27699-1617. The envelope containing the petition shall clearly bear the notation: RULE-MAKING PETITION FOR ORW CLASSIFICATION.

(e) **Listing of Waters Classified ORW with Specific Actions** Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 02H .1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing discharges to these segments shall be allowed if there is no increase in pollutant loading:
 - (A) North and South Fowler Creeks,
 - (B) Green and Norton Mill Creeks,
 - (C) Cane Creek,
 - (D) Ammons Branch,
 - (E) Glade Creek, and
 - (F) Associated tributaries.
- (3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect

the designated waters as per Rule .0203 of this Section:

- (A) Ivy Creek,
 - (B) Rock Creek, and
 - (C) Associated tributaries.
- (4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to waters that are within one mile and drain to the designated ORW areas;
 - (B) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall be permitted such that the following water quality standards are maintained in the ORW segment:
 - (i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the designated ORW under 7Q10 conditions, which are defined in Rule .0206(a)(1) of this Section;
 - (ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 02B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard at the upstream border of the ORW segment;
 - (iii) a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design

conditions (pursuant to 15A NCAC 02B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;

- (C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall comply with the following:
 - (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/1, and NH3-N = 2 mg/1;
 - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/1 for trout waters and to 20 mg/1 for all other waters;
 - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs; and
 - (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (6) In the following designated waterbodies, no additional restrictions shall be placed on new or expanded marinas. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The

Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.

(7) In the following designated waterbodies, the only type of new or expanded marina that shall be allowed shall be those marinas located in upland basin areas, or those with less than 10 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges.

(A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35. 23. 51. and Long. 76. 21. 02. thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.

(B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.

(C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.

(D) The Western Bogue Sound Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.

(E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding

Rogers Bay, the Kings Creek Restricted Area and Mill Creek.

(F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.

(8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 10 slips, having no boats over 21 feet in length and no boats with heads shall be allowed.

(A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35. 23. 51. and Long. 76. 21. 02. thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.

(B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.

(C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins

- Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.
- (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.
- (9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply within one mile and drain to the designated ORW areas;
- (B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:
- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH₃-N = 2 mg/l;
- (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;
- (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
- (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 02B .0206).
- (10) Lake Waccamaw ORW Area (Lumber River Basin) [Index No. 15-2]: all undesignated waterbodies that are tributary to Lake Waccamaw shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (11) Swift Creek and Sandy Creek ORW Area (Tar-Pamlico River Basin) [portion of Index No. 28-78-(0.5) and Index No. 28-78-1-(14)]: all undesignated waterbodies that are located within the Swift Creek watershed shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found throughout the watershed.

History Note: Authority G.S. 143-214.1; Eff. October 1, 1995; Amended Eff. April 1, 2003; August 1, 2000; April 1, 1996; January 1, 1996.

15A NCAC 02B .0316 TAR-PAMLICO RIVER BASIN

- (a) The schedule may be inspected at the following places:
- (1) Clerk of Court:
 Beaufort County
 Dare County
 Edgecombe County
 Franklin County
 Granville County
 Halifax County
 Hyde County
 Martin County
 Nash County
 Pamlico County
 Person County
 Pitt County
 Vance County
 Warren County
 Washington County
 Wilson County
- (2) North Carolina Department of Environment and Natural Resources:
 (A) Raleigh Regional Office
 3800 Barrett Drive
 Raleigh, North Carolina

(B) Washington Regional Office
943 Washington Square Mall
Washington, North Carolina.

(b) Unnamed Streams. All drainage canals not noted in the schedule are classified "C Sw," except the main drainage canals to Pamlico Sound and its bays which shall be classified "SC."

(c) The Tar-Pamlico River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) November 1, 1978;
- (3) June 8, 1980;
- (4) October 1, 1983;
- (5) June 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) August 1, 1988;
- (9) January 1, 1990;
- (10) August 1, 1990;
- (11) August 3, 1992;
- (12) April 1, 1994;
- (13) January 1, 1996;
- (14) September 1, 1996;
- (15) April 1, 2003.

(d) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective August 1, 1988 as follows:

- (1) Tar River (Index No. 28-94) from a point 1.2 miles downstream of Broad Run to the upstream side of Tranters Creek from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective January 1, 1990 by the reclassification of Pamlico River and Pamlico Sound [Index No. 29-(27)] which includes all waters within a line beginning at Juniper Bay Point and running due south to Lat. 35° 18' 00", long. 76° 13' 20", thence due west to lat. 35° 18' 00", long 76° 20' 00", thence northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding the Blowout, Hydeland Canal, Juniper Canal and Quarter Canal were reclassified from Class SA and SC to SA ORW and SC ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective January 1, 1990 by adding the supplemental classification NSW (Nutrient Sensitive Waters) to all waters in the basin from source to a line across Pamlico River from Roos Point to Persimmon Tree Point.

(g) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 02B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a

water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective April 1, 1994 with the reclassification of Blounts Creek from Herring Run to Blounts Bay [Index No. 29-9-1-(3)] from Class SC NSW to Class SB NSW.

(i) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective January 1, 1996 with the reclassification of Tranters Creek [Index Numbers 28-103- (4.5), 28-103- (13.5), 28-103- (14.5) and 28-103-(16.5)] from a point 1.5 miles upstream of Turkey Swamp to the City of Washington's former auxiliary water supply intake, including tributaries, from Class WS-IV Sw NSW and Class WS-IV CA Sw NSW to Class C Sw NSW.

(j) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective September 1, 1996 with the addition of Huddles Cut (previously unnamed in the schedule) classified as SC NSW with an Index No. of 29-25.5.

(k) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective April 1, 2003 with the reclassification of a portion of Swift Creek [Index Number 28-78-(0.5)] and a portion of Sandy Creek [Index Number 28-78-1-(14)] from Nash County SR 1004 to Nash County SR 1003 from Class C NSW to Class C ORW NSW, and the remainder of the creek's watershed to include only the ORW management strategy as represented by "+". The "+" symbol as used in this Paragraph means that all undesignated waterbodies that are located within the Swift Creek watershed shall comply with Paragraph (c) of Rule .0225 of this Subchapter in order to protect the designated waters as per Rule .0203 of this Subchapter and to protect outstanding resource values found throughout the watershed.

History Note: Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. April 1, 2003; September 1, 1996; January 1, 1996; April 1, 1994; August 3, 1992; August 1, 1990.

15A NCAC 03I .0101 DEFINITIONS

(a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.

(b) The following additional terms are hereby defined:

- (1) Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:
 - (A) Seines less than 30 feet in length;
 - (B) Collapsible crab traps, a trap used for taking crabs with the largest open dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;
 - (C) Spears, Hawaiian slings or similar devices which propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas or similar means;

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- (D) A dip net having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
- (E) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
- (F) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
- (G) Cast Nets;
- (H) Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand; and
- (I) Up to two minnow traps.
- (2) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
- (3) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.
- (4) Possess. Any actual or constructive holding whether under claim of ownership or not.
- (5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
- (6) Use. Employ, set, operate, or permit to be operated or employed.
- (7) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
- (8) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
- (9) Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
- (10) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
- (11) Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.
- (12) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- (13) Mechanical methods for clamming. Includes, but not limited to, dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
- (14) Mechanical methods for oystering. Includes, but not limited to, dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.
- (15) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.
- (16) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite pink, white, or red line or rim on the outer edge of the back fin or flipper.
- (17) Length of finfish.
- (A) Total length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (B) Fork length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin.
- (C) Fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
- (18) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (19) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following: predator protection, food, water circulation, salinity, or temperature controls utilizing technology not found in the natural environment.
- (20) Critical habitat areas. The fragile estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Critical habitats include nursery areas, beds of submerged aquatic vegetation, shellfish producing areas, anadromous fish spawning and anadromous fish nursery areas, in all coastal fishing waters as determined through marine and estuarine survey sampling. Critical habitats are vital for portions, or the entire life cycle, including the early growth and development of fish species.

- (A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.
- (B) Shellfish producing habitats are those areas in which shellfish, such as, but not limited to clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
- (C) Anadromous fish spawning areas are those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- (D) Anadromous fish nursery areas are those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (21) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (22) North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.
- (23) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.
- (24) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to:
- (A) Animals:
- (i) Sponges (Phylum Porifera);
 - (ii) Hard and Soft Corals, Sea Anemones (Phylum Cnidaria):
 - (I) Fire corals (Class Hydrozoa);
 - (II) Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);
 - (iii) Bryozoans (Phylum Bryozoa);
 - (iv) Tube Worms (Phylum Annelida):
 - (I) Fan worms (Sabellidae);
 - (II) Feather duster and Christmas tree worms (Serpulidae);
 - (III) Sand castle worms (Sabellaridae).
 - (v) Mussel banks (Phylum Mollusca:Gastropoda);
 - (vi) Colonial barnacles (Arthropoda: Crustacea: Megabalanus sp.).
- (B) Plants:
- (i) Coralline algae (Division Rhodophyta);
 - (ii) Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);
 - (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).
- (25) Coral:
- (A) Fire corals and hydrocorals (Class Hydrozoa);
- (B) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);
- (C) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia):
- (i) Sea fans (*Gorgonia* sp.);
 - (ii) Sea whips (*Leptogorgia* sp. and *Lophogorgia* sp.);
 - (iii) Sea pansies (*Renilla* sp.).
- (26) Shellfish production on leases and franchises:
- (A) The culture of oysters, clams, scallops, and mussels, on shellfish

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- leases and franchises from a sublegal harvest size to a marketable size.
- (B) The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (27) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (28) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
- (29) Pound Net Set. A fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support such trap. The lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.
- (30) Educational Institution. A college, university or community college accredited by a regional accrediting institution.
- (31) Long Haul Operations. A seine towed between two boats.
- (32) Swipe Net Operations. A seine towed by one boat.
- (33) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to form a pen or pound from which the catch is dipped or bailed.
- (34) Responsible party. Person who coordinates, supervises or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations and the person responsible for use of the issued license in compliance with applicable laws and regulations.
- (35) New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (36) Tournament Organizer. The person who coordinates, supervises or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
- (37) Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.
- (38) Recreational Purpose. A fishing activity has a recreational purpose if it is not a commercial fishing operation as defined in G.S. 113-168.
- (39) Recreational Possession Limit. Includes, but is not limited to, restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (40) Attended. Being in a vessel, in the water or on the shore immediately adjacent to the gear and immediately available to work the gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (41) Commercial Quota. Total quantity of fish allocated for harvest taken by commercial fishing operations.
- (42) Recreational Quota. Total quantity of fish allocated for harvest taken for a recreational purpose.
- (43) Office of the Division. Physical locations of the Division conducting license transactions in the cities of Wilmington, Washington, Morehead City, Columbia, Wanchese and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses are not considered Offices of the Division.
- (44) Land:
- (A) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer, when the fish reaches the shore or a structure connected to the shore.
- (B) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
- (C) For recreational fishing operations, when fish are retained in possession by the fisherman.
- (45) Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
- (46) Regular Closed Oyster Season. The regular closed oyster season occurs from May 15 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (47) Assignment. Temporary transferral to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, is still the responsible party for the license.
- (48) Transfer. Permanent transferral to another person of privileges under a license for which transfer is permitted. The person transferring

- the license retains no rights or interest under the license transferred.
- (49) Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- (50) Blue Crab Shedding. The process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following: predator protection, food, water circulation, salinity or temperature controls utilizing proven technology not found in the natural environment. A shedding operation does not include transporting peeler crabs to a permitted shedding operation.
- (51) Fyke Net. An entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).
- (52) Hoop Net. An entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

History Note: Authority G.S. 113-134; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1995; March 1, 1994; October 1, 1993; July 1, 1993; Recodified from 15A NCAC 3I .0001 Eff. December 17, 1996; Amended Eff. April 1, 1999; August 1, 1998; April 1, 1997; Temporary Amendment Eff. August 1, 1999; July 1, 1999; Temporary Amendment Eff. May 1, 2000; Amended Eff. August 1, 2000; Temporary Amendment Eff. August 1, 2000; Amended Eff. April 1, 2003; April 1, 2001.

15A NCAC 03J .0111 FYKE OR HOOP NETS

- (a) It is unlawful to use fyke or hoop nets in coastal fishing waters without:
- (1) the owner's identification being clearly printed on a sign no less than six inches square, securely attached on an outside corner stake of each such net; or

- (2) each net being marked by attaching a floating buoy to a single net and a buoy on each end of the line connecting multiple (two or more) nets, when stakes are not used. Buoys shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys shall be of any color except yellow or hot pink. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include the gear owner's current motorboat registration number and the gear owner's last name and initials.
- (b) It is unlawful to use a fyke or hoop net within 200 yards of any operational pound net set.
- (c) It is unlawful to use a fyke or hoop net within 150 yards of any railroad or highway bridge.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; Temporary Adoption Eff. August 1, 2000; Amended Eff. April 1, 2003; April 1, 2001.

15A NCAC 03K .0101 PROHIBITED SHELLFISH AREAS/ACTIVITIES

- (a) It is unlawful to possess, sell, or take oysters, clams or mussels from areas which have been designated as prohibited (polluted) by proclamation by the Fisheries Director except as provided in 15A NCAC 03K .0103, .0104, .0107, and .0401. The Fisheries Director shall issue such proclamations upon notice by the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have not been met. The Fisheries Director may reopen any such closed area upon notification from the Division of Environmental Health that duly adopted criteria for approved shellfish harvest areas have been met. Copies of these proclamations and maps of these areas are available upon request at the Division of Marine Fisheries, 3441 Arendell St., Morehead City, NC 28557; (252) 726-7021.
- (b) The Fisheries Director may, by proclamation, close areas to the taking of oysters, clams, scallops and mussels in order to protect the shellfish populations for management purposes or for public health purposes not specified in Paragraph (a) of this Rule.
- (c) It is unlawful to possess or sell oysters, clams, or mussels taken from polluted waters outside North Carolina.
- (d) It is unlawful to possess or sell oysters, clams, or mussels taken from the waters of North Carolina except as provided in G. S. 113-169.2 (i) without a harvest tag affixed to each container of oysters, clams or mussels. Harvest tags shall be affixed by the harvester and shall meet the following criteria:
- (1) Tags shall be identified as harvest tags. They shall be durable for at least 90 days, water resistant, and a minimum of two and five-eighths inches by five and one-fourth inches in size.
- (2) Tags shall be securely fastened to the outside of each container in which shellstock is transported. Bulk shipments in one container

and from the same source may have one tag with all required information attached. Harvesters who are also certified shellfish dealers may use only their dealers tag if it contains the required information. The required information shall be included on all lots of shellfish subdivided or combined into market grades or market quantities by a harvester or a certified shellfish dealer.

- (3) Tags shall contain legible information arranged in the specific order as follows:
 - (A) The harvester's name, address and shellfish license or standard or retired standard commercial fishing license with shellfish endorsement number.
 - (B) The date of harvest.
 - (C) The most precise description of the harvest location as is practicable (e.g., Long Bay, Rose Bay) that can be easily located by maps and charts.
 - (D) Type and quantity of shellfish.
 - (E) The following statement in bold, capitalized type: "THIS TAG IS REQUIRED TO BE ATTACHED UNTIL CONTAINER IS EMPTY AND THEREAFTER KEPT ON FILE FOR 90 DAYS".

History Note: Authority G.S. 113-134; 113-168.5; 113-169.2; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. July 1, 1993; Temporary Amendment Eff. July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. October 1, 2001; Amended Eff. April 1, 2003.

15A NCAC 03K .0103 SHELLFISH OR SEED MANAGEMENT AREAS

(a) The Fisheries Director may, by proclamation, designate Shellfish Management Areas which meet any of the following criteria. The area has:

- (1) Conditions of bottom type, salinity, currents, cover or cultch necessary for shellfish growth;
- (2) Shellfish populations or shellfish enhancement projects which may produce commercial quantities of shellfish at ten bushels or more per acre;
- (3) Shellfish populations or shellfish enhancement projects which may produce shellfish suitable for transplanting as seed or for relaying from prohibited (polluted) areas.

(b) It is unlawful to use a trawl net, long haul seine, or s wipe net in any designated Shellfish or Seed Management area. These areas shall be marked with signs or buoys. Unmarked and undesignated tributaries shall be the same designation as the designated waters to which they connect or into which they flow. No unauthorized removal or relocation of any such marker shall have the effect of changing the designation of any such body of water or portion thereof, nor shall any such unauthorized removal or relocation or the absence of any marker affect the

applicability of any rule pertaining to any such body of water or portion thereof.

(c) It is unlawful to take oysters or clams from any Shellfish Management Area which has been closed and posted, except that the Fisheries Director may, by proclamation, open specific areas to allow the taking of oysters or clams and may designate time, place, character, or dimensions of any method or equipment that may be employed.

(d) It is unlawful to take oysters from Seed Management Areas for planting on shellfish leases or franchises without first obtaining a Permit to Transplant Oysters from Seed Management Areas from the Fisheries Director. The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. March 1, 1994; Temporary Amendment Eff. October 1, 2001; Amended Eff. April 1, 2003.

15A NCAC 03K .0107 DEPURATION OF SHELLFISH

(a) It is unlawful to take clams or oysters from the public or private prohibited (polluted) waters of the state for the purpose of depuration except when the harvest will utilize shellfish that would otherwise be destroyed in maintenance dredging operations. All harvest and transport activities within the State of North Carolina related to depuration shall be under the direct supervision of the Division of Marine Fisheries or the Division of Environmental Health. For the purpose of this Rule, the term depuration does not include relaying of clams or oysters from shellfish leases or franchises as authorized by 15A NCAC 03K .0104.

(b) The Fisheries Director, may, by proclamation, impose any or all of the following restrictions on the harvest of clams or oysters for depuration:

- (1) Specify species;
- (2) Specify areas except harvest will not be allowed from designated buffer zones adjacent to sewage outfall facilities;
- (3) Specify harvest days;
- (4) Specify time period;
- (5) Specify quantity or size;
- (6) Specify harvest methods;
- (7) Specify record keeping requirements.

(c) Depuration permits:

- (1) It is unlawful for individuals to harvest clams or oysters from prohibited (polluted) waters for the purpose of depuration unless they have obtained a Depuration Permit or are listed as designees on a Depuration Permit from the Division of Marine Fisheries and Division of Environmental Health setting forth the method of harvest to be employed. Permits shall be issued to licensed North Carolina Clam or Oyster Dealers only. Permittees and designees harvesting under Depuration Permits must have a current Shellfish License or Shellfish Endorsement on a Standard or Retired Standard Commercial Fishing License.

- (2) In addition to information required in 15A NCAC 03M .0501, the permit application shall provide the name, address, location and telephone number of the depuration operation where the shellfish will be depurated.
- (3) Clam or Oyster Dealers desiring to obtain prohibited (polluted) clams or oysters for depuration shall apply for a depuration permit at least 15 days prior to initiation of operation.
- (d) Transport of clams or oysters for depuration:
 - (1) Clams or oysters harvested from prohibited (polluted) waters for depuration in a depuration operation located within the State of North Carolina shall be transported under the direct supervision of the Division of Marine Fisheries or the Division of Environmental Health.
 - (2) Clams or oysters harvested from prohibited (polluted) waters for depuration in a depuration operation outside the State of North Carolina shall not be transported within the State of North Carolina except under the direct supervision of the Division of Marine Fisheries or the Division of Environmental Health.
- (e) It is unlawful to ship clams or oysters harvested for depuration to depuration facilities located in a state other than North Carolina unless the facility is in compliance with the applicable rules and laws of the shellfish control agency of that state.
- (f) The procedures and requirements for obtaining permits are found in 15A NCAC 03O .0500.

History Note: Authority G.S. 113-134; 113-182; 113-201; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. April 1, 2003.

15A NCAC 03K .0302 MECHANICAL HARVEST SEASON

- (a) It is unlawful to take, buy, sell, or possess any clams taken by mechanical methods from public bottom except that the Fisheries Director may, by proclamation, open and close the season at any time in the Atlantic Ocean and only between December 1 through March 31 in internal waters for the use of mechanical clam harvesting gear. The Fisheries Director is further empowered to impose any or all of the following restrictions:
 - (1) specify number of days;
 - (2) specify areas;
 - (3) specify time period;
 - (4) specify quantity or size; and
 - (5) specify means/methods. Any proclamation specifying means or methods must be approved by the Marine Fisheries Commission prior to issuance.
- (b) The Fisheries Director may, by proclamation, open only areas in Core and Bogue Sounds, Newport, North, White Oak and New Rivers and the Intracoastal Waterway north of "BC" Marker at Topsail Beach which have been opened at any time

from January, 1979, through September, 1988, to the harvest of clams by mechanical methods. The Fisheries Director may, by proclamation, open the Atlantic Ocean and the area or any portion of the area in Pamlico Sound bounded by a line beginning on Portsmouth Island at a point 35° 01.5000' N - 76° 06.0000' W; running northerly to a point 35° 06.0000' N - 76° 06.0000' W; running westerly to a point 35° 06.0000' N - 76° 10.0000' W; running southerly to a point 35° 01.5000' N - 76° 10.0000' W; running easterly to the point of beginning to the harvest of clams by mechanical methods. Other areas opened for purposes as set out in 15A NCAC 03K .0301(b) shall open only for those purposes.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52;
Eff. January 1, 1991;
Temporary Amendment Eff. October 1, 2001;
Amended Eff. April 1, 2003.

15A NCAC 03M .0506 SNAPPER-GROUPER

(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the fisheries for species of the snapper-grouper complex and black sea bass in order to comply with the management requirements incorporated in the Fishery Management Plans for Snapper-Grouper and Sea Bass developed by the South Atlantic Fishery Management Council or Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission:

- (1) Specify size;
- (2) Specify seasons;
- (3) Specify areas;
- (4) Specify quantity;
- (5) Specify means/methods; and
- (6) Require submission of statistical and biological data.

The species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region are hereby incorporated by reference and copies are available via the Federal Register posted on the Internet at www.access.gpo.gov and at the Division of Marine Fisheries, P.O. Box 769, Morehead City, North Carolina 28557 at no cost.

- (b) Black sea bass, south of Cape Hatteras (35° 15.0321'):
 - (1) It is unlawful to possess black sea bass less than ten inches total length.
 - (2) It is unlawful to take or possess more than 20 black sea bass per person per day without a valid Federal Commercial Snapper-Grouper permit.
- (c) Gag grouper:
 - (1) It is unlawful to possess gag grouper (gray grouper) less than 24 inches total length.
 - (2) It is unlawful to possess more than two gag grouper (gray grouper) per person per day without a valid Federal Commercial Snapper-Grouper Permit.
 - (3) It is unlawful to possess more than two gag grouper (gray grouper) per person per day during the months of March and April.
 - (4) It is unlawful to sell or purchase gag grouper (gray grouper) taken from waters under the

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- jurisdiction of North Carolina or the South Atlantic Fishery Management Council during the months of March and April.
- (d) Black grouper:
- (1) It is unlawful to possess black grouper less than 24 inches total length.
 - (2) It is unlawful to possess more than two black grouper per person per day without a valid Federal Commercial Snapper-Grouper Permit.
 - (3) It is unlawful to take or possess more than two black grouper per person per day during the months of March and April.
 - (4) It is unlawful to sell or purchase black grouper taken from waters under the jurisdiction of North Carolina or the South Atlantic Fishery Management Council during the months of March and April.
- (e) It is unlawful to possess red grouper less than 20 inches total length.
- (f) It is unlawful to possess yellowfin grouper (fireback grouper) less than 20 inches total length.
- (g) It is unlawful to possess scamp less than 20 inches total length.
- (h) It is unlawful to possess yellowmouth grouper less than 20 inches total length.
- (i) Speckled hind (kitty mitchell) and warsaw grouper:
- (1) It is unlawful to sell or purchase speckled hind or warsaw grouper.
 - (2) It is unlawful to possess more than one speckled hind or one warsaw grouper per vessel per trip.
- (j) Greater amberjack:
- (1) For recreational purposes:
 - (A) It is unlawful to possess greater amberjack less than 28 inches fork length.
 - (B) It is unlawful to possess more than one greater amberjack per person per day.
 - (2) It is unlawful to sell or purchase greater amberjack less than 36 inches fork length.
 - (3) It is unlawful to possess more than one greater amberjack per person per day without a valid Federal Commercial Snapper-Grouper Permit.
 - (4) It is unlawful to possess more than one greater amberjack per person per day during the month of April even with a valid Federal Commercial Snapper-Grouper Permit.
 - (5) It is unlawful to sell or purchase greater amberjack during any season closure for greater amberjack.
- (k) Red Snapper:
- (1) It is unlawful to possess red snapper less than 20 inches total length.
 - (2) It is unlawful to possess more than two red snapper per person per day without a valid Federal Commercial Snapper-Grouper permit.
- (l) Vermilion Snapper:
- (1) For recreational purposes:
 - (A) It is unlawful to possess vermilion snapper (beeliner) less than 11 inches total length.
 - (B) It is unlawful to possess more than 10 vermilion snapper per person per day.
 - (2) It is unlawful to possess or sell vermilion snapper (beeliner) less than 12 inches total length with a valid Federal Commercial Snapper-Grouper permit.
 - (m) It is unlawful to possess silk snapper (yelloweye snapper) less than 12 inches total length.
 - (n) It is unlawful to possess blackfin snapper (hambone snapper) less than 12 inches total length.
- (o) Red porgy (*Pagrus pagrus*):
- (1) It is unlawful to possess red porgy less than 14 inches total length.
 - (2) It is unlawful to possess more than one red porgy per person per day without a valid Federal Commercial Snapper-Grouper Permit.
 - (3) From January 1 through April 30, it is unlawful, even with a valid Federal Commercial Snapper-Grouper Permit, to:
 - (A) possess more than one red porgy per person per day, or
 - (B) sell or offer for sale red porgy.
 - (4) It is unlawful to land more than 50 pounds of red porgy from May 1 through December 31 in a commercial fishing operation.
 - (p) It is unlawful for persons in possession of a valid National Marine Fisheries Service Snapper-Grouper Permit for Charter Vessels to exceed the creel restrictions established in Paragraphs (b),(j), (o), and (p) of this Rule when fishing with more than three persons (including the captain and mate) on board.
 - (q) In the Atlantic Ocean, it is unlawful for an individual fishing under a Recreational Commercial Gear License with seines, shrimp trawls, pots, trotlines or gill nets to take any species of the Snapper-Grouper complex.

History Note: Authority G.S. 113-134; 113-182; 113-221; 143B-289.52; Eff. January 1, 1991; Amended Eff. April 1, 1997; March 1, 1996; September 1, 1991; Temporary Amendment Eff. December 23, 1996; Amended Eff. August 1, 1998; April 1, 1997; Temporary Amendment Eff. January 1, 2002; August 29, 2000; January 1, 2000; May 24, 1999; Amended Eff. April 1, 2003; August 1, 2002.

15A NCAC 030 .0201 STANDARDS FOR SHELLFISH BOTTOM AND WATER COLUMN LEASES

- (a) All areas of the public bottoms underlying coastal fishing waters shall meet the following standards in addition to the standards in G.S. 113-202 in order to be deemed suitable for leasing for shellfish purposes:
- (1) The lease area must not contain a natural shellfish bed which is defined as 10 bushels or more of shellfish per acre.
 - (2) The lease area must not be closer than 100 feet to a developed shoreline. In an area bordered by undeveloped shoreline, no minimum setback is required. When the area to be

leased borders the applicant's property or borders the property of riparian owners who have consented in a notarized statement, the Secretary may reduce the distance from shore required by this Rule.

- (3) Unless the applicant can affirmatively establish a necessity for greater acreage through the management plan that is attached to the application and other evidence submitted to the Secretary, the lease area shall not be less than one-half acre and shall not exceed:
- (A) 10 acres for oyster culture;
 - (B) 5 acres for clam culture; or
 - (C) 5 acres for any other species.

This Subparagraph shall not be applied to reduce any holdings as of July 1, 1983.

(b) Franchises recognized pursuant to G.S. 113-206 and shellfish bottom leases shall meet the following standards in addition to the standards in G.S. 113-202. In order to avoid termination, franchises and shellfish bottom leases shall:

- (1) Produce and market 10 bushels of shellfish per acre per year; and
- (2) Plant 25 bushels of seed shellfish per acre per year or 50 bushels of cultch per acre per year, or a combination of cultch and seed shellfish where the percentage of required cultch planted and the percentage of required seed shellfish planted totals at least 100 percent.

(c) The following standards shall be applied to determine compliance with Subparagraphs (1) and (2) of Paragraph (b) of this Rule:

- (1) Only shellfish planted, produced or marketed according to the definitions in 15A NCAC 031 .0101 (26), (27) and (28) shall be submitted on production/utilization forms for shellfish leases and franchises.
- (2) If more than one shellfish lease or franchise is used in the production of shellfish, one of the leases or franchises used in the production of the shellfish must be designated as the producing lease or franchise for those shellfish. Each bushel of shellfish may be produced by only one shellfish lease or franchise. Shellfish transplanted between leases or franchises may be credited as planting effort on only one lease or franchise.
- (3) Production and marketing information and planting effort information shall be compiled and averaged separately to assess compliance with the standards. The lease or franchise must meet the production requirement and the planting effort requirement within the dates set forth to be judged in compliance with these standards.
- (4) In determining production and marketing averages and planting effort averages for information not reported in bushel measurements, the following conversion factors shall be used:

- (A) 300 oysters, 400 clams, or 400 scallops equal one bushel; and
- (B) 40 pounds of scallop shell, 60 pounds of oyster shell, 75 pounds of clam shell and 90 pounds of fossil stone equal one bushel.

- (5) In the event that a portion of an existing lease or franchise is obtained by a new owner, the production history for the portion obtained shall be a percentage of the originating lease or franchise production equal to the percentage of the area of lease or franchise site obtained to the area of the originating lease or franchise.
- (6) The production and marketing rates shall be averaged over the most recent three-year period after January 1 following the second anniversary of initial bottom leases and franchises and throughout the terms of renewal leases. For water column leases, these production and marketing rates shall be averaged over the first five year period for initial leases and over the most recent three year period thereafter. Three year averages for production and marketing rates shall be computed irrespective of transfer of the shellfish lease or franchise.
- (7) All bushel measurements shall be in U.S. Standard Bushels.

(d) Water columns superjacent to leased bottoms shall meet the standards in G.S. 113-202.1 in order to be deemed suitable for leasing for aquaculture purposes.

(e) Water columns superjacent to franchises recognized pursuant to G.S. 113-206 shall meet the standards in G.S. 113-202.2 in order to be deemed suitable for leasing for aquaculture purposes.

(f) Water column leases must produce and market 40 bushels of shellfish per acre per year to meet the minimum commercial production requirement or plant 100 bushels of cultch or seed shellfish per acre per year to meet commercial production by planting effort. The standards for determining production and marketing averages and planting effort averages shall be the same for water column leases as for bottom leases and franchises set forth in Paragraph (c) of this Rule except that either the produce and market requirement or the planting requirement must be met.

History Note: Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52; Eff. January 1, 1991; Amended Eff. May 1, 1997; March 1, 1995; March 1, 1994; September 1, 1991; Temporary Amendment Eff. October 1, 2001; Amended Eff. April 1, 2003.

15A NCAC 030 .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

- (a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party or person holding a power of attorney:
- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on

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- the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application must be notarized;
- (2) Current picture identification of applicant, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, current North Carolina Identification Card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
 - (3) Full names and dates of birth of designees of the applicant who shall be acting under the requested permit where that type permit requires listing of designees;
 - (4) Certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
 - (5) For permit applications from business entities, the following documentation is required:
 - (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
 - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;
 - (F) For business entities, other than corporations, copies of current assumed name statements if filed and copies of current business privilege tax certificates, if applicable.
 - (6) Additional information as required for specific permits.
- (b) A permittee must hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:
- (1) Pound Net Permit;
 - (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean.
- (c) A permittee and his designees must hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:
- (1) Permit to Transplant (Prohibited) Polluted Shellfish;
 - (2) Permit to Transplant Oysters from Seed Management Areas;
 - (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
- (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas; or
 - (5) Depuration Permit.
- (d) A permittee must hold a valid:
- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
 - (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.
- (e) Aquaculture Operations/Collection Permits:
- (1) A permittee must hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
 - (2) The permittee or designees must hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.
- (f) Applications submitted without complete and required information shall be considered incomplete and shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.
- (g) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to fully abide by the permit general and specific conditions established under 15A NCAC 03J .0107, 03K .0103, 03K .0104, 03K .0107, 03K .0206, 03K .0303, 03K .0401, 03O .0502, and 03O .0503 as applicable to the requested permit.
- (h) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:
- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
 - (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
 - (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.
- (i) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.
- (j) Permits are valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage,

or seasons for the species involved. The expiration date shall be specified on the permit.

(k) To renew a permit, the permittee shall file a certification that the information in the original application is still currently correct, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.

(l) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in 15A NCAC 03.

(m) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.

(n) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.

(o) Permit applications shall be available at all Division Offices.

(p) Any permit which is valid at time of adoption of this Rule shall be valid until the expiration date stated on the permit.

History Note: Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52; Temporary Adoption Eff. September 1, 2000; May 1, 2000; Eff. April 1, 2001; Temporary Amendment Eff. October 1, 2001; Amended Eff. April 1, 2003; August 1, 2002.

15A NCAC 18A .1801 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Department" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department.
- (2) "Lobby" means that room or area in which guests ordinarily register.
- (3) "Lodging establishment" means all hotels, motels, inns, tourist homes, and other places providing lodging accommodations for pay. Facilities described in G.S. 130A-250 (1) through (5) shall not be regulated as lodging establishments.
- (4) "Person" means person as defined in G.S. 130A-2.
- (5) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (6) "Single-service" means cups, containers, lids, closures, plates, knives, forks, spoons, stirrers, paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-time, one person use and then discarded.

History Note: Authority G.S. 130A-248; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. September 1, 2002; January 1, 1996; September 1, 1990.

16 NCAC 06C .0304 LICENSE PATTERNS

(a) Licenses shall indicate grade levels, content areas and specializations for which the professional shall be eligible for employment, as well as preparation and experience levels.

(b) Licenses shall be of the following types:

- (1) Teacher. The license shall entitle the holder to teach in some designated area of specialization at the elementary, middle, or secondary level. There shall be four levels of preparation:
 - (A) bachelor's degree (A level);
 - (B) master's degree (G level);
 - (C) sixth-year (AG level); and
 - (D) doctorate (DG level).

The teacher license shall further be categorized as prekindergarten B-K, elementary K-6, middle grades 6-9, secondary 9-12, special subjects K-12, or work force development.

- (2) Administrator/supervisor. The holder may serve in generalist and program administrator roles such as superintendent, assistant or associate superintendent, principal, assistant principal or curriculum-instructional specialist. There shall be three levels of preparation:
 - (A) master's degree;
 - (B) sixth-year; and
 - (C) doctorate.

A person shall be eligible to serve as a superintendent without qualifying for or holding a license as long as the person has earned at least a bachelor's degree from a regionally accredited college or university and has a minimum of five years leadership or managerial experience that the employing local board of education considers relevant to the position of superintendent.

- (3) Student services area. The holder may provide specialized assistance to the learner, the teacher, the administrator and the education program in general. This category shall include school counseling, school social work, school psychology, audiology, speech language pathology, and media. There shall be three levels of preparation as in the case of the administrator/supervisor, except that school psychology shall be restricted to the sixth-year or doctorate levels and school social work may be earned at the bachelor's level.

(c) The department shall base license classification on the level and degree of career development and competence. There shall be two classifications of licenses:

- (1) The initial license, which shall be valid for three years, shall allow the holder to begin practicing the profession on an independent basis.
- (2) The continuing license shall authorize professional school service on an ongoing basis, subject to renewal every five years.

History Note: Authority G.S. 115-12(9)a; 115C-271(a); N.C. Constitution, Article IX, s. 5;

Eff. July 1, 1986;
Amended Eff. August 1, 2000; March 1, 1990;
Temporary Amendment Eff. December 17, 2001;
Amended Eff. April 1, 2003.

- (3) The community college shall not contract with a company or entity to provide training to its current employees except as provided by provisions set forth in 23 NCAC 02E .0402.

Note: Contracted training does not have to be defined as work station occupational skills training in order for 23 NCAC 02E .0402(c) to apply for reimbursement purposes.

(b) Any class for which the instructor's services are provided at no cost or for which the instructional cost is paid totally and directly by an external agency is a "gratis" class. In this situation, the class is reported as self-supporting, and does not generate budget/FTE. If a portion of the class is gratis, student hours shall be prorated accordingly.

(c) Categorical state allotments to colleges, except literacy and Human Resources Development, such as Small Business, Focused Industrial Training, Community Service, and Block Grants do not earn budget/FTE and are not subject to the provisions of this Rule.

History Note: Authority G.S. 115D-5; 115D-31; 115D-58.5; S.L. 2001, c. 424, s. 30.3(b),(e); Eff. September 1, 1988;
Temporary Amendment Eff. October 15, 1992 for a period of 180 days to expire on April 15, 1993;
Temporary Amendment Eff. November 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. June 1, 1994; September 1, 1993;
Temporary Amendment Eff. October 4, 2001;
Amended Eff. April 1, 2003.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

21 NCAC 32M .0112 FEES

- (a) An application fee of one hundred dollars (\$100.00) shall be paid at the time of initial application for approval and each subsequent application for approval to practice. Application fee shall be twenty dollars (\$20.00) for the volunteer approval.
- (b) The fee for annual renewal of approval shall be fifty dollars (\$50.00).
- (c) The fee for annual renewal of volunteer approval shall be ten dollars (\$10.00).
- (d) No portion of any fee in this Rule shall be refundable.
- (e) Fees shall be divided between the Board of Nursing and the Medical Board.

History Note: Authority G.S. 90-6; Eff. January 1, 1996;
Recodified from 21 NCAC 32M .0111 Eff. January 1, 1996;
Amended Eff. April 1, 2003; May 1, 1999; January 1, 1996.

TITLE 23 – COMMUNITY COLLEGES

23 NCAC 02D .0326 BUDGET FTE FUNDING

(a) All student membership hours generated by the college for a given class shall be counted for budget FTE purposes provided 100 percent of the instructional cost is paid from college funds (funds budgeted through the college's budget including State Current, County Current, or College Funds). These provisions apply to all instructional contracts which generate budget FTE including Basic Skills classes. For purpose of this Rule, instructional cost includes the salary of the instructor(s) as well as fringe benefits, supplies, materials, and travel paid from college funds. College-sponsored instruction shall not supplant existing training which may take place without the college's involvement. Following are Rule applications:

- (1) A company or entity may reimburse the college for a given class up to 50 percent of the instructional cost. The student hours in membership generated in the class may be reported for budget FTE. If the college is reimbursed for more than 50 percent of the instructional cost for a given class, student hours in membership reported for the class shall be prorated in the same proportion as the college funding. If the college is reimbursed for 100 percent of the instructional cost, the class would be gratis [see Paragraph (b) of this Rule] and no budget FTE would be generated.
- (2) In cases where a company or entity donates funds to a college with no expectation for instruction in return, these funds shall be treated as college funds and may be used to generate budget FTE.

23 NCAC 02E .0101 PROGRAM CLASSIFICATION

The following criteria are used for classifying the programs offered in the North Carolina Community College System.

- (1) Curriculum Programs:
 - (a) A curriculum program is an organized sequence of courses leading to an associate degree, a diploma, or a certificate. All curriculum programs are designed to provide education, training, or retraining for the work force.
 - (i) Associate degree programs are planned programs of study culminating in an associate in applied science, associate in arts, associate in fine arts, associate in science, or associate in general education degree.
 - (A) The associate in applied science degree programs are designed to prepare individuals for employment. These programs involve the application of scientific principles in research, design,

- development, production, distribution, or service.
- (B) The associate in arts, associate in science, and associate in fine arts degree programs are designed to prepare students for transfer at the junior level to institutions offering baccalaureate degrees.
- (C) The associate in general education degree programs are designed for students who desire a general liberal arts education.
- (ii) The diploma programs are designed to provide entry-level employment training. A diploma program may be a stand-alone curriculum program title, or a college may award a diploma under the college's associate in applied science degree curriculum program for a series of courses taken from the program of study and structured so that a student may complete additional non-duplicative coursework to receive an associate in applied science degree.
- (iii) The certificate programs are designed to lead to employment or to provide skills upgrading or retraining for individuals already in the workforce. A certificate program may be a stand-alone curriculum program title, or a college may award a certificate under the college's associate degree or diploma curriculum program for a series of courses taken from the program of study.
- (b) Developmental Education programs consist of courses and support services which include diagnostic assessment and placement, tutoring, advising, and writing assistance. These programs are designed to address academic preparedness, workforce retraining, development of general and discipline-specific learning strategies, and affective barriers to learning. Developmental courses do not earn credit toward a degree, diploma, or certificate.
- (2) Continuing Education Programs:
 - (a) Occupational Extension courses consist of single courses, each complete in itself, designed for the specific purposes of training an individual for full- or part-time employment, upgrading the skills of persons presently employed, and retraining others for new employment in occupational fields.
 - (b) Community Service:
 - (i) Community Service courses consist of single courses, each complete in itself, that focus on an individual's personal or leisure needs rather than occupational or professional employment.
 - (ii) The cultural and civic, and visiting artist component of this program meets community needs through lecture and concert series, art shows, the use of college facilities by community groups, providing speakers to community organizations, and providing visiting artist activities for college communities. Visiting artists may be provided an opportunity to work as artists in residence to enhance local arts resources and promote the various visual, performing and literary arts in communities throughout North Carolina.
 - (c) Self-Supporting Programs:
 - (i) A self-supporting course is not reported to the state for budget FTE since the cost of conducting the course is paid by students enrolled.
 - (ii) Recreational programs are self-supporting courses which the college may provide at the request of the community but for which the college receives no budgetary credit. Funds appropriated as operating expenses for allocation to the colleges shall not be used to support recreation

courses. The financing of these courses by a college shall be on a self-supporting basis, and membership hours produced from these activities shall not be counted when computing full-time equivalent students for use in budget-funding formulas at the state level.

(d) **Basic Skills Programs.** The State Board and the community college system shall encourage persons to complete high school rather than seek testing for the High School Diploma Equivalency.

(i) **High School Equivalency programs** consist of classroom instruction, learning laboratory courses, or a combination of activities designed to qualify a student for an adult high school diploma. An Agreement of Affiliation with a local public school system is required for minors sixteen or seventeen years old. No agreement is required for adults eighteen years old and older.

(ii) **General Educational Development (GED) testing programs** consist of classroom instruction, or learning laboratory courses, or a combination of both designed to qualify a student to demonstrate competency on the General Educational Development (GED) tests and to receive a High School Diploma equivalency from the State Board. The State Board is responsible for the administration of the General Educational Development testing program in cooperation with the Office on Educational Credit of the American Council on Education. The procedures regulating the GED Testing Program set forth in the GED Examiner's Manual published by the General Educational Development Testing Service of the American Council on Education are hereby incorporated by

reference. A copy of this manual is available for inspection in the Office of the System President, Community College System Office, 200 W. Jones Street, Raleigh NC 27603-1379. A copy of this manual may be obtained at a cost of fifteen dollars (\$15.00) from the GED Testing Service of the American Council on Education, One Dupont Circle NW, Suite 250, Washington, DC 20036-1163.

(iii) **The Adult Basic Education (ABE) program** is designed for adults who are functioning at or below the eighth grade educational level. The major objectives of the program are to enable adults to acquire the basic educational skills necessary to be fully competent in our society, to improve their ability to benefit from occupational training and to have greater opportunities for more productive and profitable employment, and to meet their own objectives for enrolling in the program. Classes are offered and focus on fundamental skills such as reading, writing, speaking, computing, critical thinking, and problem solving.

(iv) **The English as a Second Language (ESL) program** offers classes which accommodate the varied needs of the immigrant and refugee populations. Attention is given to both the cultural and linguistic needs as instruction is focused upon the formation of accurate, appropriate communication skills and upon the student's ability to function in the adult American community. Classes are offered at the beginning through the advanced levels of ESL. The curriculum is designed to develop the basic language skills of reading,

- writing, speaking, and listening. Instruction integrates the English language with topics that prepare students for everyday life, employment, and citizenship.
- (v) The Compensatory Education (CED) program is designed for adults with mental retardation. The program is highly individualized and fosters a maximum level of independent living commensurate with personal ability. Instruction is offered in math, language, social science, health, community living, consumer education and vocational education.
- (e) **Business and Industrial Training.**
 - (i) The Focused Industrial Training program addresses critical skills in existing industries. Based on assessments of need, these customized classes typically combine on-the-job training with classroom instruction to up-grade or train incumbent employees of manufacturing industries.
 - (ii) The New and Expanding Industry Training program offers customized, job-specific training to new or expanding companies creating new jobs in the state.
 - (iii) The Small Business Center program provides training, counseling and referral services especially designed in content and delivery modes for small businesses, both existing and prospective.
- (f) The Human Resources Development (HRD) program provides skill assessment services, employability skills training, and career development counseling to unemployed and underemployed adults. These courses shall address six core components as follows:
 - (i) assessment of an individual's assets and limitations;
 - (ii) development of a positive self-concept;
 - (iii) development of employability skills;
 - (iv) development of communication skills;
 - (v) development of problem-solving skills; and
 - (vi) awareness of the impact of information technology in the workplace.
- (g) The Learning Laboratory programs consist of self-instruction using programmed texts, audio visual equipment, and other self-instructional materials. A learning laboratory coordinator has the function of bringing the instructional media and the student together on the basis of objective and subjective evaluation and of counseling, supervising, and encouraging persons working in the lab.

History Note: Authority G.S. 115D-1; 115D-2; 115D-5; S.L. 1995, c. 625; S.L. 2001, c. 424, s. 30.3(b), (e); Eff. February 1, 1976; Readopted Eff. January 24, 1978; Amended Eff. September 1, 1993; September 1, 1982; August 17, 1981; Temporary Amendment Eff. June 1, 1997; Amended Eff. July 1, 1998; Temporary Amendment Eff. October 4, 2001; Amended Eff. April 1, 2003.

TITLE 25 – DEPARTMENT OF STATE PERSONNEL

25 NCAC 01E .0802 MILITARY LEAVE

Military leave shall be granted to employees of the State for periods of service in the uniformed services in accordance with G.S. 127A-116 and the Uniformed Services Employment and Reemployment Act of 1994. Military leave shall also be given for state military duty to members of the State Defense Militia as outlined in Rule .0820 of this Section and the Civil Air Patrol as outlined in Rule .0806 of this Section..

History Note: Authority G.S. 126-4; 127A-116; Eff. February 1, 1976; Amended Eff. April 1, 2003; November 1, 1990; May 1, 1977.

25 NCAC 01E .0817 RETENTION AND CONTINUATION OF BENEFITS

- (a) The employee may choose to have accumulated vacation leave paid in a lump sum, may exhaust this leave, or may retain part or all of accumulated leave until return to state service. The maximum accumulation of 240 hours shall apply to lump sum payment.
- (b) The employee shall retain all accumulated sick leave and continue to earn time toward salary increases and total State service. Entitlement shall be given to full retirement

APPROVED RULES

membership service credit in accordance with the provisions of the Teachers' and State Employees' Retirement System.

Eff. February 1, 1976;

Amended Eff. April 1, 2003; October 1, 1992; February 1, 1983;

December 1, 1980; December 1, 1978.

History Note: Authority G.S. 126-4(5);

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, October 17, 2002, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments by Friday, October 11, 2002 to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Thomas Hilliard, III
Robert Saunders
Laura Devan
Jim Funderburke
David Twiddy

Appointed by House

Paul Powell - Chairman
Jennie J. Hayman Vice - Chairman
Dr. Walter Futch
Jeffrey P. Gray
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

October 17, 2002
November 21, 2002

RULES REVIEW COMMISSION September 19, 2002 MINUTES

The Rules Review Commission met on Thursday morning, September 19, 2002, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Vice Chairman Jennie Hayman, Jim Funderburk, Walter Futch, Jeffrey Gray, Thomas Hilliard, Robert Saunders, John Tart, and David Twiddy.

Staff members present were: Joseph DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Barbara Jackson	NC Department of Labor
Teresa Marrella	NC Department of Justice
Jean Stanley	NC Nursing Board
Juanita Gaskill	Marine Fisheries
Rod Helder	NC Division of Non Public Education
Jeff Manning	DENR-DWQ
Howard Kramer	NC Nursing Board
Portia Rochelle	DHHS-DMA
Marjorie Morris	DHHS-DMA
Jessica Gill	DENR/Coastal Management
Kelly Williams	DENR/Coastal Management
Vernon Cox	Division Soil & Water Conservation
Ellie Sprenkel	Department of Insurance
Dedra Alston	DENR
John Dorney	NC Division of Water Quality
Brooks Skinner	Department of Administration
Lisa Martin	NC Home Builders Association
Grady McCallie	NC Conservation Network
Steve Underwood	DENR/Coastal Management
Grover Sawyer	Department of Insurance
John Hamrick	Home Inspectors Licensure Board
Jon Carr	Attorney for American Society of Home Inspectors
Lynette Johnson	Department of Insurance

APPROVAL OF MINUTES

RULES REVIEW COMMISSION

The meeting was called to order at 10:34 a.m. with Vice-Chairman Hayman presiding. Vice-Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the August 15, 2002, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

1 NCAC 40 .0104; .0105; .0106; .0206; .0207; .0208; .0301; .0302; .0303; .0304; .0305: Department of Administration – The department asked for permission to refile the section .0100 and .0200 rules as repeals and submit a new section .0300 to replace those rules. It did this based on anticipated objections from the Rules Review Commission, Rules Review Commission staff comments, and discussion with the Office of Administrative Hearings. The Commission approved the repeals and adoptions contingent on further technical changes being made.

15A NCAC 2H .0103: DENR/Environmental Management Commission – The Commission approved the rule submitted by the agency.

15A NCAC 2H .0106: DENR/Environmental Management Commission – The Commission continued its objection to the rule due to ambiguity. The exception to paragraph (f) at the end of the paragraph is still unclear. "projected environmental impacts" is not a sufficiently clear standard to move a facility or a class of facilities from its deemed status. "contravention" of water quality standards automatically removes a facility or class of facilities from the deemed status without the necessity of any other determination by the director.

15A NCAC 2H .1301; .1302; .1303; .1305: DENR/Environmental Management Commission – The Commission approved the rewritten rules submitted by the agency.

15A NCAC 2H .1304: DENR/Environmental Management Commission – The Commission approved this rule last month contingent upon receiving technical change, However the technical change was not received. The Agency later submitted technical change and the Commission again approved.

15A NCAC 2H .0501; .0502: DENR/Environmental Management Commission - The Commission approved these rules last month contingent upon receiving technical changes, However the technical changes were not received. The Agency later submitted technical changes in time for review this month and the Commission approved the rules with changes.

15A NCAC 2I .0503: DENR/Environmental Management Commission – The Commission approved the rewritten rule submitted by the agency.

15A NCAC 03K .0104: Marine Fisheries Commission – The Commission approved the rewritten rule submitted by the agency.

15A NCAC 06H .0101; .0102; .0103; .0104; .0105: DENR/Soil & Water Conservation Commission – The Commission approved the rewritten rules submitted by the agency.

21 NCAC 36 .0211; .0218: NC Nursing Board – The Commission approved the rewritten rules submitted by the agency.

23 NCAC 2cC.0305: State Board Of Community Colleges – No Action Taken.

23 NCAC 2D .0319: State Board Of Community Colleges – No Action Taken.

23 NCAC 2E .0402: State Board Of Community Colleges – No Action Taken.

23 NCAC 2E .0403: State Board Of Community Colleges – No Action Taken.

LOG OF FILINGS

Chairman Hayman presided over the review of the log and all rules were approved unanimously with the following exceptions:

11 NCAC 8 .1101; 1103; .1105; .1112; .1113; .1114: NC Home Inspector Licensure Board – The Commission approved these rules upon a motion to approve by Commissioner Funderburk with Commissioners Gray and Hayman opposed.

COMMISSION PROCEDURES AND OTHER BUSINESS

Commissioner Gray informed Commission of the efforts of a committee formed by the Administrative Law Section of the NC Bar Association to propose changes to the rule making provisions of the Administrative Procedure Act. Among the proposals are provisions allowing Rules Review Commission approval of temporary rules and allowing non-controversial rules to go into effect without legislative review. Commissioner Gray offered to make copies of the proposal available to all Commission members who wanted them.

The next meeting of the Commission is Thursday, October 17, 2002 at 10:15 a.m.

The meeting adjourned 11:52 p.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules
Log of Filings (Log #190)

RULES REVIEW COMMISSION

August 20, 2002 through September 20, 2002

DEPARTMENT OF CORRECTION

Scope	5 NCAC 02B .0109	Repeal
Definitions	5 NCAC 02B .0110	Repeal
Good Time	5 NCAC 02B .0111	Repeal
Gain Time	5 NCAC 02B .0112	Repeal
Earned Time	5 NCAC 02B .0113	Repeal
Meritorious Time	5 NCAC 02B .0114	Repeal

DHHS/DIVISION OF FACILITY SERVICES

Plan Approval	10 NCAC 03C .3102	Amend
Organization of Neonatal Services	10 NCAC 03C .4305	Amend
Ambulance and Basic Life Support (BLS)	10 NCAC 03D .0801	Repeal
Certified EMT Instructor	10 NCAC 03D .0802	Repeal
Approved Teaching Institution	10 NCAC 03D .0803	Repeal
Commission	10 NCAC 03D .0804	Repeal
Office of Emergency Medical Services	10 NCAC 03D .0805	Repeal
Critical Care Transport Program	10 NCAC 03D .0807	Repeal
Ambulance Provider License	10 NCAC 03D .0808	Repeal
Interior Dimensions	10 NCAC 03D .0901	Repeal
Inspection Certificate	10 NCAC 03D .0902	Repeal
Warning Devices	10 NCAC 03D .0903	Repeal
Vehicle Body	10 NCAC 03D .0904	Repeal
Equipment Secured	10 NCAC 03D .0906	Repeal
Seat Belts	10 NCAC 03D .0910	Repeal
Displayed Permit	10 NCAC 03D .0912	Repeal
Permit	10 NCAC 03D .0913	Repeal
Permit Required	10 NCAC 03D .0914	Repeal
Ambulance Lettering Markings Symbols and Emblems	10 NCAC 03D .0915	Repeal
General Ambulance Requirements	10 NCAC 03D .0916	Repeal
Infectious Disease	10 NCAC 03D .0925	Repeal
Medical and Related Equipment	10 NCAC 03D .1001	Repeal
Extrication and Access Equipment	10 NCAC 03D .1002	Repeal
Other Equipment	10 NCAC 03D .1003	Repeal
Weapons and Explosives Forbidden	10 NCAC 03D .1004	Repeal
Public Access to Ambulance Service	10 NCAC 03D .1101	Repeal
Dispatch	10 NCAC 03D .1102	Repeal
Equipment	10 NCAC 03D .1103	Repeal
License Required	10 NCAC 03D .1104	Repeal
Criteria for Approved Teaching Institutions	10 NCAC 03D .1201	Repeal
Criteria for Certified EMT Instructor	10 NCAC 03D .1202	Repeal
Educational Programs	10 NCAC 03D .1203	Repeal
Aeromedical Flight Crew Members	10 NCAC 03D .1204	Repeal
Medical Responder Performance	10 NCAC 03D .1205	Repeal
Emergency Medical Technician Performance	10 NCAC 03D .1206	Repeal
Certification Requirements: Medical Responder	10 NCAC 03D .1301	Repeal
Certification Requirements: Emergency Medical Tech	10 NCAC 03D .1302	Repeal
License Permit or Certification Denial Suspension	10 NCAC 03D .1401	Repeal
Procedures for Denial Suspension Amendment or	10 NCAC 03D .1402	Repeal
Application Procedures Required Forms	10 NCAC 03D .1403	Repeal
Licensing Requirements Ambulance Provider	10 NCAC 03D .1501	Repeal
Issuance of License	10 NCAC 03D .1502	Repeal
Length of Licensure	10 NCAC 03D .1503	Repeal
Definitions	10 NCAC 03D .2001	Repeal
Level I Trauma Center Criteria	10 NCAC 03D .2101	Repeal
Level II Trauma Center Criteria	10 NCAC 03D .2102	Repeal
Level II Trauma Center Criteria	10 NCAC 03D .2103	Repeal
Submission of Request for Proposal (REP)	10 NCAC 03D .2104	Repeal
Initial Designation Process	10 NCAC 03D .2105	Repeal
Renewal Designation Process	10 NCAC 03D .2106	Repeal
Denial Probation Voluntary Withdrawal or Revocation	10 NCAC 03D .2201	Repeal

RULES REVIEW COMMISSION

Procedures for Appeal of Denial Probation or Revocation	10 NCAC 03D .2202	Repeal
Misrepresentation of Designation	10 NCAC 03D .2203	Repeal
Abbreviations	10 NCAC 03D .2501	Adopt
Air Ambulance	10 NCAC 03D .2502	Adopt
Air Medical Program	10 NCAC 03D .2503	Adopt
Assistant Medical Director	10 NCAC 03D .2504	Adopt
Convalescent Ambulance	10 NCAC 03D .2505	Adopt
Educational Medical Advisor	10 NCAC 03D .2506	Adopt
EMS Educational Institution	10 NCAC 03D .2507	Adopt
EMS Instructor	10 NCAC 03D .2508	Adopt
EMS Non-transporting Vehicle	10 NCAC 03D .2509	Adopt
EMS System	10 NCAC 03D .2510	Adopt
Ground Ambulance	10 NCAC 03D .2511	Adopt
Medical Crew Members	10 NCAC 03D .2512	Adopt
Medical Director	10 NCAC 03D .2513	Adopt
Medical Oversight	10 NCAC 03D .2514	Adopt
Model EMS System	10 NCAC 03D .2515	Adopt
Office of Emergency Medical Services	10 NCAC 03D .2516	Adopt
Operational Protocols	10 NCAC 03D .2517	Adopt
Physician	10 NCAC 03D .2518	Adopt
Quality Management Committee	10 NCAC 03D .2519	Adopt
Specialty Care Transport Program	10 NCAC 03D .2520	Adopt
Specialty Care Transport Program Continuing Education	10 NCAC 03D .2521	Adopt
System Continuing Education Coordinator	10 NCAC 03D .2522	Adopt
Treatment Protocols	10 NCAC 03D .2523	Adopt
Water Ambulance	10 NCAC 03D .2524	Adopt
EMS System Requirements	10 NCAC 03D .2601	Adopt
Model EMS Systems	10 NCAC 03D .2602	Adopt
Special Situations	10 NCAC 03D .2603	Adopt
EMS Provider License Requirements	10 NCAC 03D .2604	Adopt
EMS Provider License Conditions	10 NCAC 03D .2605	Adopt
Term of EMS Provider License	10 NCAC 03D .2606	Adopt
Ground Ambulance Vehicle and Equipment Requirement	10 NCAC 03D .2607	Adopt
Convalescent Ambulance Vehicle and Equipment	10 NCAC 03D .2608	Adopt
Air Ambulance Vehicle and Equipment	10 NCAC 03D .2609	Adopt
Water Ambulance Watercraft and Equipment Require	10 NCAC 03D .2610	Adopt
Ambulance Permit Conditions	10 NCAC 03D .2611	Adopt
Term of Ambulance Permit	10 NCAC 03D .2612	Adopt
EMS Non-transporting Vehicle Requirements	10 NCAC 03D .2613	Adopt
EMS Non-transporting Vehicle Permit Conditions	10 NCAC 03D .2614	Adopt
Term on EMS Non-transporting Vehicle Permit	10 NCAC 03D .2615	Adopt
Weapons and Explosives Forbidden	10 NCAC 03D .2616	Adopt
Program Criteria	10 NCAC 03D .2701	Adopt
Air Medical Specialty Care Transport Program	10 NCAC 03D .2702	Adopt
Ground Specialty Care Transport Programs	10 NCAC 03D .2703	Adopt
Hospital Affiliated Ground Specialty Care Transportation	10 NCAC 03D .2704	Adopt
Components of Medical Oversight for EMS Systems	10 NCAC 03D .2801	Adopt
Components of Medical Oversight for Specialty Care	10 NCAC 03D .2802	Adopt
Responsibilities of the Medical Director for EMS	10 NCAC 03D .2803	Adopt
Responsibilities of the Medical Director for Specialty Care	10 NCAC 03D .2804	Adopt
Requirements for Treatment Protocols for EMS System	10 NCAC 03D .2805	Adopt
Requirements for Treatment Protocols for Specialty	10 NCAC 03D .2806	Adopt
Requirements for Emergency Medical Dispatch Priori	10 NCAC 03D .2807	Adopt
Quality Management Committee for EMS Systems	10 NCAC 03D .2808	Adopt
Quality Management Committee for Specialty Care	10 NCAC 03D .2809	Adopt
Education Programs	10 NCAC 03D .2901	Adopt
Initial Credentialing Requirements for EMS	10 NCAC 03D .2902	Adopt
Credentialing Requirements Legal Recognition Application	10 NCAC 03D .2903	Adopt
Term of Credentials for EMS Personnel	10 NCAC 03D .2904	Adopt
Renewal of Credentials for EMS Personnel	10 NCAC 03D .2905	Adopt
Scope of Practice for EMS Personnel	10 NCAC 03D .2906	Adopt

RULES REVIEW COMMISSION

Practice Setting for EMS Personnel	10 NCAC 03D .2907	Adopt
Credentialing Requirements for Level I EMS	10 NCAC 03D .2908	Adopt
Credentialing Requirements for Level II EMS	10 NCAC 03D .2909	Adopt
Credentialing of Individuals to Administer Lifesaver	10 NCAC 03D .2910	Adopt
Continuing EMS Educational Institution Requirement	10 NCAC 03D .3001	Adopt
Basic EMS Educational Institution Requirements	10 NCAC 03D .3002	Adopt
Advanced EMS Educational Institution Requirements	10 NCAC 03D .3003	Adopt
Transition for Approved Teaching Institutions	10 NCAC 03D .3004	Adopt
Denial Suspension Amendment or Revocation	10 NCAC 03D .3101	Adopt
Procedures for Denial Suspension Amendment or Rev	10 NCAC 03D .3102	Adopt
Trauma System Definitions	10 NCAC 03D .3201	Adopt
Level I Trauma Center Criteria	10 NCAC 03D .3301	Adopt
Level II Trauma Center Criteria	10 NCAC 03D .3302	Adopt
Level III Trauma Center Criteria	10 NCAC 03D .3303	Adopt
Initial Designation Process	10 NCAC 03D .3304	Adopt
Renewal Designation Process	10 NCAC 03D .3305	Adopt
Denial Focused Review Voluntary Withdrawal or Revocation	10 NCAC 03D .3401	Adopt
Procedures for Appeal of Denial Focused Review or	10 NCAC 03D .3402	Adopt
Misrepresentation of Designation	10 NCAC 03D .3403	Adopt
State Trauma System	10 NCAC 03D .3501	Adopt
Regional Trauma System Plan	10 NCAC 03D .3502	Adopt
Regional Trauma System Policy Development	10 NCAC 03D .3503	Adopt
Definitions	10 NCAC 03R .1413	Amend
Information Required of Applicant	10 NCAC 03R .1414	Amend
Required Performance Standards	10 NCAC 03R .1415	Amend
Required Support Services	10 NCAC 03R .1416	Amend
Required Staffing and Staff Training	10 NCAC 03R .1417	Amend
Definitions	10 NCAC 03R .3301	Amend
Information Required of Applicant	10 NCAC 03R .3302	Amend
Required Performance Standards	10 NCAC 03R .3303	Amend
Required Support Services/Equipment	10 NCAC 03R .3304	Repeal
Required Staffing and Staff Training	10 NCAC 03R .3305	Amend
Definitions	10 NCAC 03U .0102	Amend
Application for a License for a Child Care Center	10 NCAC 03U .0302	Amend
General Provisions Related to Licensure of Homes	10 NCAC 03U .1701	Amend
Application for a License for a Family Child Care	10 NCAC 03U .1702	Amend
Safety and Sanitation Requirement	10 NCAC 03U .1720	Amend
Requirements for Records	10 NCAC 03U .1721	Amend
Discipline Policy	10 NCAC 03U .1722	Amend
Transportation Requirements	10 NCAC 03U .1723	Amend
Scope	10 NCAC 03U .2401	Amend
Definitions	10 NCAC 03U .2402	Adopt
Special Provisions for Licensure	10 NCAC 03U .2403	Adopt
Inclusion/Exclusion Requirements	10 NCAC 03U .2404	Adopt
Admission Requirements	10 NCAC 03U .2405	Adopt
Staff/Child Ratios	10 NCAC 03U .2406	Adopt
Space Requirements	10 NCAC 03U .2407	Adopt
Staff Qualifications	10 NCAC 03U .2408	Adopt
Children's Records	10 NCAC 03U .2409	Adopt
Children's Activities	10 NCAC 03U .2410	Adopt
Nutrition Requirements	10 NCAC 03U .2411	Adopt
Criminal Record Check Requirements for Child Care	10 NCAC 03U .2702	Amend
Criminal Record Check Requirements for Current Child Day	10 NCAC 03U .2703	Repeal
Criminal Record Check Requirements for Non-License	10 NCAC 03U .2704	Amend
Compliance History Standards for a Rated License	10 NCAC 03U .2808	Amend
DHHS		
Definitions	10 NCAC 14G .0102	Amend
Staff Definitions	10 NCAC 14V .0104	Amend
Personnel Requirements	10 NCAC 14V .0202	Amend
Competencies of Qualified Professionals and Assoc	10 NCAC 14V .0203	Adopt
Competencies and Supervision of Paraprofessionals	10 NCAC 14V .0204	Adopt

RULES REVIEW COMMISSION

Scope	10 NCAC 14V .5601	Amend
Staff	10 NCAC 14V .5602	Amend
Operations	10 NCAC 14V .5603	Amend
Requirements for State/County Special Assistance	10 NCAC 14V .5604	Adopt
DHHS/DIVISION OF MEDICAL ASSISTANCE		
Exceptions to DRG Reimbursement	10 NCAC 26H .0212	Amend
Disproportionate Share Hospitals	10 NCAC 26H .0213	Amend
DHHS/SOCIAL SERVICES COMMISSION		
Definitions	10 NCAC 41I .0303	Amend
Receiving Information Initiating Prompt Investigation	10 NCAC 41I .0304	Amend
Conducting a Thorough Investigation	10 NCAC 41I .0305	Amend
When Abuse Neglect or Dependency is Found	10 NCAC 41I .0306	Amend
Review of Court Ordered Placement	10 NCAC 41I .0311	Amend
Case Records for Protective Services	10 NCAC 41I .0312	Amend
Eligibility	10 NCAC 41J .0204	Amend
Reimbursement	10 NCAC 41J .0205	Amend
When to Complete a Risk Assessment	10 NCAC 41J .0501	Amend
DENR/ENVIRONMENTAL MANAGEMENT COMMISSION		
Little Tennessee River Basin and Savannah River	15 NCAC 02B .0303	Amend
Schedule of Fees	15 NCAC 02R .0402	Amend
DENR		
Definitions	15 NCAC 18A .1001	Amend
Definitions	15 NCAC 18A .1501	Amend
Definitions	15 NCAC 18A .1601	Amend
Water Sanitation and Quality	15 NCAC 18A .2117	Amend
Definitions	15 NCAC 18A .2201	Amend
Definitions	15 NCAC 18A .2401	Amend
Definitions	15 NCAC 18A .2701	Amend
Definitions	15 NCAC 18A .3001	Amend
Definitions	15 NCAC 18A .3201	Amend
SECRETARY OF STATE		
Application for Limited Registration	18 NCAC 06 .1417	Adopt
Rescission Offers	18 NCAC 06 .1501	Amend
Application for Investment Adviser Registration	18 NCAC 06 .1702	Amend
Application/Investment Adviser	18 NCAC 06 .1703	Amend
Record-Keeping Requirements for Investment Adviser	18 NCAC 06 .1706	Amend
Investment Adviser Brochure Rule	18 NCAC 06 .1707	Amend
Termination/Withdrawal/Investment Adviser	18 NCAC 06 .1710	Amend
Transfer/Investment Adviser Representative's Regis	18 NCAC 06 .1711	Amend
Change of Name of Investment Adviser	18 NCAC 06 .1712	Repeal
Invest Adviser Merger/Consolidation/Acquisition	18 NCAC 06 .1713	Amend
Registration of Partners/Executive Officers/Directors	18 NCAC 06 .1714	Repeal
Investment Adviser Registration	18 NCAC 06 .1715	Adopt
Transition Schedule for Conversion	18 NCAC 06 .1716	Adopt
Cash Payments for Client	18 NCAC 06 .1717	Adopt
TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS		
Toll Operations	19 NCAC 02D .0532	Amend
Escort Vehicle Driver	19 NCAC 02D .0643	Adopt
Oversize-Overweight Load Escort	19 NCAC 02D .0644	Adopt
Purpose	19 NCAC 20F .0101	Adopt
Minimum Criteria	19 NCAC 02F .0102	Adopt
Exceptions to Minimum Criteria	19 NCAC 02F .0103	Adopt
STATE BOARDS/NC AUCTIONEERS COMMISSION		
Filing and Fees	21 NCAC 04B .0202	Amend
Sale Proceeds, Accounting and Escrow Accounts	21 NCAC 04B .0603	Amend
Continuing Education Course	21 NCAC 04B .0801	Amend
Application for Original Approval	21 NCAC 04B .0802	Amend
Approval of Continuing Education Instructors	21 NCAC 04B .0804	Adopt
STATE BOARDS/N C MEDICAL BOARD		
Definitions	21 NCAC 32H .0102	Repeal
Advanced Life Support Program Criteria	21 NCAC 32H .0201	Repeal

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Program Approval	21 NCAC 32H .0202	Repeal
Approval Requirements Emergency Medical Dispatcher	21 NCAC 32H .0203	Repeal
Hospital Involvement	21 NCAC 32H .0301	Repeal
Plan for Participating Hospitals	21 NCAC 32H .0302	Repeal
Sponsor Hospital	21 NCAC 32H .0303	Repeal
Educational Programs	21 NCAC 32H .0401	Repeal
Emergency Medical Technician Paramedic Performance	21 NCAC 32H .0402	Repeal
Emergency Medical Technician Intermediate Performa	21 NCAC 32H .0403	Repeal
Mobile Intensive Care Nurse Performance	21 NCAC 32H .0404	Repeal
ALS Professional Performance in the Presence of a	21 NCAC 32H .0405	Repeal
Emergency Medical Technician Defibrillation Performance	21 NCAC 32H .0407	Repeal
Emergency Medical Dispatcher Performance	21 NCAC 32H .0408	Repeal
Physician Assistant or Nurse Practitioner Performance	21 NCAC 32H .0409	Repeal
Certification Requirements EMT Paramedic	21 NCAC 32H .0501	Repeal
Certification Requirements EMT Intermediate	21 NCAC 32H .0502	Repeal
Approval Requirements Mobile Intensive Care Nurse	21 NCAC 32H .0503	Repeal
Certification Requirements EMT Defibrillation	21 NCAC 32H .0505	Repeal
Certification Requirements Emergency Medical Dispatch	21 NCAC 32H .0506	Repeal
Approval Requirement Physician Assistance and Nurse	21 NCAC 32H .0507	Repeal
Aeromedical Medical Crew Members	21 NCAC 32H .0508	Repeal
Grounds for Denial Suspension or Revocation	21 NCAC 32H .0601	Repeal
Procedures for Denial Suspension or Revocation	21 NCAC 32H .0602	Repeal
Conditions	21 NCAC 32H .0701	Repeal
Incorporation by Reference	21 NCAC 32H .0801	Repeal
Source of Forms and Documents	21 NCAC 32H .0802	Repeal
Conditions	21 NCAC 32H .0901	Repeal
Study Project Approval	21 NCAC 32H .0902	Repeal
Study Recommendations	21 NCAC 32H .0903	Repeal
Medical Control Procedures	21 NCAC 32H .1001	Repeal
Medical Control From Hospital Outside Service Area	21 NCAC 32H .1002	Repeal
Medical Control for Transports Between Facilities	21 NCAC 32H .1003	Repeal
Air Ambulance Program Criteria	21 NCAC 32H .1004	Repeal
Medical Control Procedures	21 NCAC 32H .1101	Repeal
Requirements for Approval	21 NCAC 32I .0101	Repeal
Training Programs	21 NCAC 32I .0102	Repeal
Approval	21 NCAC 32I .0103	Repeal
Forms	21 NCAC 32I .0104	Repeal
STATE BOARDS/N C BOARD OF PHYSICAL THERAPY EXAMINERS		
Permitted Practice	21 NCAC 48C .0101	Amend

AGENDA
RULES REVIEW COMMISSION
October 17, 2002

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. DENR/Environmental Management Commission – 15A NCAC 2H .0106 Objection 08/15/02 & 09/19/02 (Bryan)
 - B. State Board of Community Colleges – 23 NCAC 2C .0305 Objection 08/15/02 (Bryan)
 - C. State Board of Community Colleges – 23 NCAC 2D .0319 Objection 08/15/02 (Bryan)
 - D. State Board of Community Colleges – 23 NCAC 2E .0402; .0403 Objection 08/15/02 (Bryan)
- IV. Commission Business
- V. Next meeting: Tentatively Scheduled for November 21, 2002

RULES REVIEW COMMISSION

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>				
NC ABC Commission v. Acme Retail, Inc. T/A Handy Pantry	01 ABC 1325	Chess	05/21/02	
Randall Ralph Casey T/A Maynards Entertainment v. NC ABC Comm.	01 ABC 1396	Wade	06/26/02	
NC ABC Commission v. Headlights, Inc. T/A Headlights	01 ABC 1473	Wade	06/28/02	
NC ABC Commission v. WDB, Inc. T/A Twin Peeks	02 ABC 0517	Conner	07/15/02	
<u>APPRAISAL BOARD</u>				
NC Appraisal Board v. Thomas G. Hildebrandt, Jr.	02 APB 0130	Chess	08/20/02	17:06 NCR 563
<u>UTILITIES COMMISSION</u>				
Tracy Woody v. State of NC Utilities Commission	02 COM 1004	Morrison	08/26/02	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Hattie Holt v. NC Crime Victims Compensation Commission	00 CPS 1067	Conner	05/30/02	
Linda Hawley v. NC Crime Victims Compensation Commission	02 CPS 0121	Conner	06/14/02	
Lial McKoy v. NC Crime Victims Compensation Commission	02 CPS 0394	Chess	07/26/02	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Emilia E Edgar v. DHHS, Div. of Facility Services	01DHR 1356	Hunter	09/09/02	
Evelia Williams v. NC DHHS	01 DHR 1750	Conner	07/15/02	
Kathy Mumford v. DHHS, Div. of Facility Services	01 DHR 2253	Chess	07/26/02	
James Bell v. NC DHHS, Div. of Facility Services	01 DHR 2340	Elkins	06/27/02	
Adam Syare v. NCDHHS, Div. of MH/DD/SAS, Southeastern Regional Mental Health Center	01 DHR 2352	Conner	06/21/02	
Effie M. Williams v. NC Department of Health and Human Services	02 DHR 0001	Gray	08/08/02	
Kathy Denise Urban v. NC DHHS, Div. of Facility Services	02 DHR 0055	Hunter	09/10/02	
Betty Carr v. DHHS, Div. of Facility Services	02 DHR 0070	Mann	09/10/02	
Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center	02 DHR 0083	Chess	06/07/02	
Albamarle Home Care & Ginger Parrish, PhD v. NC DHHS, Div. of Medical Assistance	02 DHR 0142	Conner	07/22/02	
Birgit James v. NC Dept. of Health & Human Services	02 DHR 0255	Connor	07/01/02	
Geraldine Rountree Cooper v. DHHS, Div. of Facility Services	02 DHR 0267	Elkins	07/15/02	
Unieca Richardson v. NC DHHS, Division of Facility Services	02 DHR 0286	Chess	06/17/02	
Greg McKinney & Virgie Elaine McKinney v. DHHS	02 DHR 0301	Mann	08/01/02	
Jerry Dean Webber v. NC DHHS, Broughton Hospital	02 DHR 0306	Conner	08/28/02	
Donna R Anderson v. NC DHHS, Broughton Hospital	02 DHR 0340	Gray	08/01/02	
Notisha Utley v. NC DHHS, Division of Facility Services	02 DHR 0379	Conner	07/26/02	
Isa Spaine v. NC Department of Health & Human Services	02 DHR 0403	Chess	06/24/02	
Mooreville Hospital Management Associates, Inc. d/b/a Lake Norman Regional Medical Center v. DHHS, Div. of Facility Services, Cert. of Need Section	02 DHR 0541	Chess	08/07/02	
Eli Maxwell v. NC DHHS, Div. of Facility Services, Health Care Registry	02 DHR 0556	Lassiter	08/08/02	
Robin Lee Arnold v. DHHS, Div. of Facility Services	02 DHR 0558	Conner	08/15/02	
Evelyn Denise Humphrey v. NC DHHS, Div. of Facility Services	02 DHR 0624	Morrison	08/08/02	

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James Parks v. NC Dept. of Health and Human Services	02 DHR 0680	Morrison	08/07/02
Lisa Murphy v. DHHS< Division of Facility Services	02 DHR 0694	Mann	07/26/02
Mary's Family Care #2, Beulah Spivey v. OAH	02 DHR 0735	Morrison	08/27/02
Hazel Chea v. Department of Health & Human Services	02 DHR 0795	Mann	06/11/02
Carmelita T. England v. Ms. Lisa Moor, Chief Advocate, Black Mtn Ctr.	02 DHR 1033	Chess	08/15/02
Gloria Dean Gaston v. Office of Administrative Hearings	02 DHR 1081	Morrison	07/26/02
Maria Goretti Obialor v. DHHS, Div. of Facility Services	02 DHR 1187	Mann	09/11/02
Lashanda Skinner v. DHHS	02 DHR 1190	Lassiter	09/09/02

ADMINISTRATION

San Antoni Equipment Co. v. NC Department of Administration	02 DOA 0430	Chess	06/26/02
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JUSTICE

Sara E Parker v. Consumer Protection [sic] & Rosemary D. Revis	02 DOJ 1038	Gray	08/08/02
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Alarm Systems Licensing Board

Seth Paul Barham v. Alarm System Licensing Board	02 DOJ 0552	Gray	06/12/02
Christopher Michael McVicker v. Alarm Systems Licensing Board	02 DOJ 0731	Gray	06/07/02
Jeffery Lee Garrett v. Alarm Systems Licensing Board	02 DOJ 0908	Morrison	08/06/02

Private Protective Services Board

Anthony Davon Webster v. Private Protective Services Board	01 DOJ 1857	Gray	06/07/02
Benita Lee Luckey v. Private Protective Services Board	02 DOJ 0530	Elkins	07/12/02
Orlando Carmichael Wall v. Private Protective Services Board	02 DOJ 0729	Gray	06/18/02
Randall G. Bryson v. Private Protective Services Board	02 DOJ 0730	Gray	06/07/02
Barry Snadon, Sr. v. Private Protective Services Board	02 DOJ 0907	Elkins	07/12/02
Gregory Darnell Martin v. Private Protective Services Board	02 DOJ 0916	Morrison	08/06/02
Marvin Ray Johnson v. Private Protective Services Board	02 DOJ 0945	Morrison	08/06/02
Quincey Adam Morning v. Private Protective Services Board	02 DOJ 1084	Morrison	08/06/02
Philip Garland Cameron v. Private Protective Services Board	02 DOJ 1258	Morrison	09/06/02
Desantis Lamarr Everett v. Private Protective Services Board	02 DOJ 1259	Morrison	09/06/02

Sheriffs' Education & Training Standards Commission

Kevin Warren Jackson v. Sheriffs' Education & Training Stds. Comm.	01 DOJ 1587	Chess	07/16/02
Jonathan P. Steppe v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0004	Mann	06/28/02
Jeffrey Beckwith v. Criminal Justice & Training Stds. Comm.	02 DOJ 0057	Gray	07/15/02
Thomas B. Jernigan v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0089	Conner	06/25/02
Katrina L. Moore v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0304	Reilly	07/17/02
Wallace A. Hough, Jr. v. Criminal Justice & Training Stds. Comm.	02 DOJ 0474	Morrison	08/08/02
Keith E. Kilby, Sr. v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0609	Lassiter	08/07/02
John R. Tucker v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0632	Morrison	06/26/02
Eddie Kurt Newkirk v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0870	Gray	08/28/02
Joseph Ray Johnson v. Criminal Justice & Training Stds. Comm.	02 DOJ 1420	Wade	06/27/02
Frances Sherene Hayes v. Criminal Justice & Training Stds. Comm.	02 DOJ 0171	Mann	06/04/02

ENVIRONMENT AND NATURAL RESOURCES

Town of Belville v. NC DENR, Div. of Coastal Management	96 EHR 0598	Gray	07/29/02
Stoneville Furniture Co., Inc. v. NC DENR, Div. of Air Quality	01 EHR 0976	Chess	07/16/02
Town of Ocean Isle Beach v. NC DENR	01 EHR 1885	Chess	07/31/02
Helen Smith v. NC DENR	02 EHR 0152	Morrison	08/09/02
Helen R. Bass v. County of Durham	02 EHR 0191	Gray	06/26/02
Bipin B Patel Rajan, Inc. v. NC DENR, Div. of Waste Management	02 EHR 0244	Gray	06/05/02
J.B. Hooper v. NC DENR	02 EHR 0285	Conner	08/21/02
J.L. Hope & wife, Ruth B. Hope v. NC DENR	02 EHR 0395	Mann	06/10/02
Linda L. Hamrick v. NC DENR	02 EHR 0600	Conner	07/23/02
Mitchell Oil Company Larry Furr v. DENR	02 EHR 0676	Lassiter	08/07/02
County of Hertford Producer's Gin, Inc. v. NC DENR, Div. of Air Quality	02 EHR 0690	Chess	06/17/02
Michael John Barri v. New Hanover Co. Health Dept./Env. Health	02 EHR 0742	Conner	09/03/02
Olivia Freeman POA for Bobby C. Freeman v. Trng. Stds. Comm.	02 EHR 0777	Wade	07/11/02

ENGINEERS AND LAND SURVEYORS

NC Bd. of Examiners for Engineers & Surveyors v. C Phil Wagoner	01 ELS 0078	Lewis	06/05/02
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OFFICE OF STATE PERSONNEL

Robin Heavner Franklin v. Lincoln Co. Dept. of Social Services	98 OSP 1239	Conner	08/28/02
Laura C. Seamons v. NC DHS/Murdoch Center	00 OSP 0522	Wade	06/28/02
James Edward Robinson v. Off. of Juvenile Justice, 7 th Jud. Dist.	00 OSP 0722	Wade	06/28/02
Andre Foster v. Winston-Salem State University	00 OSP 1216 ¹	Mann	06/03/02
Berry Eugene Porter v. NC Department of Transportation	01 OSP 0019	Gray	07/03/02
Linda R. Walker v. Craven County Health Department	01 OSP 0309	Gray	07/12/02
J Louise Roseborough v. Wm F. Scarlett, Dir. of Cumberland County Department of Social Services	01 OSP 0734	Morgan	06/06/02
Dennis Covington v. NC Ag. & Tech. State University	01 OSP 1045	Wade	06/28/02
Reginald Ross v. NC Department of Correction	01 OSP 1122/23	Wade	06/28/02
Andre Foster v. Winston-Salem State University	01 OSP 1388 ¹	Mann	06/03/02
Andrew W. Gholson v. Lake Wheeler Rd. Field Lab, NCSU Unit #2	01 OSP 1405	Wade	06/28/02
Demetrius J. Trahan v. EEO/Title VII, Dir. Cheryl C. Fellers, DOC	01 OSP 1559	Gray	08/13/02
Wade Elms v. NC Department of Correction	01 OSP 1594	Gray	06/27/02

¹ Combined Cases

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Wayne G. Whisemant v. Foothills Area Authority	01 OSP 1612	Elkins	05/30/02	17:01 NCR	103
Linwood Dunn v. NC Emergency Management	01 OSP 1691	Lassiter	08/21/02		
Gladys Faye Walden v. NC Department of Correction	01 OSP 1741	Mann	07/12/02		
Joy Reep Shuford v. NC Department of Correction	01 OSP 2179	Overby	06/25/02		
Joseph Kevin McKenzie v. NC DOC, Lavee Hamer (Gen. Counsel to the Section)	01 OSP 2241	Mann	06/05/02		
Bryan Aaaron Yonish v. UNC at Greensboro	01 OSP 2274	Conner	06/25/02		
Theresa Truner v. Albemarle Mental Health Center	01 OSP 2331	Gray	07/11/02		
Mark Wayne Faircloth v. NC Forest Service	01 OSP 2374	Conner	06/20/02		
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	01 OSP 2385 ²	Elkins	08/07/02		
Lashaundon Smith v. Neuse Correctional Institution	02 OSP 0064	Elkins	07/03/02	17:03 NCR	329
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	01 OSP 0110 ²	Elkins	08/07/02		
Susan Luke aka Susan Luke Young v. Gaston-Lincoln-Cleveland Area Mental Health "Pathways"	02 OSP 0140	Conner	06/06/02		
Mark P. Gibbons v. NC Department of Transportation	02 OSP 0147	Conner	06/14/02		
Jana S. Rayne v. Onslow Co. Behavioral Health Care	02 OSP 0184	Morrison	08/01/02		
Cathy L. White v. NC Department of Corrections	02 OSP 0246	Elkins	05/31/02		
Doris J. Berry v. NC Department of Transportation	02 OSP 0247	Elkins	06/17/02		
William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm	02 OSP 0270	Elkins	06/25/02		
Darrell Glenn Fender v. Avery/Mitchell Correctional Institution	02 OSP 0290	Mann	06/14/02		
Alber L. Scott v. UNC General Administration	02 OSP 0336	Elkins	06/10/02		
Michael Forreect Peeler v. NC Department of Transportation	02 OSP 0478	Conner	07/01/02		
Shirley J. Davis v. NC Department of Correction	02 OSP 0486	Elkins	07/11/02		
Alber L. Scott v. UNC General Administration	02 OSP 0498	Elkins	06/10/02		
Harold Phillips v. Durham Co. Dept. of Social Services	02 OSP 0503	Chess	07/30/02		
Michelle G. Minstrell v. NC State University	02 OSP 0568	Chess	06/26/02		
Janet Watson v. Nash Co. DSS, Carl Daughtry, Director	02 OSP 0702	Chess	08/13/02		
Patricia Anthony v. NC Dept. of Correction (Pamlico CI)	02 OSP 0797	Lassiter	08/07/02		
Jerry J Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	08/09/02		
Jerry J. Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	09/05/02		
Walter Anthony Martin, Jr. v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1002	Morrison	07/30/02		
JoAnn A Sexton v. City of Wilson	02 OSP 1041	Morrison	07/25/02		
Alex Craig Fish v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1060	Morrison	08/09/02		
Carolyn Pickett v. Nash-Rocky Mt. School Systems, Nash-Rocky Mt. Board of Education	02 OSP 1136	Morrison	07/29/02		
James J. Lewis v. Department of Correction	02 OSP 1158	Mann	08/20/02		
<u>SUBSTANCE ABUSE PROFESSIONAL BOARD</u>					
NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden	00 SAP 1573	Chess	05/10/02		
<u>UNIVERSITY OF NORTH CAROLINA</u>					
Patsy R. Hill v. UNC Hospitals	02 UNC 0458	Conner	08/21/02	17:06 NCR	571