

# NORTH CAROLINA



## REGISTER

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<http://oahnt.oah.state.nc.us/intranet/register/CI.pdf>

# NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

## TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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

**NORTH CAROLINA REGISTER**  
Publication Schedule for January 2002 – December 2002

Filing Deadlines			Notice of Rule-Making Proceedings	Notice of Text							Temporary Rule
volume & issue number	issue date	last day for filing	earliest register issue for publication of text	earliest date for public hearing	non-substantial economic impact			substantial economic impact			270 <sup>th</sup> day from issue date
					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
16:13	01/02/02	12/06/01	03/15/02	01/17/02	02/01/02	02/20/02	05/28/02	03/04/02	03/20/02	05/28/02	09/29/02
16:14	01/15/02	12/19/01	04/01/02	01/30/02	02/14/02	02/20/02	05/28/02	03/18/02	03/20/02	05/28/02	10/12/02
16:15	02/01/02	01/10/02	04/15/02	02/16/02	03/04/02	03/20/02	05/28/02	04/02/02	04/22/02	01/29/03	10/29/02
16:16	02/15/02	01/25/02	05/01/02	03/02/02	03/18/02	03/20/02	05/28/02	04/16/02	04/22/02	01/29/03	11/12/02
16:17	03/01/02	02/08/02	05/01/02	03/16/02	04/01/02	04/22/02	01/29/03	04/30/02	05/20/02	01/29/03	11/26/02
16:18	03/15/02	02/22/02	05/15/02	03/30/02	04/15/02	04/22/02	01/29/03	05/14/02	05/20/02	01/29/03	12/10/02
16:19	04/01/02	03/08/02	06/03/02	04/16/02	05/01/02	05/20/02	01/29/03	05/31/02	06/20/02	01/29/03	12/27/02
16:20	04/15/02	03/22/02	06/17/02	04/30/02	05/15/02	05/20/02	01/29/03	06/14/02	06/20/02	01/29/03	01/10/03
16:21	05/01/02	04/10/02	07/01/02	05/16/02	05/31/02	06/20/02	01/29/03	07/01/02	07/22/02	01/29/03	01/26/03
16:22	05/15/02	04/24/02	07/15/02	05/30/02	06/14/02	06/20/02	01/29/03	07/15/02	07/22/02	01/29/03	02/09/03
16:23	06/03/02	05/10/02	08/15/02	06/18/02	07/03/02	07/22/02	01/29/03	08/02/02	08/20/02	01/29/03	02/28/03
16:24	06/17/02	05/24/02	09/03/02	07/02/02	07/17/02	07/22/02	01/29/03	08/16/02	08/20/02	01/29/03	03/14/03
17:01	07/01/02	06/10/02	09/03/02	07/16/02	07/31/02	08/20/02	01/29/03	08/30/02	09/20/02	01/29/03	03/28/03
17:02	07/15/02	06/21/02	09/16/02	07/30/02	08/14/02	08/20/02	01/29/03	09/13/02	09/20/02	01/29/03	04/11/03
17:03	08/01/02	07/11/02	10/01/02	08/16/02	09/03/02	09/20/02	01/29/03	09/30/02	10/21/02	01/29/03	04/28/03
17:04	08/15/02	07/25/02	10/15/02	08/30/02	09/16/02	09/20/02	01/29/03	10/14/02	10/21/02	01/29/03	05/12/03
17:05	09/03/02	08/12/02	11/15/02	09/18/02	10/03/02	10/21/02	01/29/03	11/04/02	11/20/02	01/29/03	05/31/03
17:06	09/16/02	08/30/02	11/15/02	10/01/02	10/16/02	10/21/02	01/29/03	11/15/02	11/20/02	01/29/03	06/13/03
17:07	10/01/02	09/10/02	12/02/02	10/16/02	10/31/02	11/20/02	01/29/03	12/02/02	12/20/02	05/00/04	06/28/03
17:08	10/15/02	09/24/02	12/16/02	10/30/02	11/14/02	11/20/02	01/29/03	12/16/02	12/20/02	05/00/04	07/12/03
17:09	11/01/02	10/11/02	01/02/03	11/16/02	12/02/02	12/20/02	05/00/04	12/31/02	01/21/03	05/00/04	07/29/03
17:10	11/15/02	10/25/02	01/15/03	11/30/02	12/16/02	12/20/02	05/00/04	01/14/03	01/21/03	05/00/04	08/12/03
17:11	12/02/02	11/06/02	02/03/03	12/17/02	01/02/03	01/21/03	05/00/04	01/31/03	02/20/03	05/00/04	08/29/03
17:12	12/16/02	11/21/02	02/17/03	12/31/02	01/15/03	01/21/03	05/00/04	02/14/03	02/20/03	05/00/04	09/12/03

## EXPLANATION OF THE PUBLICATION SCHEDULE

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

### GENERAL

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

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

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

### FILING DEADLINES

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

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

### NOTICE OF RULE-MAKING PROCEEDINGS

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

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

### NOTICE OF TEXT

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

#### **END OF REQUIRED COMMENT PERIOD**

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

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

#### **DEADLINE TO SUBMIT TO THE RULES**

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

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

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

<p><i>This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.</i></p>
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**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY**

**W P East Acquisitions, LLC**

Pursuant to G.S. 130A-310.34, W P East Acquisitions, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Durham, Durham County, North Carolina. The Property consists of approximately six (6) acres and is located at 2200 West Main Street. Environmental contamination exists on the Property in groundwater. Based on representations by W P East Acquisitions, LLC, DENR has determined that Prospective Developer did not cause or contribute to the contamination at the Property. W P East Acquisitions, LLC has committed itself to high-density residential use of the Property. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and W P East Acquisitions, LLC, which in turn includes (a) a legal description of the Property, (b) a map showing the location of the Property, (c) a description of the contaminants involved and their concentrations in the media of the Property, (d) the above-stated description of the intended future use of the Property, and (e) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Durham County Library, 300 North Roxboro Street, Durham, NC 27702 by contacting Lynn Richardson at that address or at (919) 560-0100; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the Brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

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

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

**TITLE 02 – DEPARTMENT OF AGRICULTURE AND  
CONSUMER SERVICES**

**CHAPTER 52 – VETERINARY DIVISION**

**Notice of Rule-making Proceedings** is hereby given by North Carolina Board of Agriculture 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:** 02 NCAC 52B .0204 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 106-307.5

**Statement of the Subject Matter:** This Rule sets forth requirements to prevent the importation into North Carolina of cattle that are infected with or exposed to brucellosis.

**Reason for Proposed Action:** Over the past decade, there has been a significant decrease in brucellosis cases throughout the country. Proposed changes would delete the requirement for herd certification numbers on the health certificate because most herds from brucellosis-free states are no longer certified; and delete the requirement for negative brucellosis test within 30 days prior to entry for cattle from brucellosis-free states.

**Comment Procedures:** Comments from the public should be directed to David McLeod, Sec., NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611, phone (919) 733-7125, fax (919) 716-0105, email [david.mcleod@ncmail.net](mailto:david.mcleod@ncmail.net).

**TITLE 12 – DEPARTMENT OF JUSTICE**

**CHAPTER 11 - N.C. ALARM SYSTEMS LICENSING  
BOARD**

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

**Citation to Existing Rule Affected by this Rule-making:** 12 NCAC 11 .0203, .0302, .0500 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 74D-2; 74D-5; 74D-7

**Statement of the Subject Matter:**

**12 NCAC 11 .0203, .0302** – These Rules specify the amount of fees that are charged for each individual license and permit.

**12 NCAC 11 .0500** - This Rule sets forth the continuing education requirements for those engaged in the alarm systems industry.

**Reason for Proposed Action:**

**12 NCAC 11 .0203, .0302** – The Board is fee funded pursuant to State law and does not rely on funds allocated by the General Assembly. The Board has determined that it is necessary to raise the fees in order to increase revenues that will allow the Board to fulfill its legislative directive to regulate the alarms systems business.

**12 NCAC 11 .0500** - The Board has determined that numerous amendments need to be made to the continuing education rules.

**Comment Procedures:** Comments from the public shall be directed to W. Wayne Woodard, 1631 Midtown Place, Raleigh, NC 27609, phone (919) 875-3611.

**TITLE 13 – DEPARTMENT OF LABOR**

**CHAPTER 12 – WAGE AND HOUR**

**Notice of Rule-making Proceedings** is hereby given by North Carolina Department of Labor Wage & Hour Division in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

**Citation to Existing Rule Affected by this Rule-making:** 13 NCAC 12 .0408 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 95-25.5; 95-25.19

**Statement of the Subject Matter:** Amends definitions relative to ABC restrictions on youth employment.

**Reason for Proposed Action:** On December 5, 2001, the North Carolina General Assembly ratified House Bill 948 amending G.S. 95-25.5 to allow North Carolina youths to be employed by establishments holding ABC permits provided certain conditions are met. Governor Easley signed House Bill 948 on January 4, 2002 (S.L. 2001-515). The Department of Labor proposes to amend this Rule to reflect this change in governing law.

**Comment Procedures:** Comments from the public shall be directed to Barbara A. Jackson, 4 West Edenton St., Raleigh, NC

27601, phone (919) 733-0368, fax (919) 733-4235, email  
bjackson@mail.dol.state.nc.us.

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

CHAPTER 02 - COMMUNITY COLLEGES

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 01 – NORTH CAROLINA ACUPUNCTURE  
LICENSING BOARD

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

**Citation to Existing Rule Affected by this Rule-making:** 21 NCAC 01 .0301 - Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 90-454

**Statement of the Subject Matter:** To better clarify the standards for continuing education requirements for licensees.

**Reason for Proposed Action:** To further clarify one component of the standards for continuing education, and to make a simple address change.

**Comment Procedures:** All written comments must be returned to Diana Mills, NC Acupuncture Licensing Board, 605 Poole Dr., Garner, NC 27529.

**Notice of Rule-making Proceedings** is hereby given by State Board of Community Colleges 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:** 23 NCAC 02C .0107; 02D .0323-324; 02E .0204, .0604. Other rules may be proposed in the course of the rule-making process.

**Authority for the Rule-making:** G.S. 115D-5

**Statement of the Subject Matter:** To regulate the conditions under which a college may offer courses or programs in the assigned service area of another college. To establish criteria for the Associate in Engineering Degree Program.

**Reason for Proposed Action:**

23 NCAC 02C .0107; 02D .0323-.0324; 02E 0604 - To standardize the criteria used by colleges to offer courses or programs in the assigned service area of another college.

23 NCAC 02E .0204 – To set forth criteria for the Associate in Engineering Degree program.

**Comment Procedures:** Written comments should be sent to Clay T. Hines, NC Community Colleges, 5004 Mail Service Center, Raleigh, NC 27699-5004. Phone (919) 733-7051, fax (919) 733-0680. Email hinesc@ncccs.cc.nc.us.

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

## TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to amend the rules cited as 02 NCAC 09B .0116; 52C .0701 and repeal the rules cited as 02 NCAC 52A .0108-.0109. Notice of Rule-making Proceedings was published in the Register on August 15, 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): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than October 30, 2002, to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.*

### Reason for Proposed Action:

**02 NCAC 09B .0116** – *The Food, Drug and Cosmetics Act prohibits the sale of adulterated foods, which includes fruit and vegetable juices. The adoption of 21 C.F.R., Part 120, would establish standards for the safe processing of fruit and vegetable juices. Failure of the processor to follow these standards would render the juice products adulterated as defined in the Act.*

**02 NCAC 52A .0108-.0109** – *The sanitation standards and inspection guidelines set forth in these Rules have been superceded by Federal standards adopted by reference at 02 NCAC 52D .0101.*

**02 NCAC 52C .0701** – *Chronic Wasting Disease affects both wild and domesticated cervidae herds. There is currently no means of determining the CWD status of cervidae herds. The proposed rule change would provide for examination of cervidae by the State Veterinarian to determine and certify CWD status.*

**Comment Procedures:** *Comments from the public shall be directed to David S. McLeod, Sec., NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611, phone (919) 733-7125, (919) 716-0105, email david.mcleod@ncmail.net. Comments will be received through November 14, 2002.*

### Fiscal Impact

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

## CHAPTER 09 - FOOD AND DRUG PROTECTION DIVISION

### SUBCHAPTER 09B - RULES AND STANDARDS ADOPTED BY REFERENCE

### 02 NCAC 09B .0116 ADOPTIONS BY REFERENCE

(a) The Board incorporates by reference, including subsequent amendments and editions, "Official Methods of Analysis of AOAC" published by the Association of Official Analytical Chemists. Copies of this document may be obtained from the Association of Official Analytical Chemists International, Department 0742, 1970 Chain Bridge Road, McLean, VA 22109-0742, at a cost of three hundred fifty-nine dollars (\$359.00).

(b) The Board incorporates by reference, including subsequent amendments and editions, the "U.S. Pharmacopeia National Formulary USP XXI-NFXVI" and supplements published by the U.S. Pharmacopeial Convention, Inc. Copies of this document may be obtained from The United States Pharmacopeial Convention, Inc., Attention: Customer Service, 12601 Twinbrook Parkway, Rockville, MD 20852, at a cost of four hundred fifty dollars (\$450.00).

(c) The Board incorporates by reference, including subsequent amendments and editions, the "ASTM Standards on Engine Coolants", published by the American Society for Testing Materials. Copies of this document may be obtained from the American Society for Testing Materials, 1916 Race Street, Philadelphia, PA 19103, at a cost of seventy-two dollars (\$72.00).

(d) The Board incorporates by reference, including subsequent amendments and editions, the following publications:

- (1) "EPA Manual of Chemical Methods for Pesticides and Devices", and supplements published by AOAC. Copies of this document may be obtained from the Association of Official Analytical Chemists International, Department 0742, 1970 Chain Bridge Road, McLean, VA 22109-0742, at a cost of one hundred forty-nine dollars (\$149.00);
- (2) "Pesticide Analytical Manual," Volumes I and II, published by the United States Department of Health, Education and Welfare, Food and Drug Administration. Copies of this document may be obtained from the National Technical Information Service, Attention: Orders Department, 5285 Port Royal Road, Springfield, VA 22161, at a cost of sixty-one dollars (\$61.00) for Volume I and two hundred twenty-four dollars (\$224.00) for Volume II;
- (3) "FDA Compliance Policy Guides," published by the United States Department of Health, Education and Welfare, Food and Drug Administration. Copies of this document may be obtained from the National Technical Information Service, Attention: Orders Department, 5285 Port Royal Road, Springfield, VA 22161, at a cost of one hundred seventy-five dollars (\$175.00);
- (4) "Bergey's Manual of Determinative



- Bacteriology," R. E. Buchanan and N. E. Gibbons, Editors, Williams & Wilkins Company, Baltimore. Copies of this document may be obtained from the Williams & Wilkins Company, Attention: Book Order Department, 428 East Preston Street, Baltimore, MD 21202, at a cost of sixty-five dollars (\$65.00);
- (5) "Microbiology Laboratory Guidebook," published by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Meat and Poultry Inspection Program, Washington, D.C. Copies of this document may be obtained from the USDA-Food Safety and Inspection Service, ALA Room 80, South Building, 14th and Independence Avenues, Southwest, Washington, DC 20250, at no charge;
- (6) "FDA Bacteriological Analytical Manual," published by the Association of Official Analytical Chemists. Copies of this document may be obtained from the Association of Official Analytical Chemists International, Department 0742, 1970 Chain Bridge Road, McLean, VA 22109-0742, at a cost of one hundred twenty-three dollars (\$123.00);
- (7) "Standard Methods for the Examination of Dairy Products," E. H. Marth, Editor, published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association, 1015 Fifteenth Street, Northwest, Washington, DC 20005, at a cost of fifty-five dollars (\$55.00);
- (8) "Compendium of Methods for the Microbiological Examination of Foods," M. L. Speck, Editor, published by the American Public Health Association. Copies of this document may be obtained from the American Public Health Association, 1015 Fifteenth Street, Northwest, Washington, DC 20005, at a cost of ninety dollars (\$90.00);
- (9) "Bergey's Manual of Systematic Bacteriology," Vol. I, Kreg and Holt, Editors, William E. Wilkins Company, Baltimore. Copies of this document may be obtained from the Williams & Wilkins Company, Attention: Book Order Department, 428 East Preston Street, Baltimore, MD 21202, at a cost of one hundred fifteen dollars (\$115.00);
- (10) "Manual of Clinical Microbiology", E. H. Lennette, Balows, et al., Editors, published by the American Society for Microbiology. Copies of this document may be obtained from the American Society for Microbiology, P.O. Box 605, Herndon, VA 22070, at a cost of ninety-eight dollars (\$98.00);
- (11) "Standard Methods for the Examination of Water and Waste Water", published by American Public Health Association, American Water Works Association, and Water Pollution Control Federation. Copies of

this document may be obtained from the American Public Health Association, 1015 Fifteenth Street, Northwest, Washington, DC 20005, at a cost of one hundred sixty dollars (\$160.00).

(e) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter A (General), as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	Part	Subject of Part
(1)	1.1	General
(2)	1.3	Labeling - Definitions
(3)	1.20	Presence of Mandatory Label Information
(4)	1.21	Failure to Reveal Material Facts
(5)	1.24	Exemptions from Required Label Statements
(6)	1.31	Package Size Savings
(7)	1.35	"Cents-off," or Other Savings Representations
(8)	2.25	Grain Seed Treated with Poisonous Substances; Color Identification to Prevent Adulteration of Human and Animal Food
(9)	2.35	Use of Secondhand Containers for the Shipment or Storage of Food and Animal Feed
(10)	7.12	Guaranty
(11)	7.13	Suggested Forms of Guaranty
(12)	70	Color Additives
(13)	70.3	Definitions
(14)	70.5	General Restrictions on Use
(15)	70.10	Color Additives in Standardized Foods, New Drugs, and Antibiotics
(16)	70.11	Related Substances
(17)	70.20	Packaging Requirements for Straight Colors (Other Than Hair Dyes)
(18)	70.25	Labeling Requirements for Color Additives (Other Than Hair Dyes)
(19)	73	Listing of Color Additives Exempt from Certification
(20)	74	Listing of Color Additives Subject to Certification
(21)	81	General Specifications and General Restrictions for Provisioned Color Additives for Use in Foods, Drugs and Cosmetics
(22)	82	Listing of Certified Provisionally Listed Colors and Specifications

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixteen dollars (\$16.00).

(f) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter B (Food for Human Consumption), as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug and Cosmetic Act:

Part	Subject of Part
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# PROPOSED RULES

- (1) 100 General
- (2) 101 Food Labeling  
(Except 101.11 and 101.103)
- (3) 102 Common or Usual Name for  
Nonstandardized Foods
- (4) 103 Quality Standards for Foods with No  
Identity Standards
- (5) 104 Nutritional Quality Guidelines for  
Foods
- (6) 105 Foods for Special Dietary Use
- (7) 106 Infant Formula Quality Control  
Procedures
- (8) 107 Infant Formula
- (9) 108 Emergency Permit Control
- (10) 109 Unavoidable Contaminants in Food  
for Human Consumption and Food-Packaging  
Material
- (11) 110 Current Good Manufacturing Practice  
in Manufacturing, Processing, Packing, or  
Holding Human Food
- (12) 113 Thermally Processed Low-Acid  
Foods Packaged in Hermetically Sealed  
Containers
- (13) 114 Acidified Foods
- (14) 120 Hazard Analysis and Critical Control  
Point (HACCP) Systems
- (14)(15) 123 Frozen Raw Breaded Shrimp
- (15)(16) 129 Processing and Bottling of Bottled  
Drinking Water (Except as amended by 2 02  
NCAC 9C 09C.0700 - Bottled Water)
- (16)(17) 130 Food Standards: General
- (17)(18) 131 Milk and Cream
- (18)(19) 133 Cheeses and Related Cheese Products
- (19)(20) 135 Frozen Desserts
- (20)(21) 136 Bakery Products
- (21)(22) 137 Cereal Flours and Related Products
- (22)(23) 139 Macaroni and Noodle Products
- (23)(24) 145 Canned Fruits
- (24)(25) 146 Canned Fruit Juices
- (25)(26) 150 Fruit Butters, Jellies, Preserves, and  
Related Products
- (26)(27) 152 Fruit Pies
- (27)(28) 155 Canned Vegetables
- (28)(29) 156 Vegetable Juices
- (29)(30) 158 Frozen Vegetables
- (30)(31) 160 Eggs and Egg Products
- (31)(32) 161 Fish and Shellfish (Except Section  
161.30 and 161.130 through 161.145)
- (32)(33) 163 Cacao Products
- (33)(34) 164 Tree Nut and Peanut Products
- (34)(35) 165 Nonalcoholic Beverages
- (35)(36) 166 Margarine
- (36)(37) 168 Sweeteners and Table Syrups
- (37)(38) 169 Food Dressings and Flavorings
- (38)(39) 170 Food Additives
- (39)(40) 172 Food Additives Permitted for Direct  
Addition to Food for Human Consumption
- (40)(41) 173 Secondary Direct Food Additives  
Permitted in Food for Human Consumption
- (41)(42) 174 Indirect Food Additives: General
- (42)(43) 175 Indirect Food Additives: Adhesive

- Coatings and Components
- (43)(44) 176 Indirect Food Additives: Paper and  
Paperboard Components
- (44)(45) 177 Indirect Food Additives: Polymers
- (45)(46) 178 Indirect Food Additives: Adjuvants,  
Production Aids, and Sanitizers
- (46)(47) 179 Irradiation in the Production,  
Processing and Handling of Food
- (47)(48) 180 Food Additives Permitted in Food on  
an Interim Basis or in Contact with Food  
Pending Additional Study
- (48)(49) 181 Prior-Sanctioned Food Ingredients
- (49)(50) 182 Substances Generally Recognized as  
Safe
- (50)(51) 184 Direct Food Substances Affirmed as  
Generally Recognized as Safe
- (51)(52) 186 Indirect Food Substances Affirmed as  
Generally Recognized as Safe
- (52)(53) 189 Substances Prohibited from Use in  
Human Food
- (53)(54) 193 Tolerances for Pesticides in Food  
Administered by the Environmental Protection  
Agency

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of forty-two dollars (\$42.00).

(g) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter C (Drugs: General) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

- |      | Part | Subject of Part                                                                                         |
|------|------|---------------------------------------------------------------------------------------------------------|
| (1)  | 200  | General                                                                                                 |
| (2)  | 201  | Labeling                                                                                                |
| (3)  | 202  | Prescription Drug Advertising                                                                           |
| (4)  | 210  | Current Good Manufacturing Practices in Manufacturing, Processing, Packing or Holding of Drugs; General |
| (5)  | 211  | Current Good Manufacturing Practice for Finished Pharmaceuticals                                        |
| (6)  | 225  | Current Good Manufacturing Practice for Medicated Feeds                                                 |
| (7)  | 226  | Current Good Manufacturing Practice for Medicated Premixes                                              |
| (8)  | 250  | Special Requirements for Specific Human Drugs                                                           |
| (9)  | 290  | Controlled Drugs                                                                                        |
| (10) | 299  | Drugs; Official Names and Established Names                                                             |

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of seven dollars (\$7.00).

(h) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter D (Drugs for Human Use) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal

**PROPOSED RULES**

**Food, Drug, and Cosmetic Act:**

	Part	Subject of Part
(1)	300	General
(2)	310	New Drugs
(3)	312	New Drugs for Investigational Use
(4)	314	New Drug Applications
(5)	320	Bioavailability and Bioequivalence Requirements
(6)	329	Habit-Forming Drugs
(7)	330	Over-the-Counter (OTC) Human Drugs Which Are Generally Recognized as Safe and Effective and Not Misbranded
(8)	331	Antacid Products for Over-the-Counter (OTC) Human Use
(9)	332	Antiflatulent Products for Over-the-Counter Human Use
(10)	361	Prescription Drugs for Human Use Generally Recognized as Safe and Effective and Not Misbranded: Drugs Used in Research
(11)	369	Interpretive Statements Re: Warnings on Drugs and Devices for Over-the-Counter Sale
(12)	429	Drugs Composed Wholly or Partly of Insulin
(13)	430	Antibiotic Drugs: General
(14)	431	Certification of Antibiotic Drugs
(15)	432	Packaging and Labeling of Antibiotic Drugs
(16)	433	Exemptions from Antibiotic Certification and Labeling Requirements
(17)	436	Tests and Methods of Assay of Antibiotic and Antibiotic-Containing Drugs
(18)	440	Penicillin Antibiotic Drugs
(19)	442	Cepha Antibiotics
(20)	444	Oligosaccharide Antibiotic Drugs
(21)	446	Tetracycline Antibiotic Drugs
(22)	448	Peptide Antibiotics
(23)	449	Antifungal Antibiotics
(24)	450	Antitumor Antibiotic Drugs
(25)	452	Macrolide Antibiotic Drugs
(26)	453	Lincomycin Antibiotic Drugs
(27)	455	Certain Other Antibiotic Drugs
(28)	460	Antibiotic Drugs Intended for Use in Laboratory Diagnosis of Disease

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of thirty-six dollars (\$36.00).

(i) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter H (Medical Devices) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	Part	Subject of Part
(1)	809	In Vitro Diagnostic Products for Human Use
(2)	812	Investigational Device Exemptions
(3)	813	Investigational Exemptions for

	Intraocular Lenses			
(4)	820	Good Manufacturing Practices for Medical Devices: General		
(5)	860	Medical Device Classification Procedures		
(6)	861	Procedures for Performance Standards Development		
(7)	870	Cardiovascular Devices		
(8)	882	Neurological Devices		
(9)	884	Obstetrical and Gynecological Devices		
(10)	895	Banned Devices		

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twenty-two dollars (\$22.00).

(j) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter E (Animal Drugs, Feeds, and Related Products) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

	Part	Subject of Part
(1)	500	General
(2)	501	Animal Food Labeling
(3)	502	Common or Usual Names for Nonstandardized Animal Foods
(4)	505	Interpretive Statements Re: Warnings on Animal Drugs for Over-the-Counter Sale
(5)	507	Thermally Processed Low-Acid Animal Foods Packaged in Hermetically Sealed Containers
(6)	508	Emergency Permit Control
(7)	509	Unavoidable Contaminants in Animal Food and Food-Packaging Material
(8)	510	New Animal Drugs
(9)	511	New Animal Drugs for Investigational Use
(10)	514	New Animal Drug Applications
(11)	520	Oral Dosage Form New Animal Drugs Not Subject to Certification
(12)	522	Implantation of Injectable Dosage Form New Animal Drugs Not Subject to Certification
(13)	524	Ophthalmic and Topical Dosage Form New Animal Drugs Not Subject to Certification
(14)	526	Intramammary Dosage Forms Not Subject to Certification
(15)	529	Certain Other Dosage Form New Animal Drugs Not Subject to Certification
(16)	536	Tests for Specific Antibiotic Dosage Forms
(17)	539	Bulk Antibiotic Drugs Subject to Certification
(18)	540	Penicillin Antibiotic Drugs for Animal Use
(19)	544	Oligosaccharide Certifiable Antibiotic Drugs for Animal Use

## PROPOSED RULES

- (20) 546 Tetracycline Antibiotic Drugs for Animal Use
- (21) 548 Certifiable Peptide Antibiotic Drugs for Animal Use
- (22) 555 Chloramphenicol Drugs for Animal Use
- (23) 556 Tolerances for Residues of New Animal Drugs in Food
- (24) 558 New Animal Drugs for Use in Animal Feeds
- (25) 561 Tolerances for Pesticides in Animal Feeds Administered by the Environmental Protection Agency
- (26) 564 Definitions and Standards for Animal Food
- (27) 570 Food Additives
- (28) 573 Food Additives Permitted in Feed and Drinking Water of Animals
- (29) 582 Substances Generally Recognized as Safe

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of sixteen dollars (\$16.00).

(k) The Board incorporates by reference, including subsequent amendments and editions, the following parts and subparts of the Code of Federal Regulations, Title 21, Subchapter G (Cosmetics) as promulgated by the Commissioner of the Food and Drug Administration under the authority of the Federal Food, Drug, and Cosmetic Act:

- |     | Part | Subject of Part                                                                                  |
|-----|------|--------------------------------------------------------------------------------------------------|
| (1) | 700  | General                                                                                          |
| (2) | 701  | Cosmetic Labeling                                                                                |
| (3) | 720  | Voluntary Filing of Cosmetic Product Ingredient and Cosmetic Raw Material Composition Statements |
| (4) | 730  | Voluntary Filing of Cosmetic Product Experiences                                                 |
| (5) | 740  | Cosmetic Product Warning Statements                                                              |

Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of eight dollars and fifty cents (\$8.50).

(l) The Board incorporates by reference, including subsequent amendments and editions, "Tolerances and Exemptions from Tolerances for Pesticide Chemicals in or on Raw Agricultural Commodities," 40 C.F.R. Part 180. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twenty-four dollars (\$24.00).

(m) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity or Composition for Meats, Meat By-products, and Meat Food Products," 9 C.F.R. Part 319. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twenty-three dollars (\$23.00).

(n) The Board incorporates by reference, including subsequent amendments and editions, "Definitions and Standards of Identity

or Composition for Poultry and Poultry Products," 9 C.F.R. Sections 381.155 through 381.170. Copies of the Code of Federal Regulations may be obtained from the Superintendent of Documents, Government Printing Office, Washington, DC 20402, at a cost of twenty-three dollars (\$23.00).

(o) The Board incorporates by reference, including subsequent amendments and editions, Title 9, Part 317.2(1) of the Code of Federal Regulations. A copy of this material may be obtained at no cost from the Food and Drug Protection Division of the Department of ~~Agriculture~~ Agriculture and Consumer Services.

(p) The Board incorporates by reference, including subsequent amendments and editions, Title 9, Part 381.125(b) of the Code of Federal Regulations. A copy of this material may be obtained at no cost from the Food and Drug Protection Division of the Department of ~~Agriculture~~ Agriculture and Consumer Services.

Authority G.S. 106-139.

## CHAPTER 52 - VETERINARY DIVISION

### SUBCHAPTER 52A – RULES AND REGULATIONS ADOPTED BY REFERENCE

#### SECTION .0100 - ADOPTIONS BY REFERENCE

##### 02 NCAC 52A .0108 SANITATION HANDBOOK

~~The "FSIS Directive 11,000.2 – Plant Sanitation," published by the United States Department of Agriculture, Food Safety and Inspection Service, Science and Technology Branch, Facilities, Equipment and Sanitation Division, including subsequent amendments and editions, are hereby incorporated by reference. Copies of this material may be obtained from the Meat and Poultry Inspection Service at no cost.~~

Authority G.S. 106-549.22.

##### 02 NCAC 52A .0109 INSPECTION MANUAL

~~The "Meat and Poultry Inspection Manual," published by the United States Department of Agriculture, Food Safety and Inspection Service, Inspection Operations, including subsequent amendments, are hereby incorporated by reference. Copies of this material may be obtained from the Meat and Poultry Inspection Service at no cost.~~

Authority G.S. 106-549.22.

### SUBCHAPTER 52C - CONTROL OF LIVESTOCK DISEASES: MISCELLANEOUS PROVISIONS

#### SECTION .0700 - MISCELLANEOUS REQUIREMENTS

##### 02 NCAC 52C .0701 INTRASTATE REQUIREMENTS: WILD ANIMALS

(a) Cervidae which originate from herds containing cervidae only may be sold within North Carolina, if they test negative for tuberculosis within 60 days of change of ownership.

(b) Cervidae which are commingled with domestic livestock may be sold within North Carolina provided that domestic cattle are tested annually, and all cervidae and bovidae other than domestic cattle and bison are tested negative for tuberculosis within 60 days prior to moving intrastate.

## PROPOSED RULES

(c) Cervidae owners shall maintain records showing:

- (1) date and source of new additions to the herd;
- (2) date of deaths of cervidae and copy of laboratory report on cause of death; and
- (3) date of sale or other disposition of any animal from a herd containing cervidae and the name and address of person who received the animal.

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

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

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

(f) The State Veterinarian may issue a certification that a captive cervidae herd is apparently free of Chronic Wasting Disease, based on examination of the animals, and the owner's compliance with the testing and record keeping requirements of this Rule. Owners of captive cervidae shall assist employees of the Veterinary Division in assembling the cervidae for examination.

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

\*\*\*\*\*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Agriculture intends to adopt the rule cited as 02 NCAC 52J .0104 and amend the rules cited as 02 NCAC 52J .0101-.0103, .0201-.0207, .0209-.0210, .0302. Notice of Rule-making Proceedings was published in the Register on July 1, 2002.*

**Proposed Effective Date:** January 1, 2005

**Instructions on How to Demand a Public Hearing:** *(must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than October 30, 2002, to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.*

**Reason for Proposed Action:** *Proposed changes would clarify existing rules by making requirements more specific, add requirements for drainage of facilities, acceptable impervious surfaces for sanitation, fencing of outdoor areas, and other changes to improve quality of facilities and care provided by licensees.*

**Comment Procedures:** *Comments from the public shall be directed to David S. McLeod, Sec., NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611, phone (919) 733-7125, fax (919)*

716-0105, and email david.mcleod@ncmail.net. Comments will be received through November 14, 2002.

### Fiscal Impact

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

## CHAPTER 52 - VETERINARY DIVISION

### SUBCHAPTER 52J - ANIMAL WELFARE SECTION

#### SECTION .0100 - RECORD KEEPING AND LICENSING

##### 02 NCAC 52J .0101 RECORDS; ANIMAL SHELTERS, ETC.

Operators of all animal shelters, pet shops, public auctions, and dealers shall maintain records on all dogs and cats showing the following:

- (1) origin of animals (including names and addresses of consignors) and date animals were received;
- (2) description of animals including species, age, sex, breed, and color markings;
- (3) location of animal if not kept at the licensed or registered facility;
- ~~(3)(4)~~ disposition of animals including name and address of person to whom animal is sold, traded or ~~adopted;~~ adopted and the date of such transaction; in the event of death, the record shall show the date and cause of death; if euthanized, the record will shall show date and type of euthanasia; and
- ~~(4)(5)~~ record of veterinary care including ~~treatments~~ treatments, immunization and immunization; date, time, and initials of person administering any product or procedure.
- ~~(5)~~ maintain records on file for a period of one calendar year.

Authority G.S. 19A-24.

##### 02 NCAC 52J .0102 RECORDS; BOARDING KENNELS

Operators of boarding kennels shall maintain records of all dogs and cats showing the following:

- (1) name and address of owner or person responsible for animal, the date of entry and signature and address of individual to whom animal is ~~released;~~ released and the date of release;
- (2) description of animal including breed, sex, age and color marking; and
- (3) ~~record of~~ veterinary care including treatment provided while boarded, which shall include date, times, description of medication (including name and dosage) and immunization; initials of person administering product or procedure.
- ~~(4)~~ records on file must be maintained for a period



~~of one calendar year.~~

Authority G.S. 19A-24.

**02 NCAC 52J .0103 INSPECTION OF RECORDS**

All operators of animal shelters, pet shops, boarding kennels, public auctions, and persons operating as dealers ~~will~~ shall make all required records available to the director or his authorized representative on ~~request~~ request, during the business hours listed on the license application. The operator must be able to match each animal to its record upon request. Records shall be maintained for a period of one year.

Authority G.S. 19A-24; 19A-25.

**02 NCAC 52J .0104 DEFINITIONS**

As used in this Subchapter:

- (1) "Suitable method of drainage" means drainage that allows for the elimination of water and waste products, prevents contamination of animals, allows animals to remain dry, and complies with applicable building codes and local ordinances.
- (2) "Adequate" means a condition which, when met, does not jeopardize an animal's comfort, safety or health.
- (3) "Properly cleaned" means the removal of carcasses, debris, food waste, excrement, or other organic material with adequate frequency.
- (4) "Accessories" means any objects used in cleaning and sanitizing primary enclosures, exercise areas, or objects to which an animal may have access, including, but not limited to toys, blankets, food and water utensils, and bedding.
- (5) "Husbandry" means the practice of daily care administered to animals.
- (6) "License period" means July 1 through June 30.
- (7) "Isolation" means the setting apart of an animal from all other animals, food, and equipment in the facility for the sole purpose of preventing the spread of disease.
- (8) "Long term care" means the housing of an animal for a period of more than 30 consecutive days.
- (9) "Social interaction" means friendly physical contact or play between animals of the same species or with a person.

Authority G.S. 19A-24.

**SECTION .0200 - FACILITIES AND OPERATING STANDARDS**

**02 NCAC 52J .0201 GENERAL**

(a) Housing facilities for dogs and cats shall be structurally sound and maintained in good repair to protect the animals from injury, contain the animals and restrict the entrance of other animals and people.

~~(b) All light fixtures and electrical outlets in animal areas shall be in compliance with the State Building Code.~~

~~(b)(c) Reliable and adequate safe electric power, if required, power is required to comply with other provisions of the Animal Welfare Act and adequate potable water shall be available. Act.~~

~~(e)(d) Supplies of food and bedding shall be stored in facilities which adequately protect such supplies against infestation or contamination by vermin, vermin and insects. All open bags of food shall be stored in airtight containers with lids. Refrigeration shall be provided for supplies of perishable food.~~

~~(d)(e) Provisions shall be made for the daily removal and disposal of animal and food waste, bedding and debris, debris from the housing facility in accordance with local ordinances, to assure facility will be maintained in a clean and sanitary manner.~~

~~(e)(f) Hot and cold running, potable water must be available. Facilities such as washroom, basin or sink shall be provided to maintain cleanliness among animal caretakers—caretakers, animals, and animal food and water receptacles.~~

~~(f)(g) Ambient temperature shall be measured and read outside the primary enclosure at a distance not to exceed three feet from any one of the external walls and on a level parallel to the bottom of the primary enclosure at a point approximately half the distance between the top and bottom of such enclosure. Facility shall have ability to confirm ambient temperature.~~

~~(h) A separate, six-foot perimeter fence is required if any animals have access to an outdoor enclosure, including exercise areas.~~

~~(i) An adequate drainage system must be provided for the housing facility.~~

~~(j) All areas of a facility are subject to review or inspection by North Carolina Department of Agriculture and Consumer Services employees.~~

~~(k) All animals in a facility are subject to these standards, regardless of ownership.~~

~~(l) A licensee or registrant shall comply with all federal, state and local laws, rules and ordinances relating to or affecting the welfare of dogs and cats in its facility.~~

~~(m) No dog or cat shall be in a window display except during business hours and then only in compliance with standards set forth in this Section.~~

Authority G.S. 19A-24.

**02 NCAC 52J .0202 INDOOR FACILITIES**

(a) Indoor housing facilities for dogs and cats shall be ~~sufficiently~~ adequately heated and cooled when necessary to protect the dogs and cats from cold and excessive heat and provide for their health and comfort. The ambient temperature shall not be allowed to fall below 50 degrees F. ~~for dogs and cats not acclimated to lower temperatures, or exceed 85 degrees F.~~

(b) Indoor housing facilities for dogs and cats shall be adequately ventilated to provide for the health and comfort of the animals at all times. ~~Such The~~ facilities shall be provided with fresh air either by means of windows, doors, vents or air conditioning and shall be ventilated so as to minimize ~~drafts, drafts.~~ Air flow shall be adequate to minimize odors and moisture condensation. ~~Ventilation shall be provided when ambient temperature is 85 degrees F. or higher.~~

(c) Indoor housing facilities for dogs and cats shall have ample light by natural or artificial means or both, of good quality and well distributed. ~~Such light shall provide uniformly distributed~~

~~illumination of sufficient light intensity to permit routine inspection and cleaning during the entire working period. Primary enclosures shall be so placed as to protect the dogs and cats from excessive illumination. adequate illumination to permit routine inspections, maintenance, cleaning and housekeeping of the facility and observation of the animals. Illumination shall provide regular diurnal lighting cycles of either natural or artificial light, uniformly diffused throughout the animal facilities.~~

(d) Interior building surfaces of indoor facilities with which animals come in contact shall be constructed and maintained so that they are ~~substantially~~ impervious to moisture, ~~so that it may and can~~ be readily sanitized.

(e) A suitable method of drainage shall be provided to rapidly eliminate excess water from an indoor housing facility. If closed drain systems are used, they shall be equipped with traps and installed to prevent odors and backup of sewage. Drains and troughs shall be constructed to prevent cross-contamination among animals.

Authority G.S. 19A-24.

## 02 NCAC 52J .0203 OUTDOOR FACILITIES

(a) ~~When sunlight is likely to cause overheating and discomfort, sufficient shade shall be provided to allow all dogs and cats kept outdoors to protect themselves from the direct rays of the sun. Primary enclosures and walkways with which an animal comes in contact shall be constructed of sealed concrete or other surfaces impervious to moisture. Gravel may be used if maintained at a minimum depth of six inches and kept in a sanitary manner. No wood can be within the animal's reach.~~

(b) Dogs and cats kept outdoors shall be provided with access to shelter housing to allow them to remain dry and comfortable during inclement weather. Housing shall be constructed of material which is impervious to moisture, and which can be disinfected. One house shall be available for each animal within each enclosure.

(c) The height of a primary enclosure other than a cage shall be no less than six feet. All enclosures shall be constructed to prevent the escape of animals. In addition to housing, the enclosure shall provide protection from excessive sun and inclement weather.

(d) Animal owners shall be advised at the time of reservation and admission if the animal will be kept in outside facilities.

~~(e)(e)~~ A suitable method of drainage shall be provided to rapidly eliminate excess water.

Authority G.S. 19A-24.

## 02 NCAC 52J .0204 PRIMARY ENCLOSURES

(a) Primary enclosures shall be constructed as to prevent contamination from waste and wastewater from animals in other enclosures. All surfaces with which an animal comes in contact shall be impervious to moisture. No wood can be within the animal's reach.

~~(a)(b)~~ Primary enclosures for dogs and cats shall be structurally sound and maintained in good repair and in a manner to prevent injury to animals and keep other animals out. Primary enclosures shall be constructed so as to provide ~~sufficient~~ space to allow each dog or cat to walk, turn about ~~freely-freely~~, and to easily stand, sit, or lie in a ~~comfortable, normal-natural~~ position.

(c) Each primary enclosure shall be provided with a solid resting surface or surfaces adequate to comfortably hold all occupants of the primary enclosure at the same time. All resting surfaces must be of a non-porous or easily sanitized material, such as a towel, or a disposable material such as newspaper. The resting surface or surfaces shall be elevated in primary enclosures housing two or more cats.

~~(b)(d)~~ In addition to Paragraph ~~(a)(b)~~ of this ~~Regulation, Rule~~, each dog shall be provided a minimum square footage of floor space equal to the mathematical square of the sum of the length of the dog in inches, as measured from the tip of its nose to the base of its tail, plus six ~~inches-inches~~, then divide the product by 144. The calculation is: (length of dog in inches + 6) x (length of dog in inches + 6) = required floor space in square inches. Required floor space in square inches ÷ 144 = required floor space in square feet. The calculation shall be expressed in square feet. Not more than ~~42~~ four adult dogs shall be housed in the same primary enclosure.

$$\frac{(\text{length of dog in inches} + 6") \times (\text{length of dog in inches} + 6")}{144} = \text{required square feet}$$

~~(e)(e)~~ In addition to Paragraph ~~(a)(b)~~ of this ~~Regulation, Rule~~, each adult cat housed in any primary enclosure shall be provided a minimum of ~~two and one-half-four~~ square feet of floor ~~space-space~~ which may include elevated resting surfaces. Each kitten shall be provided 1.5 square feet. Not more than 12 adult cats shall be housed in the same primary enclosure.

~~(d) In all enclosures having a solid floor, a receptacle containing sufficient clean litter shall be provided for excreta. Each primary enclosure shall be provided with a solid resting surface or surfaces adequate to comfortably hold all occupants of the primary enclosures at the same time. Such resting surface or surfaces shall be elevated in primary enclosures housing two or more cats.~~

~~(f) In all cat enclosures, a receptacle containing sufficient clean litter shall be provided for waste. A minimum of one receptacle per three cats is required.~~

Authority G.S. 19A-24.

## 02 NCAC 52J .0205 FEEDING

(a) Dogs and cats shall be fed at least once each ~~day-24-hour~~ period except as otherwise might be required to provide adequate veterinary care. Food shall be commercially prepared food which complies with laws applicable to animal feed or the food shall be provided by the owner. The food shall be free from contamination, wholesome, palatable, and of ~~sufficient~~ adequate quality and quantity appropriate for the given size, age, and ~~nutritive value-condition of an animal~~ to meet the ~~normal~~ daily requirements for ~~the condition and size of the dog or cat-nutritional value~~. Puppies and kittens less than six months of age shall be fed at least twice in each ~~24-hour-24-hour~~ period. An ~~eight-hour-eight-hour~~ interval between feedings is required if only two feedings are offered in a ~~24-hour-24-hour~~ period.

(b) Food receptacles shall be accessible to all dogs or cats and shall be located so as to minimize contamination by ~~excreta. Feeding pans-waste. For every adult animal, there must be at least one food receptacle offered. Food receptacles~~ shall be

durable and shall be kept clean and sanitized. Damaged receptacles shall be replaced. Disposable food receptacles may be used but must be discarded after each feeding. Self feeders may be used for the feeding of dry food, and they shall be sanitized regularly to prevent molding, deterioration or caking of feed.

(c) Food and water receptacles in outdoor facilities shall be protected from the elements.

Authority G.S. 19A-24.

**02 NCAC 52J .0206 WATERING**

If potable water is not accessible to the dogs and cats at all times, potable water shall be offered to such animals at least twice daily for periods of not less than one hour. Animals shall have continuous access to fresh water, except as might otherwise be required to provide adequate veterinary care. Watering receptacles shall be durable and kept clean and sanitized. Damaged receptacles shall be replaced.

Authority G.S. 19A-24.

**02 NCAC 52J .0207 SANITATION**

(a) Excreta-Waste shall be removed from primary enclosures as often as necessary and exercise areas to prevent contamination of the dogs or cats contained therein and to reduce disease hazards and odors. Enclosures and exercise areas for dogs and cats must be properly cleaned a minimum of two times per day. The animal must be able to walk or lie down without coming in contact with any waste or debris. When a hosing or flushing method is used for cleaning a primary enclosure commonly known as a cage, any dog an enclosure, dogs or cat cats contained therein shall be removed from such enclosure during the cleaning process, and adequate measures shall be taken to protect the animals in other such enclosures from being contaminated with water and other wastes.

(b) Sanitization of primary enclosures-Sanitation shall be as follows:

- (1) Prior to the introduction of dogs or cats into empty primary enclosures previously occupied, such enclosures and accessories shall be sanitized in the manner provided in Subparagraph (3) of this Paragraph.
- (2) Primary-In addition to primary enclosures for dogs or cats shall be sanitized often enough to prevent an accumulation being properly cleaned a minimum of debris or excreta, or a disease hazard, provided, however, that such two times per day, enclosures and accessories shall be sanitized at least a minimum of once every two weeks-seven days in the manner provided in Subparagraph (3) of this Paragraph-Paragraph if the same animal is housed in the same enclosure more than seven days.
- (3) Cages, rooms and hard-surfaced pens or runs shall be sanitized by:
  - (A) washing them with hot water (180 degrees F.) and soap or detergent as in a mechanical cage washer; or
  - (B) washing all soiled surfaces with a

detergent solution to remove all organic matter followed by or in conjunction with application of a safe and effective disinfectant approved by the director; disinfectant; or

(C) cleaning all soiled surfaces with live steam.

(4) Food and water receptacles shall be sanitized daily with hot water, detergent, and approved disinfectant.

(5) Soiled linens and cloth products shall be mechanically washed with detergent and sanitized.

(6) Any area accessible to multiple animals shall be kept clean and sanitary.

(c) Premises (buildings and grounds) shall be kept clean and in good repair in order to protect the animals from injury and to facilitate the prescribed husbandry practices set forth in this Rule. Premises shall remain free of accumulations of trash, trash, junk, waste products, and discarded matter. Weeds, grasses, and bushes must be controlled so as to facilitate cleaning of the premises and to improve pest control, and to protect the health and well-being of the animals.

(d) An effective program for the control of insects, ectoparasites, and avian and mammalian pests shall be established and maintained.

(e) No dog or cat shall be in a window display except during business hours and then only in compliance with standards set forth in 2 NCAC 52J .0200.

Authority G.S. 19A-24.

**02 NCAC 52J .0209 CLASSIFICATION AND SEPARATION**

Animals housed in the same primary enclosure shall be maintained in compatible groups, with the following additional restrictions:

- (1) Females in season (estrus) shall not be housed in the same primary enclosure with males, except for planned breeding purposes. Breeding shall not be allowed in animal shelters.
- (2) Animals of different owners shall not have contact with other animals, unless written permission is obtained from the animal's owner. Any dog or cat exhibiting a vicious disposition shall be housed individually in a primary enclosure.
- (3) Puppies or kittens less than six-four months of age shall not be housed in the same primary enclosure with adult dogs or cats other than their dams, except when permanently maintained in breeding colonies, colonies, or if requested in writing, by the animals' owner, as in a boarding kennel. Puppies or kittens between 4 and 16 weeks of age shall have daily access to human social interaction, excluding animals which pose a danger to humans or other animals.
- (4) Dogs shall not be housed in the same primary enclosure with cats, nor shall dogs or cats be



housed in the same primary enclosure with any other species of animals. Exceptions will be allowed at boarding kennels, if requested in writing by the animals' owner.

- (5) All facilities shall designate an isolation area for animals being treated or observed for communicable diseases. Dogs or cats ~~under quarantine or treatment~~ in isolation that are being treated for a communicable disease shall be separated from other dogs or cats and other ~~susceptable-susceptible~~ species of animals in such a manner as to minimize dissemination of such disease. A sign shall be posted at the cage or isolation area when in use, giving notice of a communicable disease.

- (6) Animals in long term care which are intended for adoption or sale must be provided the following:

- (a) Daily access to both human and same species social interaction.
- (b) Daily access for dogs to space other than the primary enclosure.
- (c) A species and size-appropriate toy, unless it poses a health threat.

- (7) All animals shall be confined in primary enclosures or exercise areas.

Authority G.S. 19A-24.

## 02 NCAC 52J .0210 VETERINARY CARE

- (a) ~~Programs~~ A written program of veterinary care to include disease control and prevention, vaccination, euthanasia, and adequate veterinary care shall be established and maintained under with the supervision and assistance of a licensed veterinarian.

- (b) If there is a severe or recurrent disease problem at the facility, the facility operator shall obtain a veterinarian's written recommendations for correcting the problem.

- ~~(b)(c)~~ Each dog and cat shall be observed daily by the animal caretaker in charge, or by someone under his direct supervision. Sick or diseased, injured, lame, or blind dogs or cats shall be provided with veterinary care or be humanely disposed of unless such action is inconsistent with the research purposes for which such animal was obtained and is being held, provided, however, euthanized, provided that the provision this shall not effect-affect compliance with any state or local law requiring the holding, for a specified period, of animals suspected of being diseased. Obviously sick, diseased, or deformed animals will not be offered for sale or adoption. If euthanasia is performed at a facility, a list of personnel approved to perform euthanasia shall be maintained on a Letter of Euthanasia Certification form and kept on file at the facility. Diseased or deformed animals shall be sold or adopted only under the policy set forth in the "Program of Veterinary Care." Full written disclosure of the medical condition of the animal shall be provided to the new owner.

- (d) All animals in a licensed or registered facility shall be in compliance with the North Carolina rabies law, G.S. 130A, Article 6, Part 6.

Authority G.S. 19A-24.

## SECTION .0300 - TRANSPORTATION STANDARDS

### 02 NCAC 52J .0302 PRIMARY ENCLOSURES USED IN TRANSPORTING DOGS AND CATS

- (a) Primary enclosures such as compartments or transport cages, cartons, or crates used to transport cats and dogs shall be well constructed, well ventilated and designed to protect the health and insure the safety of the animals. Such enclosures shall be constructed or positioned in the vehicle in such a manner that:

- (1) Each animal in the vehicle has sufficient fresh air for normal breathing.
- (2) The openings of such enclosures are easily accessible for emergency removals at all times.
- (3) The animals are adequately protected from the elements.

The ambient temperature shall ~~not be allowed to exceed 95 degrees F. F at any time nor to exceed 85 degrees F. for a period of more than four hours. The ambient temperature will not be allowed to fall below 50 and 85 degrees F. unless animals are acclimated to lower temperatures.~~

- (b) Animals transported in the same primary enclosure shall be of the same species. Puppies or kittens less than ~~six-four~~ months of age shall not be transported in the same primary enclosure with adult dogs and cats other than their dams.

- (c) Primary enclosures used to transport dogs and cats shall be large enough for each animal to ~~stand erect,~~ turn about freely ~~freely~~, and to easily stand, sit, or lie down in a ~~normal-natural~~ position.

- (d) Animals shall not be placed in primary enclosures over other animals in transit unless such enclosure is constructed so as to prevent animal excreta from entering lower enclosures.

- (e) All primary enclosures used to transport dogs and cats shall be sanitized between use for shipments.

Authority G.S. 19A-24.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the Tobacco Trust Fund Commission intends to adopt the rules cited as 02 NCAC 57 .0101-.0103, .0201-.0210, .0301-.0309. Notice of Rule-making Proceedings was published in the Register on May 15, 2002 and August 1, 2002.*

**Proposed Effective Date:** April 15, 2003

**Public Hearing:**

**Date:** November 6, 2002

**Time:** 3:00 p.m.

**Location:** Auditorium, Johnston County Extension Center, 806 North St., Smithfield, NC, phone (919) 989-5380

**Reason for Proposed Action:** *In 2000, the General Assembly enacted legislation creating the Tobacco Trust Fund commission to receive and distribute part of the funds to be received by the State pursuant to the settlement agreement between certain tobacco manufacturers and the states. The proposed rules are necessary in order to implement policies, standards, and procedures for grant programs authorized by this legislation.*

**Comment Procedures:** *Comments from the public shall be directed to William Upchurch, Tobacco Trust Fund Commission, PO Box 27647, Raleigh, NC 27611. Comments shall be received through November 14, 2002.*

**Fiscal Impact**

- ☒ **State** 02 NCAC 57 .0101-.0103, .0201-.0210, .0301-.0309
- ☐ **Local**
- ☐ **Substantive** (≥\$5,000,000)
- ☐ **None**

**CHAPTER 57 - TOBACCO TRUST FUND COMMISSION**

**SECTION .0100 – GENERAL PROVISIONS**

**02 NCAC 57 .0101 POLICY**

- (a) North Carolina's prosperity has historically been supported by its agricultural economy and particularly by the tobacco-related segment of its agricultural economy.
- (b) The tobacco-related segment of the State's economy is experiencing severe economic hardship as it confronts a national decline in the use and demand for tobacco products.
- (c) The Master Settlement Agreement between North Carolina and various cigarette manufacturers has contributed to the decline in the tobacco-related segment of the State's economy. It is therefore appropriate for some of the money from the Master Settlement Agreement to be spent for the public purpose of alleviating or avoiding unemployment and fiscal distress in the tobacco-related segment of the State's economy, stabilizing local tobacco-dependent economies, stabilizing and maintaining local tax bases, and optimally using natural resources.

*Authority G.S. 143-715.*

**02 NCAC 57 .0102 AUTHORIZATION**

- (a) The Tobacco Trust Fund Commission is authorized by G.S. 143, Article 75 to develop Compensatory Programs and Qualified Agricultural Programs to provide financial assistance from the Tobacco Trust Fund to eligible recipients.
- (b) As part of its authority to develop guidelines and criteria for eligibility for disbursement of funds, to determine forms of direct and indirect economic assistance to be awarded, and to develop procedures for applying for and reviewing applications for assistance from the Fund, the Commission may periodically set a list of funding priorities which it will follow in awarding grants for qualified agricultural programs and in granting compensatory programs. The Commission may also request proposals to address specific funding priorities or to encourage specific programs intended to alleviate or avoid unemployment and fiscal distress in the tobacco-related segment of the State's economy, stabilize local tobacco-dependent economies, stabilize and maintain local tax bases, and optimally use natural resources. The Commission may work cooperatively with other government agencies and agricultural and rural entities to develop Compensatory Programs and Qualified Agricultural Programs.

*Authority G.S. 143-715; 143-718.*

**02 NCAC 57 .0103**

**DEFINITIONS**

The following definitions are in effect throughout this Chapter:

- (1) Commission. The definition of the Tobacco Trust Fund Commission as contained in G.S. 143-716(1) or the Commission staff;
- (2) Compensatory Programs. The definition of Compensatory Programs contained in G.S. 143-716(2);
- (3) Fund. The Tobacco Trust Fund established by G.S. 143-719;
- (4) Lost Quota. The difference in total aggregate annual tobacco quota poundage between the year in question and 1997;
- (5) Master Settlement Agreement. The definition of Master Settlement Agreement as found in G.S. 143-716(4);
- (6) National Tobacco Grower Settlement Trust. Defined in G.S. 143-316(5);
- (7) Person. An individual human being;
- (8) Qualified Agricultural Programs. Defined in G.S. 143-716(6);
- (9) Tobacco allotment. An amount of tobacco allowed to be grown on a tract of land;
- (10) Tobacco allotment holder. A person who, at the time of the grant application, owns a certain amount of tobacco quota on a tract of land, as determined by the U.S. Farm Service Agency records for the county in which the quota is located;
- (11) Tobacco product component business. Defined in G.S. 143-716(7);
- (12) Tobacco grower. Tobacco producer;
- (13) Tobacco producer. A person or entity actively engaged in planting, growing, harvesting and marketing tobacco, or who shares in the expense of producing the crop, and for that reason is entitled to share in the revenues derived from marketing the crop;
- (14) Tobacco products. Cigarettes, cigars, smokeless tobacco, pipe tobacco, roll your own tobacco or any other tobacco product sold at retail intended for human consumption;
- (15) Tobacco-related business. Defined in G.S. 143-716(8);
- (16) Tobacco-related employment. Defined in G.S. 143-716(9); and
- (17) Tobacco-related segment of the State's agricultural economy. That part of the State's agricultural economy that includes tobacco producers, tobacco allotment holders, persons who work on tobacco farms and tobacco auction-related workers or warehousemen and others in tobacco-dependent communities as determined by the Commission in a grant or contract approval.

*Authority G.S. 143-716; 143-718.*

**SECTION .0200 - COMPENSATORY PROGRAM GRANTS**

**02 NCAC 57 .0201 PURPOSE**

The purpose of the Commission's Compensatory Program is to directly or indirectly compensate or indemnify tobacco producers, tobacco allotment holders, individuals displaced from tobacco-related employment and persons engaged in tobacco-related business for economic losses resulting from lost quota and declining market conditions caused by the Master Settlement Agreement.

*Authority G.S. 143-720.*

**02 NCAC 57 .0202 TYPES OF PROGRAMS**

Grants from Compensatory Programs shall compensate or indemnify grant beneficiaries for losses occurring in 1998 and after. Grants for financial assistance shall be for no more than one year at a time, but may at the Commission's discretion be renewed for one or more subsequent years.

*Authority G.S. 143-720.*

**02 NCAC 57 .0203 ELIGIBILITY TO RECEIVE GRANTS**

Persons receiving, or organizations administering, Compensatory Program grants shall be, or shall benefit, one or more of the following:

- (1) Tobacco producers, allotment holders and persons engaged in tobacco-related businesses who can quantify adverse economic effects in North Carolina to themselves individually from the Master Settlement Agreement after payment of any funds from the National Tobacco Grower Settlement Trust;
- (2) Tobacco producers, allotment holders and persons engaged in tobacco-related businesses who can quantify economic loss to themselves individually resulting from lost tobacco quota due to the Master Settlement Agreement;
- (3) Tobacco producers who can quantify a decline in the value of tobacco-related personal property assets due to the Master Settlement Agreement;
- (4) Tobacco product component businesses which are adversely affected by the Master Settlement Agreement and which need financial assistance to:
  - (a) Retool machinery or equipment; or
  - (b) Retrain workers in order to convert to the production of new products or non-tobacco use of existing products; or
  - (c) Effect other similar changes;
- (5) Persons engaged in tobacco-related businesses who can quantify individual financial losses due to the Master Settlement Agreement; or
- (6) Individuals displaced from tobacco-related employment who can show that the Master Settlement Agreement caused their displacement and who can further show that the displacement has resulted in actual economic loss to them.

*Authority G.S. 143-720.*

**02 NCAC 57 .0204 APPLICATIONS FOR GRANTS**

(a) Grant proposals shall be typed or printed and five copies submitted to the Commission at Post Office Box 27647, Raleigh, North Carolina 27611. To the extent possible, applicants should also provide an electronic copy in a format such as a formatted diskette or via e-mail using Microsoft Word. For grant applications submitted in the Year 2002, completed grant proposals postmarked later than October 1, 2002, will be considered in the subsequent funding year. For all grant proposals submitted after 2002, completed grant proposals postmarked later than August 1 of any funding year will be considered in the subsequent funding year.

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

- (1) Names, mailing addresses, telephone numbers, signatures and driver's license number or federal identification number of the applicant;
- (2) If the applicant is an organization, consortium, cooperative or other entity representing multiple eligible beneficiaries, a description of the applying organization including history, mission statement, fiscal information, audit statements (if available), organizational goals and members of the Board of Directors. If the applicant involves more than one organization, person or entity, it shall identify participating organizations, persons or entities and define their roles in completing the Compensatory Program;
- (3) A description of the Compensatory Program, its goals and objectives, and the manner in which it will accomplish its goals and objectives, including how the applicant will quantify actual losses due to the Master Settlement Agreement that are not compensated by payments from the National Tobacco Grower Settlement Trust;
- (4) A detailed statement of the projected cost of the Compensatory Program, including any administrative costs and including expected funding from any other source;
- (5) A description of how the project will be completed including time lines;
- (6) A description of the accounts that will be set up and used and an assurance that all accounts can be audited by the Commission or the State Auditor;
- (7) An explanation of how the project's results will be evaluated;
- (8) At least two references who may be contacted by the Commission;
- (9) Any other information required by GS. 143, Article 75 or required by the Commission in order to make a decision on the grant proposal;
- (10) An explanation of how the project will enhance North Carolina's tobacco-related economy for the common good; and
- (11) A list and history of the applicant's past

projects funded by grants or awards.

(c) As a condition of applying for a compensatory program or of receiving a grant for a compensatory program, applicants or grantees must allow the Commission or the Commission staff to make site visits at the Commission's convenience.

*Authority G.S. 143-718.*

**02 NCAC 57 .0205 SPECIAL INFORMATION  
NEEDED FOR DIRECT COMPENSATORY PROGRAMS**

If a request is for direct compensation or indemnification or for a program to administer direct compensation or indemnification to an eligible beneficiary or beneficiaries, then the application for the Compensatory Program must contain the following:

- (1) Documentation demonstrating the amount of actual loss of tobacco-related income in North Carolina in 1998 or years subsequent. An applicant may make such demonstration with:
  - (a) A verified letter from a Certified Public Accountant or an attorney licensed in North Carolina that details the amount of the actual loss; or
  - (b) That portion of a federal or state income tax return that shows a loss of tobacco-related income. (Please be aware that any such tax information included in an application will become part of the public record); or
  - (c) A verified statement from a North Carolina employer quantifying the applicant's loss in tobacco-related income in North Carolina for any given year from 1998 forward; or
  - (d) Any other similar reliable, accurate and verifiable documentation which the Commission in its discretion may accept as proof of actual loss;
- (2) Documentation demonstrating that the amount of actual loss or quantifiable adverse effect on income is attributable to the Master Settlement Agreement and not simply because of a decline in quota not caused by the Master Settlement Agreement. Applicants may demonstrate the actual loss with verified information from an independent expert in the field, which expert may be, but is not limited to, an economist or an accountant. The Commission will compare this demonstration with any independent expert information it may have about losses caused by the Master Settlement Agreement and losses compensated by the National Tobacco Grower Settlement Trust; and
- (3) Documentation of any compensation received from the National Tobacco Grower Settlement Trust, or any other source to cover actual losses due to the Master Settlement Agreement, or a verified statement that no compensation was received from the National Tobacco Growers' Settlement Trust or from any other source to compensate losses caused

by the Master Settlement Agreement.

*Authority G.S. 143-718; 143-720.*

**02 NCAC 57 .0206 OUT OF CYCLE AWARD OF GRANTS**

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

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

*Authority G.S. 143-718.*

**02 NCAC 57 .0207 REVIEW OF PROPOSALS**

- (a) The Executive Director of the Commission and his or her staff or designee shall screen applications to see if they are complete. The Executive Director shall notify applicants if the grant application is incomplete.
- (b) Applications that have been deemed complete will be forwarded to one or more Compensatory Program Review Committees of the Commission. Compensatory Program Review Committee members shall include Commissioners and may include invited outsiders who have particular expertise in technical areas.
- (c) During the review and evaluation of proposals, the Compensatory Program Review Committees may request that the Commission staff or designee make reports on any site visits that may be required for full consideration of the grant proposal. The Compensatory Program Review Committees will make recommendations to the Commission.
- (d) The Commission will receive the suggestions of the Review Committees and will evaluate proposals based on the beneficial impact of the request on the State's tobacco-related economy. In making this evaluation the Commission may consider who will benefit from the grant, how many will benefit from the grant, the cost of administering the grant and whether the grant will benefit tobacco dependent economies of the State in a measurable manner. Proposals will be given a preference for statewide impact and for containing a delivery mechanism to intended beneficiaries.
- (e) No grant may be awarded for a project that is unlawful.

*Authority G.S. 143-718.*

**02 NCAC 57 .0208 AWARD OF GRANTS**

- (a) The Commission will award grants if it determines that it has sufficient funds to do so. All applicants will be notified in writing whether they have received a grant or not.
- (b) The grant proposal shall be incorporated into the grant and the goals, time lines and other grant objectives shall be

performance standards for the grant.

(c) Funds will be conveyed to grantees through contracts with the Commission.

(d) Of the total funds granted for each project, up to 100 percent may be paid upon signing of the contract if such payment is requested as part of the grant application and the Commission determines that the initial request is necessary for administration of the grant program.

(e) Of the total funds granted for each project, up to 25 percent may be held back and paid only for completion of the final stage of the project which completion shall demonstrate to the Commission or the Commission staff that the performance standards of the grant will be met.

(f) Other payments to successful applicants shall be paid upon receipt of expenditure reports or invoices at mutually agreed upon periodic intervals.

(g) For good cause shown, the Commission or the Commission staff may agree to change time lines when such changes do not undermine the purposes and goals of the Compensatory Program.

(h) The Commission may consider the applicant's past performance of grants and publicly funded projects when awarding Compensatory Programs. The Commission shall not award money to an applicant whose past performance of a Commission grant or program has been unsatisfactory.

(i) The granting agreement will outline the standard accounting practices which the grantee will follow in order to facilitate review by the Commission staff and/or the State Auditor, or an outside auditor hired by the Commission. The grant agreement will also provide that the grantee shall put grant money in an interest bearing account and that any interest earned on the grant money shall be returned to the Commission at the conclusion of the grant together with an accounting of such interest earnings.

(j) If the Commission determines that grant funds are not being used for the purpose for which they were awarded, the Commission may cease making payments under the grant schedule until the problem has been resolved or may demand immediate return of any unspent money from the grant, with which request the grantee must comply. Grantees must pay back to the Commission any funds that the Commission determines have not been spent for the purpose for which they were granted as well as the statutory interest rate on those funds.

(k) Grantees must return any grant money which remains unspent at the conclusion of the grant project along with any interest earned on grant money.

*Authority G.S. 143-718.*

#### **02 NCAC 57 .0209 REPORTING**

(a) Successful applicants shall submit written progress reports at six-month intervals or at shorter intervals as established by the Commission. Written reports shall describe the status of the Compensatory Program, progress toward achieving program objectives, notable occurrences and any significant problems encountered and steps taken to overcome the problems. Upon completion of the Compensatory Program, the successful applicant must make a final written report to the Commission which final report shall include an evaluation of the success of the program.

(b) A representative of the Commission shall review the progress reports for completeness which shall include a showing

of how the project is meeting its stated goals and performance standards. If the representative finds that the report is deficient in showing how the project is meeting its stated goals and performance standards, the grantee will be notified of the deficiency and must provide a changed and corrected report within 30 working days. If a corrected or changed report is not received in the specified time the Commission may withhold the next grant payment.

*Authority G.S. 143-718.*

#### **02 NCAC 57 .0210 POLICIES GOVERNING COMPENSATORY PROGRAMS**

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

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

*Authority G.S. 143-718.*

#### **SECTION .0300 - QUALIFIED AGRICULTURAL PROGRAM GRANTS**

##### **02 NCAC 57 .0301 PURPOSE**

The purpose of the Commission's grants for Qualified Agricultural Programs is to support and foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy, particularly the segment adversely affected by the Master Settlement Agreement. Projects shall address one or more of the following goals:

- (1) Alleviating and avoiding unemployment in the tobacco-related sector of the State's agricultural economy;
- (2) Preserving and increasing local tax bases in agricultural areas;
- (3) Encouraging the economic stability of participants in the State's agricultural economy;
- (4) Optimally using natural resources in the tobacco-related segment of the State's agricultural economy; or
- (5) Any other goal that will promote the public good by supporting and fostering the vitality and solvency of the tobacco-related sector of the State's agricultural economy.

*Authority G.S. 143-716.*

##### **02 NCAC 57 .0302 ELIGIBILITY TO RECEIVE GRANTS**

Entities receiving Qualified Agricultural Program grants shall be one or more of the following:

- (1) Agencies and departments of the State of North Carolina;
- (2) Local governmental units;
- (3) Agencies and departments of the United States

- (4) government; or  
Members of the private sector, including non-profit organizations.

*Authority G.S. 143-721.*

**02 NCAC 57 .0303 THE PRIMARY BENEFICIARY**

The primary beneficiary of Qualified Agricultural Programs shall be the tobacco-related segment of the State's agricultural economy.

*Authority G.S. 143-716.*

**02 NCAC 57 .0304 APPLICATIONS FOR GRANTS**

(a) Grants proposals shall be typed or printed and five copies submitted to the Commission at Post Office Box 27647, Raleigh, North Carolina 27611. To the extent possible, applicants should also provide an electronic copy formatted in Microsoft Word to the Commission. For grant applications submitted in the Year 2002, completed grant proposals postmarked later than October 1, 2002, will be considered in the subsequent funding year. For all grant proposals submitted after 2002, completed grant proposals postmarked later than August 1 of any funding year will be considered in the subsequent funding year.

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

- (1) Names, mailing addresses, telephone numbers, signatures and driver's license number or federal identification number of the applicant;
- (2) A description of the applying organization including history, mission statement, fiscal information, audit statements (if available), organizational goals and a list of the members of the Board of Directors. If the applicant involves more than one person, organization or entity, the applicant shall identify participating persons, organizations or entities and define their roles in completing the grant;
- (3) A description of the Qualified Agricultural Program, its objectives and the manner in which it will accomplish the requirement that the Qualified Agricultural Program foster the vitality and solvency of the tobacco-related segment of the State's agricultural economy;
- (4) A detailed statement of the projected cost of the Qualified Agricultural Program, including any administrative costs and including expected funding from any other source;
- (5) A description of how the project will be completed including time lines;
- (6) A description of the accounts that will be set up and used and an assurance that all accounts can be audited by the Commission or the State auditor;
- (7) An explanation of how the project's results will be evaluated;
- (8) At least two references which the Commission may contact;
- (9) Any other information required by G.S. 143, Article 75 or by the Commission in order to

- (10) make a decision on the grant proposal; and  
A list and history of the applicant's past projects funded by grants or awards.

(c) As a condition of applying for the grant or of receiving a grant, applicants or grantees must allow the Commission or the Commission staff to make site visits at the Commission's convenience.

*Authority G.S. 143-718.*

**02 NCAC 57 .0305 OUT OF CYCLE CONSIDERATION OF GRANTS**

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

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

**02 NCAC 57 .0306 REVIEW OF PROPOSALS**

(a) The Executive Director of the Commission and his or her staff or designee shall screen applications to see if they are complete. The Executive Director shall notify applicants if the grant application is incomplete.

(b) Applications that have been deemed complete will be forwarded to one or more Grant Review Committees of the Commission. Grant Review Committee members shall include Commissioners and may include invited outsiders who have particular expertise in technical areas.

(c) During the review and evaluation of grant proposals, the Grant Review Committees may request that the Commission staff or designee make reports on any site visits that may be required for full consideration of the grant proposal. The Grant Review Committees will make recommendations to the Commission based on its review and evaluation.

(d) The Commission will evaluate grant proposals and recommendations made to it by the Review Committees based on the beneficial impact of the grant request on the solvency and vitality of the tobacco-related segment of the State's agricultural economy.

(e) In making this evaluation the Commission may consider who will benefit from the grant, how many will benefit from the grant, how the grant project will alleviate or avoid unemployment, stabilize local tax bases, encourage the economic stability of participants in the State's agricultural economy or encourage the optimal use of natural resources in the tobacco-related segment of the State's agricultural economy. Proposals will be given a preference for statewide impact, for containing a delivery mechanism to intended beneficiaries, for providing alternate markets for tobacco or for providing for diversification of the tobacco crop or the tobacco grower.

(f) No grant will be awarded that is unlawful.

*Authority G.S. 143-718.*

**02 NCAC 57 .0307 AWARD OF GRANTS**

- (a) The Commission will award grants to proposals which have the greatest impact on the long-term health of the State's tobacco-related agricultural economy. All applicants will be notified in writing whether they have received a grant or not. The Commission will award grants if it determines that it has sufficient funds to do so.
- (b) The grant proposal shall be incorporated into the grant and the goals, time lines and other grant objectives shall be performance standards for the grant.
- (c) Funds will be conveyed to grantees through contracts with the Commission.
- (d) Of the total funds granted for each project, up to 100 percent may be paid upon signing of the contract if such payment is requested as part of the grant application and the Commission determines the request is necessary for the administration of the grant program.
- (e) Of the total funds granted for each project, up to 25 percent may be held back and paid only for completion of the final stage of the project which completion shall demonstrate to the Commission or the Commission staff that the performance standards of the grant will be met.
- (f) Other payments to grantees shall be paid upon receipt of expenditure reports or invoices at mutually agreed upon periodic intervals.
- (g) For good cause shown, the Commission or the Commission staff may agree to change time lines when such changes do not undermine the purposes and goals of the grant.
- (h) The Commission may consider the applicant's past performance of grants and publicly funded projects when awarding grants. The Commission shall not award a grant to an application whose past performance of Commission grants or programs has been unsatisfactory.
- (i) The granting agreement will outline the standard accounting practices which the grantee will follow in order to facilitate review by the Commission staff and/or the State Auditor, or an outside auditor hired by the Commission. The grant agreement will also provide that the grantee shall put grant money in an interest bearing account and that any interest earned on the grant money shall be returned to the Commission at the conclusion of the grant together with an accounting of such interest earnings.
- (j) If the Commission determines that grant funds are not being used for the purpose for which they were awarded, the Commission may cease making payments under the grant schedule until the problem has been resolved or may demand immediate return of any unspent money from the grant, with which request the grantee must comply. Grantees must pay back to the Commission any funds that the Commission determines have not been spent for the purpose for which they were granted as well as the statutory interest rate on those funds.
- (k) Grantees must return any grant money which remains unspent at the conclusion of the grant project along with any interest earned on grant money.

*Authority G.S. 143-718; 143-721.*

**02 NCAC 57 .0308 REPORTING**

- (a) Grantees shall submit written progress reports at six-month intervals or at shorter intervals as established by the Commission. Written reports shall describe the status of the grant projects, progress toward achieving project objectives,

notable occurrences and any significant problems encountered and steps taken to overcome the problems. Upon completion of the Project, the grantee must make a final written report to the Commission which final report shall include an evaluation of the success of the project.

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

*Authority G.S. 143-718.*

**02 NCAC 57 .0309 POLICIES GOVERNING QUALIFIED AGRICULTURAL PROGRAM GRANTS**

- (a) Grantees must keep financial and other records of the grant project for five years and must comply with audit requests. If the Commission in its informed discretion determines that the size of the grant or the performance or alleged non-performance of the grantee compels it, the Commission may require a compliance audit of the grant.
- (b) All grant applications, attachments to grant applications and written reports received by the Commission are public documents.

*Authority G.S. 143-718.*

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**TITLE 04 – DEPARTMENT OF COMMERCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Office of the Commissioner of Banks; State Banking Commission intends to adopt the rules cited as 04 NCAC 03M .0101-.0102, .0201-.0204, .0301-.0303, .0401-.0403, .0501-.0502 and repeal the rules cited as 04 NCAC 03I .0101, .0201, .0204-.0206, .0301-.0306, .0401-.0406, .0501-.0503, .0601-.0605, .0701-.0706. Notice of Rule-making Proceedings was published in the Register on February 1, 2002.*

**Proposed Effective Date:** April 1, 2003

**Public Hearing:**

**Date:** November 4, 2002

**Time:** 9:00 a.m.

**Location:** Hearing Room, Commissioner of Banks, 316 W. Edenton St., Raleigh, NC

**Reason for Proposed Action:** *In 2001, the NC General Assembly adopted Senate Bill 904, "An Act to Enact the Mortgage Lending Act to Govern Mortgage Brokers and Bankers," as G.S. 53, Article 19A. The General Assembly later amended Article 19A by passing Senate Bill 1066, "An Act to Amend the Laws Regulating Real Estate Appraisers." Since the Mortgage Lending Act was ratified, it has become apparent that there is a need for rules which define certain terms, regulate certain practices, and which establish certain policies and*

compliance requirements. There have been questions and concerns raised as to the proper operation of the statute, and there is a need for rules to provide guidance to industry participants as to acceptable practices and procedures.

**Comment Procedures:** Any written comments may be submitted to Daniel E. Garner, Agency Legal Specialist, Office of the Commissioner of Banks, 4309 Mail Service Center, Raleigh, North Carolina 27699-4309. Oral comments will be received at the hearing. Written comments will be received until November 14, 2002.

**Fiscal Impact**

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

**CHAPTER 03 - BANKING COMMISSION**

**SUBCHAPTER 03I - MORTGAGE BANKER/BROKER**

**SECTION .0100 – ADMINISTRATIVE**

**04 NCAC 03I .0101 DEFINITIONS; FILINGS**

~~(a) As used in this Subchapter, unless the context clearly requires otherwise:~~

- ~~(1) Terms defined in G.S. 53-234 shall have the same meaning as set forth therein;~~
- ~~(2) "Accounting period" shall mean either a period of 12 months (or less in the first year of operations) ending December 31 or a fiscal year of not more than 12 months (or less in the first year of operations) ending on the last day of any month except December;~~
- ~~(3) "Advertisement" shall mean material used or intended to be used to induce the public to apply for a mortgage loan. The term shall include any printed or published material, or descriptive literature concerning a mortgage loan to be solicited, processed, negotiated or funded by a registrant whether disseminated by direct mail, newspaper, magazine, radio or television broadcast, billboard or similar display. The term advertisement shall not include any disclosures, program descriptions, or other materials prepared or authorized by any state or federal government agency, nor shall such term include any material or communication which has been excluded from any definition of advertisement for purposes of any regulation of the Board of Governors of the Federal Reserve System regulating consumer credit disclosures;~~
- ~~(4) "Application fee" shall mean any fee accepted by a registrant in connection with an application for a mortgage loan including any charge for soliciting, processing, placing or negotiating a mortgage loan. The term does not include a commitment fee, lock-in fee, or third-party fee as such terms are defined in~~

Subparagraphs (a)(13), (20) and (33) of this Rule;

- ~~(5) "Application for a mortgage loan" shall have the same meaning as "Application for a federally related mortgage loan" in Regulation X;~~
- ~~(6) "Bonus" shall mean money, or an equivalent, given in addition to usual compensation;~~
- ~~(7) "Branch manager" shall mean an employee of a registrant who is in charge of, and responsible for, the operations of a registrant's branch office located in this State;~~
- ~~(8) "Branch office" shall mean any location, including a personal residence, but not the principal place of business, where the registrant holds itself out to the public as engaging in business as a mortgage banker or mortgage broker;~~
- ~~(9) "Business day" shall have the same meaning as "business day" is defined in Regulation X;~~
- ~~(10) "Certified Statement of Financial Condition" shall mean the statement of financial condition (balance sheet) audited in accordance with generally accepted accounting principles and generally accepted auditing standards;~~
- ~~(11) "Commitment" shall mean an offer to make a mortgage loan, signed, authorized or made by a mortgage banker;~~
- ~~(12) "Commitment agreement" shall mean a commitment accepted by an applicant for a mortgage loan;~~
- ~~(13) "Commitment fee" shall mean a fee, exclusive of any third-party fee, imposed by a mortgage banker as consideration for binding it to make a mortgage loan;~~
- ~~(14) "Controlling person" shall mean any person, as defined herein, who owns or holds with the power to vote 10% or more of the equity securities of the registrant, or who has the power to direct the management and policy of the registrant;~~
- ~~(15) "Employee" shall mean any individual performing a service for a registrant for whom the registrant is liable for withholding taxes pursuant to Title 26 of the United States Code;~~
- ~~(16) "First tier subsidiary" shall mean a corporation of which 100% of the stock is directly owned by the parent company;~~
- ~~(17) "Good faith estimate" shall have the same meaning as "good faith estimate" in Regulation X;~~
- ~~(18) "HUD" shall mean the United States Department of Housing and Urban Development;~~
- ~~(19) "Lock-in agreement" shall mean an agreement between a mortgage banker and an applicant for a mortgage loan which, subject to the terms set forth therein, obligates the mortgage banker to make a mortgage loan at a specified rate and a specific number of points, if any;~~



- ~~(20) "Lock-in fee" shall mean points or other fees or discounts accepted by a mortgage broker for transmittal to a mortgage banker or exempt organization or by a mortgage banker as consideration for the making of a lock-in agreement;~~
- ~~(21) "Person" shall mean an individual, corporation, partnership, trust, association or other entity;~~
- ~~(22) "Point" shall mean an origination fee or other fee or discount calculated as 1% of the principal amount of the loan or 1% of the amount financed, however such point may be denominated by the registrant. The term point shall include, but not be limited to, percentage-based fees denominated as application fees, mortgage brokerage fees, origination fees, or warehousing fees;~~
- ~~(23) "Premium" shall be synonymous with "bonus" as defined herein and shall mean money, or an equivalent, given in addition to usual compensation;~~
- ~~(24) "Premium pricing" shall mean a loan delivered to a lender at an adjusted interest rate that will meet the lender's yield requirements and will enable the broker to receive as its fee the difference between the points delivered to the lender and the fee allotted to the customer;~~
- ~~(25) "Prevailing rate" shall mean an interest rate on a mortgage loan that is set by a mortgage banker after the issuance of a commitment but prior to or on the closing date. Such rate may be fixed or variable;~~
- ~~(26) "Principal officer" shall have the same meaning as "executive officer" as defined in Regulation O of the Board of Governors of the Federal Reserve System, codified at 12 CFR Part 215, et seq.;~~
- ~~(27) "Registration of Mortgage Bankers and Brokers Act" shall mean the Registration Requirements Act for Certain Makers of Mortgages and Deeds of Trust on Residential Real Property, codified at Chapter 53, Article 19 of the General Statutes of North Carolina (G.S. 53-233, et seq.);~~
- ~~(28) "Regulation X" shall mean Regulation X as promulgated by HUD and codified at 24 CFR Part 3500, et seq.;~~
- ~~(29) "Regulation Z" shall mean Regulation Z as promulgated by the Board of Governors of the Federal Reserve System and codified at 12 CFR Part 226, et seq.;~~
- ~~(30) "RESPA" shall mean the Real Estate Settlement Procedures Act, codified at 12 USC 2601, et seq.;~~
- ~~(31) "Tablefunding" shall mean a transaction in which a registrant closes a loan in its own name with funds provided by others and such loan is assigned within 24 hours of the funding of the loan to the mortgage lender providing the funding;~~

- ~~(32) "Settlement cost" shall have the same meaning as "settlement cost" is defined in Regulation X;~~
- ~~(33) "Third party fee" shall mean the fees or charges paid by the applicant for a mortgage loan to the registrant for transmittal to third persons who provide services in connection with the mortgage loan, including, but not limited to, recording taxes and fees, reconveyance or releasing fees, appraisal fees, credit report fees, attorney's fees, fees for title reports and title searches, title insurance premiums, surveys and similar charges;~~
- ~~(34) "Truth In Lending Act" shall mean Title I of the Consumer Credit Protection Act, as amended, and codified at 15 USC 1601, et seq.~~

~~(b) For the purposes of this Subchapter, unless the context clearly requires otherwise, the terms mortgage banker and mortgage broker shall mean a registrant.~~

~~(c) Any application for registration or any report, annual statement, amendment to application, notice or other document which is required by law or rule to be filed with the Commissioner shall be addressed as follows:~~

~~Commissioner of Banks  
Post Office Box 29512  
Raleigh, North Carolina 27626-0512~~

~~Authority G.S. 53-233; 53-234; 53-241.~~

## **SECTION .0200 - FINANCIAL REQUIREMENTS**

### **04 NCAC 03I .0201 FINANCIAL REQUIREMENTS FOR MORTGAGE BANKERS AND MORTGAGE BROKERS**

~~(a) A mortgage banker shall have at all times one of the following:~~

- ~~(1) a net worth as computed in Rule .0206 of this Section of at least two hundred and fifty thousand dollars (\$250,000) and a surety bond in the amount of twenty five thousand dollars (\$25,000) as set forth in Rule .0204 of this Section.~~
- ~~(2) a surety bond in the amount of one hundred thousand dollars (\$100,000) as set forth in Rule .0204,~~
- ~~(3) an irrevocable letter of credit in the amount of one hundred thousand dollars (\$100,000) as set forth in Rule .0205 of this Section, or~~
- ~~(4) a pledge of securities in the amount of one hundred thousand dollars (\$100,000) as set forth in Rule .0205 of this Section.~~

~~(b) A mortgage broker and a mortgage banker whose only activity is tablefunding shall post a surety bond in the amount of twenty five thousand dollars (\$25,000) as set forth in Rule .0204 of this Section.~~

~~(c) For any year in which a mortgage banker seeks to rely on the capital of its parent to satisfy the requirements of Paragraph (a) of this Rule, it shall provide to the Commissioner of Banks:~~

- ~~(1) Certified Financial Statements of the parent showing a net worth of at least five hundred~~

~~thousand dollars (\$500,000) as of the close of its most recent fiscal year; and~~

- ~~(2) A binding written commitment from the parent to the lender to make a minimum of two hundred fifty thousand dollars (\$250,000) available to the mortgage banker in connection with its mortgage banking activities.~~

*Authority G.S. 53-236(b); 53-241.*

**04 NCAC 03I .0204 SURETY BOND**

~~(a) A surety bond required by Rule .0201 of this Section shall be executed by a company authorized to do business in North Carolina and shall be conditioned upon the obligor's compliance with the provisions of the Registration of Mortgage Bankers and Brokers Act and all rules adopted thereunder.~~

~~(b) In lieu of a surety bond, a mortgage banker or mortgage broker may elect to post an irrevocable letter of credit or pledge securities to the Commissioner as set forth in Rule .0205 of this Section.~~

*Authority G.S. 53-236(b); 53-241.*

**04 NCAC 03I .0205 IRREVOCABLE LETTER OF CREDIT; PLEDGE OF SECURITIES**

~~(a) A mortgage banker or mortgage broker who elects to post an irrevocable letter of credit pursuant to Rule .0204 of this Section shall obtain an irrevocable letter of credit from a bank or insurance company authorized to do business in North Carolina. The irrevocable letter of credit shall be filed with the Commissioner and shall run to the benefit of the Commissioner.~~

~~(b) A mortgage banker or mortgage broker who elects to pledge securities pursuant to Rule .0204 of this Section shall deposit with the Commissioner securities with a par value equal to the amount required by Rule .0204 of this Section. Such securities will consist of:~~

- ~~(1) General obligations of or fully guaranteed by the United States or of any agency or instrumentality of or corporation wholly owned by the United States directly or indirectly; or~~
- ~~(2) Direct general obligations of the State of North Carolina, or of any county, city, town, or other political subdivision or municipal corporation of the State of North Carolina.~~

~~The compensation, if any, of the custodian for acting as such under this Rule shall be paid by the depositing registrant.~~

*Authority G.S. 53-236(b); 53-241.*

**04 NCAC 03I .0206 NETWORTH**

~~Networth shall be computed in accordance with generally accepted accounting principles and evidence of compliance with Rule .0201(a)(1) of this Section shall be reported annually on a Certified Statement of Financial Condition.~~

*Authority G.S. 53-236(b); 53-241.*

**SECTION .0300 - REGISTRATION OF MORTGAGE BANKERS AND MORTGAGE BROKERS**

**04 NCAC 03I .0301 APPLICATION FOR REGISTRATION AS A MORTGAGE BANKER OR BROKER**

~~(a) Any person who would like to engage in business as a mortgage banker or mortgage broker pursuant to the Registration of Mortgage Bankers and Brokers Act shall first be registered with the Commissioner. An application shall be obtained from the Commissioner and shall be filed pursuant to Rule .0101(c) of this Subchapter.~~

~~(b) The application for registration as a mortgage banker shall include one of the following:~~

- ~~(1) a certified Statement of Financial Condition (balance sheet) for the previous accounting period reflecting a minimum networth of two hundred fifty thousand dollars (\$250,000), and a surety bond, irrevocable letter of credit, or a pledge of securities in the amount of twenty-five thousand dollars (\$25,000); or~~
- ~~(2) a surety bond in the amount of one hundred thousand dollars (\$100,000); or~~
- ~~(3) an irrevocable letter of credit in the amount of one hundred thousand dollars (\$100,000); or~~
- ~~(4) a pledge of securities in the amount of one hundred thousand dollars (\$100,000).~~

~~(c) The application for registration as a mortgage broker or a mortgage banker whose only activity is tablefunding shall include one of the following:~~

- ~~(1) a surety bond in the amount of twenty five thousand dollars (\$25,000);~~
- ~~(2) an irrevocable letter of credit in the amount of twenty five thousand dollars (\$25,000); or~~
- ~~(3) a pledge of securities in the amount of twenty-five thousand dollars (\$25,000).~~

~~(d) Except for a mortgage banker who elects to submit a certified Statement of Financial Condition pursuant to Subparagraph (b)(1) of this Rule, an applicant shall include a statement of financial condition affirming the financial solvency of the applicant in the application for registration as a mortgage banker or a mortgage broker.~~

~~(e) In addition, the application for registration as mortgage banker or mortgage broker shall include:~~

- ~~(1) Copies of the following documents, where applicable:
 
  - ~~(A) The applicant's Articles of Incorporation, or General or Limited Partnership Agreement,~~
  - ~~(B) A Certificate of Existence or Certificate of Good Standing, not more than 90 days old, from the applicant's state of incorporation,~~
  - ~~(C) A Certificate of Authority to do business in this State,~~
  - ~~(D) A copy of the applicant's Certificate of Assumed Name;~~~~
- ~~(2) A Statement of Financial Condition on a form provided by the Commissioner;~~
- ~~(3) A statement authorizing the Commissioner to run a credit report on the applicant;~~
- ~~(4) Disclosure of any criminal proceedings pending against or criminal convictions entered against the applicant, its partners,~~

- directors, principal officers or controlling persons;
- ~~(5) Disclosure of any civil proceedings pending against or civil judgments entered against the applicant, its partners, directors, principal officers or controlling persons which involve fraud or dishonesty;~~
- ~~(6) Disclosure of any civil judgments entered against the applicant, its partners, directors, principal officers or controlling persons during the past 10 years which have remained partially or wholly unpaid;~~
- ~~(7) Disclosure of the following proceedings involving the applicant: bankruptcy, assignment for the benefit of creditors, receivership, conservatorship or similar proceeding;~~
- ~~(8) Disclosure of enforcement proceedings by the Federal Housing Administration, Veterans Administration, Federal National Mortgage Association, or any other federal or state agency against the applicant, its partners, directors, principal officers or controlling persons which involve licensure or business activities as a mortgage broker or mortgage banker;~~
- ~~(9) Disclosure of any proceedings brought by a state or federal administrative agency against the applicant, its partners, directors, principal officers or controlling persons;~~
- ~~(10) Disclosure of any judgments entered by state or federal administrative agency against the applicant, its partners, directors, principal officers, or controlling persons which involve fraud, dishonesty, or reflect on the applicants' character and fitness to command the confidence of the public;~~
- ~~(11) A description of the applicant's business operations and organizational structure;~~
- ~~(12) The addresses at which the applicant intends to engage in business as a mortgage banker or broker, including branch offices and the name of the branch manager at each branch office;~~
- ~~(13) A description of the business experience, current business activities and education of the applicant, its partners, directors, principal officers and controlling persons;~~
- ~~(14) Evidence of compliance with the experience requirements set forth in Rules .0303 and .0304 of this Section;~~
- ~~(15) Three business references, including one bank reference;~~
- ~~(16) Where applicable, the names and business addresses of all lenders whom the applicant is authorized to represent and whom the applicant may bind to loan terms. A copy of the agency agreement for each such lender shall be provided.~~

~~(f) The following fees shall be submitted with the application for registration as a mortgage banker or mortgage broker:~~

- ~~(1) A nonrefundable application fee made payable to the Commissioner in the amount set forth in G.S. 53-236(b);~~
- ~~(2) An annual registration fee made payable to the Commissioner in the amount set forth in G.S. 53-242.~~
- ~~(g) The application shall be in writing and shall be verified by the oath of the applicant.~~
- ~~(h) A person who wishes to engage in business as both a mortgage broker and a mortgage banker shall so state on the application and shall meet all standards for registration as both a mortgage banker and mortgage broker. Such applicant shall submit with its application only one nonrefundable fee as set forth in G.S. 53-236(b) and two annual registration fees as set forth in G.S. 53-242.~~
- ~~(i) In addition to the documents and information described in Paragraph (b) of this Rule, the Commissioner may require additional information as necessary to make the findings required by G.S. 53-236 and G.S. 53-237.~~
- ~~(j) In the event of denial of the application, the Commissioner shall refund in full any annual registration fees paid pursuant to G.S. 53-242.~~
- ~~(k) Incomplete application files may be closed and deemed denied without prejudice when the applicant has not submitted information requested by the Commissioner within 30 days of request.~~

*Authority G.S. 53-235; 53-236; 53-237(a); 53-241; 53-242.*

#### **04 NCAC 03I .0302 EXEMPT PERSONS OR ORGANIZATIONS**

~~(a) For the purposes of G.S. 53-234(6)(a), the following shall apply:~~

- ~~(1) "Regulatory body or agency of the United States" shall mean the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Reserve Board or the Office of Thrift Supervision, or their successor agencies;~~
- ~~(2) Only a first tier subsidiary of a lender shall be deemed to be a subsidiary which is subject to the general supervision or regulation of the lender;~~
- ~~(3) Only a first tier subsidiary of a holding company of which a lender is also a first tier subsidiary shall be deemed to be an affiliate which is subject to the general supervision or regulation of the lender.~~

~~(b) For the purposes of G.S. 53-234(6)(b), the receipt of a computer loan origination fee pursuant to Regulation X shall be deemed to be compensation or income in connection with the placement of a mortgage loan. A licensed real estate agent or broker who wishes to receive such fees shall first be registered as a mortgage broker with the Commissioner.~~

*Authority G.S. 53-234(6)(a); 53-241.*

#### **04 NCAC 03I .0303 EXPERIENCE REQUIREMENTS FOR MORTGAGE BANKERS**

~~(a) A mortgage banker shall, at all times, comply with the following experience requirements:~~

- ~~(1) If the mortgage banker is a sole proprietor, he shall have at least three years of experience in residential mortgage lending;~~
- ~~(2) If the mortgage banker is a general or limited partnership, at least one of its general partners shall have the experience set forth in Subparagraph (a)(1) of this Rule;~~
- ~~(3) If the mortgage banker is a corporation, at least one of its principal officers shall have the experience set forth in Subparagraph (a)(1) of this Rule.~~

~~(b) Mortgage bankers which are registered with the Commissioner on the date this Rule becomes effective shall have until January 1, 1997 to meet the requirements of this Rule.~~

*Authority G.S. 53-236(b); 53-237(a); 53-241.*

**04 NCAC 03I .0304 EXPERIENCE REQUIREMENTS FOR MORTGAGE BROKERS**

~~(a) A mortgage broker shall, at all times, comply with the following experience requirements:~~

- ~~(1) If the mortgage broker is a sole proprietor, he must have at least three years of experience in brokering residential mortgage loans or residential mortgage lending;~~
- ~~(2) If the mortgage broker is a general or limited partnership, at least one of its general partners shall have the experience set forth in Subparagraph (a)(1) of this Rule;~~
- ~~(3) If the mortgage broker is a corporation, at least one of its principal officers shall have the experience set forth in Subparagraph (a)(1) of this Rule.~~

~~(b) Mortgage brokers which are registered with the Commissioner on the date this Rule becomes effective shall have until January 1, 1997 to meet the experience requirements of this Rule.~~

*Authority G.S. 53-236(b); 53-237(a); 53-241.*

**04 NCAC 03I .0305 ISSUANCE OF CERTIFICATE OF REGISTRATION**

~~Upon receipt of a completed application and compliance with Section .0200 and Rules .0303 and .0304 of this Subchapter, and payment of the fees required by G.S. 53-236 and G.S. 53-242, the Commissioner shall investigate the applicant pursuant to G.S. 53-237. If the Commissioner finds the applicant has met the provisions of G.S. 53-237, the Commissioner shall register the applicant as either a mortgage broker or a mortgage banker.~~

*Authority G.S. 53-236; 53-237(a); 53-241; 53-242.*

**04 NCAC 03I .0306 NONTRANSFERABILITY OF CERTIFICATE OF REGISTRATION**

- ~~(a) A Certificate of Registration shall be neither transferable nor assignable.~~
- ~~(b) The circumstances under which the Commissioner shall deem a change in the registrant's organizational structure to constitute a transfer or assignment of the Certificate of Registration shall include, but not be limited to, the following:~~
  - ~~(1) If the registrant is a corporation:~~

- ~~(A) A change in ownership of 50% or more of the registrant's stock;~~
- ~~(B) The conversion of the corporation into a general or limited partnership or sole proprietorship;~~
- ~~(2) If the registrant is a general or limited partnership:~~
  - ~~(A) A change in one of the registrant's general partners;~~
  - ~~(B) The conversion of the general partnership into a limited partnership, corporation or sole proprietorship;~~
  - ~~(C) The conversion of the limited partnership into a general partnership, corporation or sole proprietorship;~~
- ~~(3) If the registrant is a sole proprietor:~~
  - ~~(A) The conversion of the sole proprietorship into a general or limited partnership or corporation;~~
  - ~~(B) The sale of all of the assets of the registrant's business to another person.~~

~~(c) Upon a change in organization as set forth in Paragraph (b) of this Rule, the Certificate of Registration shall become void and the registrant shall surrender its Certificate of Registration to the Commissioner within 30 days of such change. If the entity which results from the change in the registrant's organizational structure would like to engage in business as a mortgage banker or mortgage broker in this State, it shall apply for a Certificate of Registration pursuant to Rule .0301 of this Section.~~

*Authority G.S. 53-237(c); 53-241.*

**SECTION .0400 - OPERATIONS**

**04 NCAC 03I .0401 ANNUAL REGISTRATION FEE**

- ~~(a) On or before December 31 of each year, each registrant shall pay the annual fee set forth in G.S. 53-242.~~
- ~~(b) Failure of a registrant to pay the annual fee within 31 days of the date specified in Paragraph (a) of this Rule shall be grounds for revocation of its registration pursuant to G.S. 53-239(c).~~

*Authority G.S. 53-239(c); 53-241; 53-242.*

**04 NCAC 03I .0402 ANNUAL REPORT**

- ~~(a) No later than 120 days after the end of the registrant's accounting period, it shall file an annual report. The report shall be filed on a form obtained from the Commissioner pursuant to Rule .0101(e) of this Subchapter.~~
- ~~(b) The annual report referenced in Paragraph (a) of this Rule shall include evidence of compliance with Rule .0201 of this Subchapter and a Statement of Financial Condition affirming the financial solvency of the registrant on a form provided by the Commissioner.~~
- ~~(c) The annual report required by this Rule shall be in writing and be verified by the oath of the registrant.~~
- ~~(d) Failure of a registrant to submit an annual report in the manner required by this Rule shall be grounds for revocation of its registration pursuant to G.S. 53-239(c).~~

*Authority G.S. 53-239(c); 53-241.*

**04 NCAC 03I .0403 SEGREGATION OF FEES**

~~(a) A mortgage broker and a mortgage banker that engages in tablefunding but does not engage in any other mortgage banking activity shall immediately deposit all third-party fees and refundable fees in a segregated account in a federally insured financial institution. The account shall be in the name of the registrant. The account shall be used exclusively for third-party fees and refundable fees, and shall be reconciled monthly.~~

~~(b) For purposes of this Rule "immediately" means within seven business days of receipt of the funds.~~

*Authority G.S. 53-238; 53-241.*

**04 NCAC 03I .0404 REFUNDS**

~~If refunds are due, such refunds shall be made no later than 30 business days after an application for a loan is terminated for any reason or no later than 30 business days after the closing of the loan.~~

*Authority G.S. 53-238(5); 53-238(6); 53-241.*

**04 NCAC 03I .0405 RECORD AND BOOKKEEPING REQUIREMENTS**

~~(a) A registrant shall maintain books and records which shall include, at a minimum, the following:~~

- ~~(1) A record, such as a cash receipts journal, of all monies received in connection with each mortgage loan showing at least:
  - ~~(A) Identity of payor,~~
  - ~~(B) Date received,~~
  - ~~(C) Amount received,~~
  - ~~(D) Description of the purpose of payment,~~
  - ~~(E) Identification of the loan to which the receipt relates, if any;~~~~
- ~~(2) A sequential listing of checks written for each bank account relating to the registrant's business as a mortgage broker or mortgage banker, such as a cash disbursements journal, showing at least:
  - ~~(A) Payee,~~
  - ~~(B) Amount,~~
  - ~~(C) Date,~~
  - ~~(D) Purpose of payment, including identification of the loan to which it relates, if any;~~~~
- ~~(3) A file for each mortgage loan containing:
  - ~~(A) Name of applicant,~~
  - ~~(B) Date of application,~~
  - ~~(C) Employee processing the application,~~
  - ~~(D) HUD-1 Settlement Statement,~~
  - ~~(E) Copies of all agreements or contracts with the applicant including commitment and lock-in agreements, where applicable,~~
  - ~~(F) All required disclosures with applicable State and Federal law, rules and regulations;~~~~

~~(4) Samples of each piece of advertising relating to the registrant's business of mortgage brokerage or mortgage banking in North Carolina for a period of 12 months;~~

~~(5) If the registrant is a corporation, general or limited partnership, copies of the following:~~

- ~~(A) Articles of Incorporation or General or Limited Partnership Agreement,~~
- ~~(B) Corporate or partnership minutes, if required by law,~~
- ~~(C) Annual reports, if required by law,~~
- ~~(D) All contracts, agreements and escrow instructions to or with any depository;~~

~~(6) A monthly reconciliation of the account referred to in Rule .0403 of this Section.~~

~~(b) All records required by Paragraph (a) of this Rule shall be kept for a period of at least three years, and shall be available upon 72 hours notice by the Commissioner. Such records may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner. However, books and records kept in this manner shall be convertible into clearly legible, tangible documents within 72 hours of request by the Commissioner. This time period shall be extended for an additional reasonable time by the Commissioner if the registrant demonstrates to the satisfaction of the Commissioner that it cannot provide the records requested within 72 hours of request.~~

~~(c) All records required by Paragraph (a) of this Rule shall be prepared in accordance with generally accepted accounting principles, where applicable.~~

~~(d) A registrant shall notify the Commissioner of any change in the location of its books and records.~~

*Authority G.S. 53-238; 53-239; 53-241.*

**04 NCAC 03I .0406 DISPLAY OF CERTIFICATE OF REGISTRATION**

~~(a) A registrant shall post its Certificate of Registration in plain view of customers at its principal office, each of its branch offices in this State and any branch offices outside of this State at which mortgage loans are originated or made on residential real property as defined in G.S. 53-234(1) and (2).~~

~~(b) A registrant shall notify the Commissioner of the opening of any branch office, a change in the name under which it operates or a change in the address of its principal office and any branch office as set forth in Paragraph (a) of this Rule. The notification shall be made at least 30 days prior to the effective date of such change, shall provide the new name or address and shall be accompanied by a certificate reissuance fee of twenty-five dollars (\$25.00) payable to the Commissioner. Upon receipt of a Certificate of Registration which contains the new address, a registrant shall surrender its former Certificate of Registration to the Commissioner.~~

*Authority G.S. 53-122(3); 53-234(1); 53-234(2); 53-237(c); 53-241.*

**SECTION .0500 - REPORTING AND NOTIFICATION REQUIREMENTS**



**04 NCAC 03I .0501 AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER**

~~(a) A registrant shall notify the Commissioner within 30 days of any material changes to information submitted to the Commissioner during the application process, upon filing of the annual statement, or otherwise filed with the Commissioner.~~

~~(b) Notification shall be accomplished by letter or by revision of the applicable pages of the application or annual report filed pursuant to Rule .0301 and .0402, respectively, of this Subchapter. If the registrant elects to comply with this Rule by revising its application or annual statement, it shall obtain the applicable pages of the application from the Commissioner.~~

~~(c) For the purposes of this Rule, the term "material" shall mean any information which would be likely to influence the granting, revocation, or expiration of a Certificate of Registration. The term "material" shall include but not be limited to:~~

- ~~(1) changes in the registrant's corporate officers, partners, or business structure, and~~
- ~~(2) changes in the address of the registrant's main or branch offices and any names under which the registrant operates.~~

Authority G.S. 53-241.

**04 NCAC 03I .0502 WITHDRAWAL/TERMINATION/REGISTRATION/MTGE BANKER/MTGE BROKER**

~~(a) A registrant shall notify the Commissioner in writing of its decision to cease operations as a mortgage banker or mortgage broker in this State within seven days of such decision.~~

~~(b) A registrant shall surrender its Certificate of Registration to the Commissioner no later than 15 days after it has ceased operations in this State.~~

Authority G.S. 53-241.

**04 NCAC 03I .0503 IMPAIRMENT OF FINANCIAL REQUIREMENTS**

~~(a) A registrant shall immediately notify the Commissioner in writing if, at any time, it fails to meet the minimum net worth required by Rule .0201 of this Subchapter.~~

~~(b) A registrant shall immediately notify the Commissioner in writing of any cancellation or suspension of the surety bond, irrevocable letter of credit, or pledge of securities required by Rules .0204 or .0205 of this Subchapter.~~

~~(c) For the purposes of this Rule, immediately means within seven days of discovery of the failure to meet the requirements of Rules .0201, .0204, and .0205 of this Subchapter.~~

Authority G.S. 53-236(b); 53-241.

**SECTION .0600 - PROHIBITED ACTS AND PRACTICES; INVESTIGATIONS**

**04 NCAC 03I .0601 PROHIBITED CONDUCT AND PRACTICES**

~~(a) For the purposes of G.S. 53-238(1) and (2), the terms "material facts," and "material factors, terms or conditions" shall mean any term, fact, factor or condition which is likely to~~

~~influence, persuade or induce an applicant for a mortgage loan to take a particular action.~~

~~(b) For the purposes of G.S. 53-238(6), acts and practices of a registrant which shall be deemed not in "good faith" or "fair dealing" shall include the following:~~

- ~~(1) The failure to make a good faith effort to issue commitments and effect closing in a timely manner;~~
- ~~(2) The failure to provide any of the disclosures in the manner and at the times required by this Subchapter;~~
- ~~(3) The failure to disburse funds in accordance with a commitment to make a mortgage loan which is accepted by the applicant;~~
- ~~(4) The conduct of business with an unregistered mortgage broker or mortgage banker;~~
- ~~(5) The acceptance of any fees at closing which were not disclosed in accordance with this Subchapter;~~
- ~~(6) The failure to provide an accurate loan payoff amount requested by a borrower or an authorized agent in a timely manner.~~

Authority G.S. 53-238; 53-241.

**04 NCAC 03I .0602 SOLICITATION AND ADVERTISING**

~~(a) A registrant shall not advertise mortgage loan products unless it will make such products available to a reasonable number of qualified applicants responding to the advertisement. Nothing in this Paragraph shall require a registrant to make a loan to an unqualified applicant.~~

~~(b) No registrant shall fraudulently or deceitfully advertise a mortgage loan, or misrepresent the terms, conditions or charges incident to a mortgage loan in any advertisement. Conduct which shall be deemed fraudulent, deceitful or misleading shall include the following:~~

- ~~(1) The advertisement of immediate approval of a loan application or immediate closing of a loan;~~
- ~~(2) The advertisement of a no-point mortgage loan when points are a condition for commitment or closing;~~
- ~~(3) The advertisement of an intentionally incorrect number of points;~~
- ~~(4) The advertisement that an applicant will have unqualified access to credit without disclosing material limitations on the availability of credit, such as the percentage of down payment required, that a higher interest rate or points may be required, or that restrictions as to the maximum principal amount of the loan offered may apply;~~
- ~~(5) The advertisement of a specific time period within which a commitment will be issued unless a commitment will be issued to a qualified applicant within the time period specified;~~
- ~~(6) The advertisement of a mortgage loan where an interest rate is indicated in the advertisement, unless the advertisement~~

~~provides that the expressed rate may change or not be available at commitment or closing;~~

- ~~(7) The advertisement of mortgage loan interest rates that are in violation of State or Federal laws and regulations.~~

*Authority G.S. 53-238; 53-241.*

**04 NCAC 03I .0603 EXAMINATIONS, INVESTIGATION**

~~The Commissioner or his designee may examine or investigate a registrant when the Commissioner has reasonable grounds to believe that a registrant has violated any law or regulation of this State, the Federal government or any agency thereof.~~

*Authority G.S. 53-238; 53-239; 53-240; 53-241.*

**04 NCAC 03I .0604 ENFORCEMENT ACTIONS**

~~(a) The grounds upon which the Commissioner may either revoke or suspend a registrant's Certificate of Registration shall include the following:~~

- ~~(1) The making of any false statement in an application for registration, if the false statement would have been grounds for the denial of the application; or~~
- ~~(2) The making of any false statement on any form or document requested by the Commissioner; or~~
- ~~(3) One or more violations of the Registration of Mortgage Bankers and Brokers Act or provisions of this Subchapter; or~~
- ~~(4) The conviction of any crime which would have a bearing upon the fitness or ability of the registrant to conduct its business; or~~
- ~~(5) The commission of any action which involves dishonesty, fraud or misrepresentation. This Subparagraph shall not be construed to apply to bonafide errors.~~

~~(b) The Commissioner shall not revoke or suspend the Certificate of Registration of a registrant without first providing the registrant with notice and an opportunity to be heard pursuant to G.S. 150B and 4 NCAC 3B .0200, et seq.~~

*Authority G.S. 53-238; 53-239; 53-241.*

**04 NCAC 03I .0605 HEARINGS**

~~All hearings conducted pursuant to this Subchapter or the Registration of Mortgage Bankers and Brokers Act shall proceed in accordance with G.S. 150B and 4 NCAC 3B .0200, et seq. The Commissioner may subpoena witnesses at all such hearings.~~

*Authority G.S. 53-239; 53-241.*

**SECTION .0700 - DISCLOSURE REQUIREMENTS**

**04 NCAC 03I .0701 CONFLICTS OF INTEREST**

~~(a) A registrant has a conflict of interest if it provides the borrower with additional products or services under any of the following circumstances:~~

- ~~(1) The registrant or its subsidiary or parent owns, controls or holds with the power to vote 10%~~

~~or more of any class of equity securities or other beneficial interest of any person providing the additional products or services; or~~

- ~~(2) The person providing the additional products or services owns, controls or holds with the power to vote 10% or more of any class of equity securities or other beneficial interest of the registrant, its subsidiary or parent; or~~
- ~~(3) The same person owns, controls or holds with the power to vote 10% or more of any class of equity securities or other beneficial interest of both the registrant and the person providing the additional products or services; or~~
- ~~(4) One or more persons is an officer or director of both the registrant and the person providing the additional products or services.~~

~~(b) A registrant which has a conflict of interest as specified in Paragraph (a) of this Rule shall disclose the conflict of interest to the borrower in writing at the time it offers additional products or services.~~

~~(c) The registrant shall inform the borrower in writing that it may receive a financial benefit as a result of the conflict of interest.~~

~~(d) The registrant shall inform the borrower in writing that he may choose alternative sources to provide the required services.~~

*Authority G.S. 53-238; 53-241.*

**04 NCAC 03I .0702 MORTGAGE BROKER APPLICATION DISCLOSURES**

~~(a) This Rule shall apply to mortgage brokers and mortgage bankers that engage in tablefunding, but do not engage in any other mortgage banking activity.~~

~~(b) At or prior to acceptance of the application, application fee or third-party fee, whichever shall occur first, the registrant shall disclose the following information in writing:~~

- ~~(1) That it does not fund mortgage loans;~~
- ~~(2) That it cannot guarantee acceptance into any particular loan program, nor can it guarantee any specific loan terms or conditions;~~
- ~~(3) The amount of the application fee, and the terms or conditions of refund, if any.~~

~~(c) Within three business days after the application is received or prepared, the registrant shall disclose the following information in writing by delivering it or placing it in the mail to the loan applicant:~~

- ~~(1) A good faith estimate of all settlement costs;~~
- ~~(2) The specific services which will be provided or performed for the application fee and a description of the costs of each service;~~
- ~~(3) The maximum points or fees of any nature, however denominated, including premium pricing, payable to the registrant by the lender and any fees or points, however denominated, to be paid by the applicant directly to the registrant. In those instances where fees and points are paid from the loan proceeds and are not considered to be a cost of credit for the purposes of Regulation Z, a statement shall be included to the effect that such points and fees~~

are costs for obtaining the loan which the borrower may be obligated to repay with interest over the term of the mortgage loan. Alternatively, in those instances where fees and points are paid directly to the registrant at or before closing and are not considered to be a cost of credit for the purposes of Regulation Z, a statement shall be included to the effect that such points and fees are costs for obtaining the loan and that they are an addition to the amount which the borrower will actually receive from the loan;

(4) Any premiums or bonuses to be paid to the registrant by the mortgage banker or exempt organization and the basis of its eligibility to receive premiums or bonuses;

(5) If applicable, the fact that fees are being divided between more than one mortgage broker, mortgage banker, or exempt organization, or any combination thereof, and the dollar amount or the percentage of such fees. If such fees cannot be determined precisely, a good faith estimate of such fees shall be provided.

(d) Any third party fees collected in excess of the actual cost shall be returned at or prior to closing.

(e) Some or all of the disclosures required by Paragraphs (b) and (c) of this Rule may appear on forms used to comply with applicable State and Federal laws, rules or regulations or, at the option of the registrant, may be made as separate disclosures.

(f) The registrant shall provide each applicant with a copy of the application upon request. Where both a husband and wife apply jointly for a mortgage loan, the registrant may provide only one copy of the application to either spouse.

(g) Nothing in this Rule shall be construed to prohibit the acceptance of telephone applications provided that the applicant, upon request, is given the opportunity to review the information he orally submits within 10 days of the telephone application and provided further that the applicant receives the appropriate disclosures as set forth in this Rule.

Authority G.S. 53-238; 53-241.

#### 04 NCAC 03I .0703 MORTGAGE BANKER APPLICATION DISCLOSURES

(a) This Rule shall not apply to mortgage bankers that engage in tablefunding, but do not engage in any other mortgage banking activity.

(b) Prior to the acceptance of an application, application fee or third party fee, whichever shall occur first, a mortgage banker shall disclose the following in writing:

- (1) The amount of the application fee, if any;
- (2) Whether the application fee or any third party fee is refundable. For all refundable fees, the mortgage banker shall disclose the terms and conditions of refund.

(c) Within three business days after the application is received or prepared, the mortgage banker shall disclose in writing the mortgage banker's good faith estimate of settlement costs by delivering it or placing it in the mail to the loan applicant.

(d) Any third party fees collected in excess of their actual cost shall be returned at or prior to closing.

(e) Some or all of the disclosures required by Paragraphs (b) and (c) of this Rule may appear on forms used to comply with applicable State or Federal laws, rules or regulations or, at the option of the mortgage banker, may be made as separate disclosures.

(f) A mortgage banker shall provide each applicant with a copy of his application upon request. Where a married couple applies jointly for a mortgage loan, the registrant may provide only one copy of the application to either spouse.

(g) Nothing in this Rule shall be construed to prohibit the acceptance of telephone applications provided that the applicant, upon request, is given the opportunity to review the information he orally submits within 10 days of the telephone application and provided further that the applicant receives the appropriate disclosures as set forth in this Rule.

Authority G.S. 53-238; 53-241.

#### 04 NCAC 03I .0704 DISCLOSURE ARRGMTS BETWEEN MORTGAGE BANKERS/MORTGAGE BROKERS

If a mortgage loan involves more than one registered mortgage banker or mortgage broker, the registrants shall agree among themselves as to which shall comply with the disclosure and other requirements imposed under Rules .0702 and .0703 of this Section consistent with applicable Federal and State law, rules and regulations. In the absence of agreement, all such registrants shall be liable therefor.

Authority G.S. 53-241.

#### 04 NCAC 03I .0705 COMMITMENT DISCLOSURES

(a) At the issuance of a commitment, or acceptance of a commitment fee, or within three days after the application has been received or prepared, whichever is later, a mortgage banker shall disclose the following information in writing by delivering it or placing it in the mail:

(1) The following terms and conditions of the commitment:

- (A) The amount of the commitment fee, if any;
- (B) Whether the commitment fee is refundable and the terms and conditions of refund;
- (C) The time during which the commitment is irrevocable and may be accepted by the borrower;
- (D) The expiration date of the commitment;
- (E) The amount of fees and charges payable at the time of commitment, if applicable.

(2) The following terms and conditions of the mortgage loan:

- (A) Identification of the entity which will fund the loan;
- (B) Identification of the borrower(s);
- (C) Identification of the property securing the loan;



- ~~(D) Principal amount of the loan,~~
- ~~(E) Term of the loan,~~
- ~~(F) Interest rate of the loan expressed as an annual percentage rate as of the date of closing. The annual percentage rate shall be calculated as provided in the Truth In Lending Act (15 USC 1606) and Regulation Z (12 CFR Part 226.22),~~
- ~~(G) Monthly payment of principal and interest,~~
- ~~(H) Where applicable, a statement that a balloon payment will be required,~~
- ~~(I) If the loan is an adjustable rate loan, in addition to the foregoing, the mortgage banker shall disclose the frequency of change, the index, the margin and any relevant caps,~~
- ~~(J) Where the commitment is a prevailing rate commitment, the index and margin, if any, upon which the rate for the loan will be based,~~
- ~~(K) Where applicable, a statement that private mortgage insurance will be required,~~
- ~~(L) Where applicable, a statement that negative amortization may apply,~~
- ~~(M) Whether and under what conditions the loan is assumable,~~
- ~~(N) Where applicable, a statement that funds are to be escrowed,~~
- ~~(O) The total points to be accepted directly or indirectly by or on behalf of the mortgage banker at, prior to or after closing,~~
- ~~(3) All conditions precedent to closing, including the following, if applicable:~~
  - ~~(A) Title report and title insurance,~~
  - ~~(B) Property survey,~~
  - ~~(C) Copy of certificate of occupancy for use,~~
  - ~~(D) Satisfactory final inspection (if new construction),~~
  - ~~(E) Evidence of hazard insurance.~~

~~(b) The mortgage banker shall separately identify the points, including premium pricing, payable by the lender to a mortgage broker or a mortgage banker that engages in table funding but does not engage in any other mortgage banking activity.~~

~~(c) The mortgage banker shall separately identify any premiums or bonuses to be paid to the mortgage broker or mortgage banker that engages in tablefunding, but does not engage in any other mortgage banking activity,~~

~~(d) Points, however denominated by the mortgage banker, may not be required by the mortgage banker as a condition for closing a mortgage loan if they have not been previously disclosed pursuant to this Rule.~~

~~(e) A commitment fee and any points accepted by a mortgage banker prior to closing must be refunded in full if an applicant who has provided complete and correct credit information as required by the application form is rejected as not credit worthy.~~

~~(f) In cases where a mortgage broker which is an exclusive agent of the mortgage banker agrees to prepare the Good Faith Estimate of Settlement Costs pursuant to Regulation X, the mortgage banker need not disclose terms and provisions pursuant to Paragraph (a) of this Rule which have already been disclosed on the Good Faith Estimate of Settlement Services.~~

~~(g) A mortgage banker shall provide each applicant with a copy of the form or forms which contain items required to be disclosed by this Section. If the applicant is a married couple, the mortgage banker may provide only one copy to either spouse.~~

~~(h) The items required to be disclosed by Paragraph (a) of this Rule may be incorporated into the commitment or into one or more forms required by State or Federal law, rules and regulations, or such items may be contained in a separate form.~~

~~(i) Any additional settlement costs, documents or other items required to close the loan which are found to be necessary after the commitment has been issued shall be disclosed to the applicant in writing within three business days of the discovery of the need for such items.~~

Authority G.S. 53-238; 53-241.

#### 04 NCAC 03I .0706 MORTGAGE LOCK-IN AGREEMENT

~~(a) If the applicant chooses to lock in an interest rate, prior to the acceptance of payment for any points or a lock in fee, or within three business days after the application has been prepared or received, whichever is later, a mortgage banker shall provide the applicant with a written lock in agreement signed by the mortgage banker and the applicant. The lock in agreement shall contain the following information:~~

- ~~(1) The term of the loan,~~
- ~~(2) The interest rate and any points,~~
- ~~(3) The expiration of the lock in period,~~
- ~~(4) The lock in fee,~~
- ~~(5) Where applicable, the commitment fee locked in,~~
- ~~(6) Whether the lock in or commitment fee is refundable and the terms and conditions of refund,~~
- ~~(7) The source of the funding of the loan.~~

~~(b) The length of the lock in period shall be a time period within which the mortgage banker can reasonably expect to close the loan given the prevailing market conditions at the time of the lock in.~~

~~(c) Nothing contained herein shall be construed to prohibit a mortgage broker from accepting a lock in fee for transmittal to a mortgage banker or exempt organization prior to the issuance by the mortgage banker or exempt organization of a commitment, provided that prior to acceptance of a lock in fee:~~

- ~~(1) The mortgage broker provides the applicant with a lock in agreement executed by the mortgage banker which conforms with the requirements of Paragraph (a) of this Rule;~~
- ~~(2) The lock in fee is made payable by the applicant to the mortgage banker or exempt organization. A mortgage broker may only accept a lock in fee for transmittal to the mortgage banker or exempt organization.~~

~~(d) The items required to be disclosed by Paragraph (a) of this Rule may be incorporated into the lock-in agreement or into one or more forms required by State and Federal law, rules and regulations.~~

~~(e) A lock-in fee, including any points accepted by the mortgage banker prior to closing, shall be refunded in full if an applicant who provides complete and correct information as required by an application is rejected as not credit worthy.~~

Authority G.S. 53-238; 53-241.

### **SUBCHAPTER 3M - MORTGAGE LENDING**

#### **SECTION .0100 – GENERAL**

##### **04 NCAC 03M .0101 DEFINITIONS**

As used in this Subchapter, unless a contrary definition is expressly provided or clearly required by the context:

- (1) Terms used in this Subchapter which are defined in the Act shall have the same meaning as set forth in the Act.
- (2) When any term herein is defined by reference to or incorporation of a regulation or rule of a federal or state agency, board, commission or other regulatory body other than the Commissioner, such reference shall be deemed to be to such regulation or rule as the same is in effect and interpreted on the effective date of this Subchapter.
- (3) "Act" means North Carolina Session Law 2001-393, as amended by North Carolina Session Law 2001-399, s.2, commonly known as the "Mortgage Lending Act", as the same shall be codified and as amended from time to time.
- (4) "Certified statement of financial condition" means a statement of financial condition prepared in accordance with generally accepted accounting principles and certified by the preparer as fairly and accurately reflecting the financial condition of the licensee as of the date specified therein.
- (5) "Commissioner" means the North Carolina Commissioner of Banks or any member(s) of his or her staff designated by the Commissioner to act on his or her behalf. "Commission" means the North Carolina Banking Commission.
- (6) "Continuing education program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.
- (7) "Controlling person" means a person who, with regard to a licensee:
  - (a) has the ability to exercise "control" as such term is defined in G.S. 243.01(6); or
  - (b) otherwise, directly or indirectly, has the power to direct the management and policy of the licensee.

- (8) "Examination" means the mortgage lending fundamentals examination required by G.S. 243.05(b)(2).
- (9) "Exempt person" means a person exempt from the licensing requirements of the Act.
- (10) "Fundamentals program" means a classroom education program approved pursuant to Rule .0301 of this Subchapter.
- (11) "Instructor" means an individual who is employed by a provider and who is responsible for teaching a program.
- (12) "License" means a mortgage lender, mortgage broker or loan officer license issued pursuant to the Act and this Subchapter. "Licensee" means a person to whom such a license has been issued and who currently holds such license.
- (13) "License year" means July 1 – June 30, or such other 12 month period as the Commissioner may from time to time determine.
- (14) "Program" means either a fundamentals or continuing education program.
- (15) "Provider" means any person who provides an education program.
- (16) "Testing Service" means an organization selected by the Commissioner to develop and administer the examination.

Authority G.S. 53-243.04.

##### **04 NCAC 03M .0102 NOTICES**

(a) Except as may be provided in G.S. 150B or the rules of the Office of Administrative Hearings, any notice, pleading, decision or other communication required or permitted to be given by the Commissioner to a licensee, an applicant or an exempt person shall be considered given when deposited in the United States mail with sufficient first class postage affixed, addressed to the most recent principal office address provided by the addressee.

(b) Unless otherwise stated thereon or in any accompanying instructions, any application for licensure, report, annual statement, amendment to application, notice or other document which is required or permitted by law or rule to be filed with the Commissioner shall be in writing, signed by the sender or a principal officer and shall be effective upon actual receipt at the following address, or such other address as the Commissioner may specify from time to time, as follows: By ordinary mail: North Carolina Commissioner of Banks, 4309 Mail Service Center, Raleigh, NC 27699-4309; By overnight mail service or hand delivery: North Carolina Commissioner of Banks, 316 W. Edenton Street, Raleigh, NC 27603.

Authority G.S. 53-243.04.

#### **SECTION .0200 – LICENSING**

##### **04 NCAC 03M .0201 APPLICATION**

(a) The required license fees shall be submitted with an application for licensure as a mortgage banker, mortgage broker or loan officer. Such fees are nonrefundable.

(b) Each type of application shall be in writing on a form promulgated by the Commissioner, shall be accompanied by all information requested therein and shall be verified by the oath of the applicant or a principal officer thereof.

(c) In addition to the documents and information specified in the relevant application form and accompanying instructions, the Commissioner or his or her staff may require additional information as they deem necessary in order to enable the Commissioner to make the determinations required by G.S.53-243.05(i).

(d) Applications submitted without the required fees or which are missing information deemed material by the Commissioner or the Commission staff shall be held in inactive status for a period of 30 calendar days after written notice to the applicant specifying the nature of the deficiency. If any such deficiency remains outstanding for more than 30 days, the application shall automatically be considered denied without further action by the Commissioner, and the applicant shall be required to submit a new application and pay all fees associated therewith.

*Authority G.S. 53-243.04.*

**04 NCAC 03M .0202 NONTRANSFERABILITY**

(a) Any attempt to transfer or assign a license through a change of control without the prior consent of the Commissioner shall:

- (1) be ineffective;
- (2) be grounds for immediate revocation of such license; and
- (3) render the assignor licensee liable for any and all actions or omissions of its assignee which occur while acting under the apparent authority of such license.

(b) A change in the identity of a licensee's controlling person or any material change in the licensee's organizational structure shall be considered a transfer or assignment of the license. However, the Commissioner may permit such change without requiring the licensee to apply for a new license, provided:

- (1) the licensee gives notice to the Commissioner at least 60 days in advance of the effective date of the proposed change; and
- (2) the Commissioner determines that permitting the licensee to continue to operate under its existing license would not be inconsistent with the purposes of the Act.

(c) A notice pursuant to Subparagraph (b)(1) of this Rule shall include sufficient detail to enable the Commissioner to make the determination described in that Subparagraph.

*Authority G.S. 53-243.04.*

**04 NCAC 03M .0203 NAME CHANGES**

A licensee may, with the prior approval of the Commissioner, change its corporate name or the name under which it operates, provided:

- (1) the licensee and the proposed new name satisfies all applicable laws pertaining to corporate, fictitious and trade names (including, but not limited to, G.S.53-127);
- (2) the licensee has given the Commissioner at least 30 days prior notice of the proposed new name; and

- (3) the Commissioner determines that the new name is not likely to result in confusion among the general banking public regarding the licensee's identity or powers.

*Authority G.S. 53-243.04.*

**04 NCAC 03M .0204 EXPERIENCE**

(a) As used in G.S. 243.05(c)(1), a person will be considered to have acquired "experience in residential mortgage lending" during any documented period or periods of substantially full time employment in the mortgage banking or brokerage industry in which he or she had actual and substantial responsibility for job functions in each area of study included in a fundamentals program approved by the Commissioner.

(b) Persons to whom a mortgage lender or mortgage broker license is issued pursuant to Sections 5(a) or 5(c) of the Act shall comply with the minimum experience requirements of G.S.53-243.05(c) by not later than the date the licensee files for renewal of such license for the July 1, 2003 - June 30, 2004 license year.

*Authority G.S. 53-243.04.*

**SECTION .0300 - EDUCATION AND EXAMINATIONS**

**04 NCAC 03M .0301 APPROVAL OF PROVIDERS AND PROGRAMS**

(a) A licensee or prospective licensee will receive credit for participation in a program only if it is presented by a provider approved by the Commissioner and the Commissioner has approved the program. The Commissioner shall make readily available to the public a current listing of approved providers list, which shall be updated as needed. The list shall indicate whether a provider is approved to present fundamentals programs, continuing education programs, or both.

(b) Any provider desiring to conduct a fundamentals or continuing education program shall, at least 30 days prior to any advertisement, promotion or solicitation of prospective attendees of the program, request that the Commissioner approve the provider's qualifications and approve one or more specific programs. The application shall be upon a form prescribed by the Commissioner and shall include at least the following information:

- (1) the name and address of the provider and date(s) on and locations at which the program is to be offered;
- (2) the qualifications and experience of the provider's principal officers, staff, and instructor(s);
- (3) the costs of all programs for which approval is sought; and
- (4) a reasonably detailed description of each program for which approval is sought.

(c) A provider shall not use any words, symbols or other means to indicate that either the provider or a program has received the Commissioner's approval unless such approval has been issued and remains in effect.

(d) A provider shall publish and provide to all prospective students prior to or simultaneous with their enrollment a writing which contains the information described in Subparagraphs (b)(1)-(b)(4) of this Rule.

(e) The Commissioner's approval of any provider or program shall expire one year from the date of issuance and thereafter on each subsequent anniversary of the renewal date. Application for renewal of provider or program approval must be filed by not later than 60 days prior to each such expiration date.

(f) The Commissioner may deny, revoke, suspend, or terminate approval of any provider or any individual program upon a finding that:

- (1) the provider has refused or failed to comply with any applicable provisions of this Subchapter or of any contractual agreement with the Commissioner or has refused or failed to submit in a timely manner information or properly completed forms prescribed by the Commissioner; or
- (2) any provider officer or employee has obtained or used, or has attempted to obtain or use, in any manner or form, the examination questions; or
- (3) in the case of the fundamentals program, the provider's students have a first-time licensing examination performance record that is significantly below the examination performance record of first-time examination candidates overall; or
- (4) the provider has not conducted at least one fundamentals or continuing education program (as applicable) during the preceding 12-month period; or
- (5) the provider has knowingly employed to present any program an instructor who would be ineligible under the standards of G.S. 53-243.05(a)(4), or who is otherwise unqualified.

*Authority G.S. 53-243.04; 53-243.05; 53-243.07.*

**04 NCAC 03M .0302 LOAN OFFICER EXAMINATION**

(a) Examinations shall be administered by the testing service no less frequently than quarterly in a reasonable number of locations distributed throughout North Carolina.

(b) The length and minimum acceptable score for examinations shall be determined from time to time and announced in advance by the Commissioner.

(c) The testing service shall maintain and publish a current schedule of times and locations at which the examination will be administered. The testing service may charge applicants a fee for its administration of the examination.

*Authority G.S. 53-243.05.*

**04 NCAC 03M .0303 REQUIREMENTS FOR PROVIDERS**

(a) A provider shall designate one person as its contact person who shall be available to the Commissioner during ordinary business hours and shall be knowledgeable and have authority to act with regard to all administrative matters concerning instructors, scheduling, advertising, recordkeeping, and supervising all programs offered by the provider.

(b) Providers shall retain the following material from each program on file at one location for a minimum of three years:

class schedules; advertisements; bulletins, catalogues, and other publications distributed to students; and list of student names, with social security numbers, for each program; and the name of the instructor. All files shall be made available to the Commissioner upon request.

(c) Fundamentals programs must provide prospective loan officer licensees with a basic knowledge of and competency in the following: basics of home purchase and ownership, the mortgage industry generally, loan evaluation and documentation, the operation of a mortgage firm, features of various loan products, state and federally required disclosures, and ethical considerations.

(d) Continuing education programs must enhance the existing professional competence of the target group of licensees by providing updated information or more detailed or narrowly-focused information than the fundamentals program.

*Authority G.S. 53-243.05; 53-243.07.*

**SECTION .0400 - REPORTING AND NOTIFICATION REQUIREMENTS**

**04 NCAC 03M .0401 ANNUAL REPORTING REQUIREMENTS**

(a) No later than 90 days after the end of a mortgage banker licensee or mortgage broker licensee's accounting period, it shall file an annual report. The report shall be filed on a form and shall contain and be supplemented or accompanied by such information as shall be prescribed by the Commissioner including, but not necessarily limited to, a certified statement of financial condition.

(b) The annual report required by this Rule shall be in writing and be verified by the oath of the licensee.

(c) Failure of a licensee to submit an annual report in the manner required by this Rule shall be grounds for discipline pursuant to G.S. 53-243.12.

*Authority G.S. 53-243.04.*

**04 NCAC 03M .0402 AMENDMENTS TO INFORMATION ON FILE WITH THE COMMISSIONER**

(a) A licensee shall notify the Commissioner within 30 days of any material changes to information submitted to the Commissioner during the application process, upon filing of the annual statement, or otherwise filed with the Commissioner.

(b) Notification shall be accomplished by letter or by submission of revised pages of the application or annual report filed pursuant to Rules .0201 and .0401, respectively, of this Subchapter.

(c) For the purposes of this Rule, the term "material" means any information which would be likely to influence the granting, revocation, or expiration of a license. The term "material" shall include by not be limited to:

- (1) changes in the licensee's corporate officers, partners, or business structure; and
- (2) changes in the address of the licensee's main or branch offices and any names under which the licensee operates.

*Authority G.S. 53-243.04.*

**04 NCAC 03M .0403      TERMINATION OF OPERATIONS**

- (a) A licensee shall notify the Commissioner in writing of its decision to cease operations as a mortgage banker or mortgage broker in this State within seven days of such decision.  
(b) A licensee shall surrender all licenses to the Commissioner no later than 15 days after it has ceased operations in North Carolina.

*Authority G.S. 53-243.04.*

**SECTION 0500 - RECORD AND BOOKKEEPING REQUIREMENTS**

**04 NCAC 03M .0501      RECORDS TO BE MAINTAINED**

- (a) A licensee shall maintain or cause to be maintained a record of all cash, checks or other monetary instruments received in connection with each mortgage loan application showing the identity of the payor, date received, amount, and purpose.  
(b) A licensee shall maintain a record showing a sequential listing of checks written for each bank account relating to the licensee's business as a mortgage broker or mortgage lender, showing at least the payee, amount, date, and purpose of payment, including identification of the loan to which it relates, if any. The licensee shall reconcile the bank accounts monthly.  
(c) The licensee shall create and retain a file for each mortgage loan application which shall contain, as applicable, applicant's name, date, name of person taking the application, HUD-1 Settlement Statement, copies of all agreements or contracts with the applicant, including any commitment and lock-in agreements, and all disclosures required by State and Federal law.  
(d) A licensee shall maintain a record of samples of each piece of advertising relating to the licensee's business of mortgage brokerage or mortgage banking in North Carolina for a period of 12 months.  
(e) A licensee shall maintain a record of copies of all contracts, agreements and escrow instructions to or with any depository.

*Authority G.S. 53-243.04.*

**04 NCAC 03M .0502      FORM AND LOCATION**

- (a) All records required by this Rule shall be kept for a period of at least three years, and shall be available for inspection and copying upon request by the Commissioner.  
(b) Such records may be maintained in the form of magnetic tape, magnetic disk or other form of computer, electronic or microfilm media available for examination on the basis of computer printed reproduction, video display or other medium acceptable to the Commissioner. However, books and records kept in this manner shall be convertible into clearly legible, tangible documents.  
(c) All records required by this Rule shall be prepared in accordance with generally accepted accounting principles, where applicable.  
(d) Unless otherwise agreed to in writing by the Commissioner, all records required to be maintained shall be maintained in a secure and readily accessible location within the State of North Carolina.  
(e) A licensee shall promptly notify the Commissioner of any change in the location of its books and records.

*Authority G.S. 53-243.04.*

**TITLE 11 – DEPARTMENT OF INSURANCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Insurance intends to adopt the rule cited as 11 NCAC 12 .0328, and amend the rules cited as 11 NCAC 12 .0601-.0609, .0611-.0612. Notice of Rule-making Proceedings was published in the Register on August 1, 2002.*

**Proposed Effective Date:** *May 1, 2003*

**Public Hearing:**

**Date:** *November 7, 2002*

**Time:** *10:00 a.m.*

**Location:** *3<sup>rd</sup> Floor Hearing Room, Dobbs Building, 430 N. Salisbury Street, Raleigh, NC*

**Reason for Proposed Action:** *The rules are being amended/adopted in order to be in compliance with NAIC Model Laws and with statutes.*

**Comment Procedures:** *Written comments should be sent to Louis Belo, NCDOT, 430 N. Salisbury Street, Raleigh, NC 27611. Comments should be submitted by November 14, 2002.*

**Fiscal Impact**

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

**CHAPTER 12 – LIFE AND HEALTH DIVISION**

**SECTION .0300 - GENERAL PROVISIONS**

**11 NCAC 12 .0328      ELIGIBLE INDIVIDUAL COVERAGE**

- (a) As used in this Rule, "designated health plan" means a guaranteed available plan an insurer must issue to an eligible individual under G.S. 58-68-60.  
(b) As used in this Rule, "eligible individual" has the same meaning as in G.S. 58-68-60(b).  
(c) As used in this Rule, "insurer" means an entity licensed under G.S. 58 that offers health insurance coverage in the individual market in this State.  
(d) An insurer shall market each of its designated health plan(s) to eligible individuals.  
(e) In marketing the designated health plan(s) to eligible individuals, an insurer shall use at least the same sources and methods of distribution that it uses to market other health benefit plans to individuals. An agent authorized by an insurer to market health benefit plans to individuals in this State shall also be authorized to market to eligible individuals.  
(f) An insurer shall offer at least the designated health plan(s) to any eligible individual who applies for or makes an inquiry regarding health insurance coverage from the insurer. The offer may be provided directly to the eligible individual or delivered



through an agent. The offer shall be in writing and shall include at least the following information:

- (1) A general description of the benefits contained in the designated health plan(s) and any other health benefit plan being offered to the eligible individual; and
- (2) Information describing how the eligible individual may enroll in the plans.

(g) An insurer shall provide a price quote to an eligible individual (directly or through an authorized agent) within 10 working days of receiving a request for a quote and information necessary to provide the quote. An insurer shall notify an eligible individual within five working days of receiving a request for a quote of any additional information needed by the insurer to provide the quote.

(h) An insurer shall not apply more stringent or detailed requirements related to the application process for an eligible individual than are applied for other individual applicants for other health benefit plans offered by the insurer.

(i) If an insurer denies coverage under a health benefit plan to an eligible individual, the denial shall be in writing and shall state with specificity the reasons for the denial, subject to any restrictions related to confidentiality of medical information. The written denial shall be accompanied by a written explanation of the guaranteed availability of coverage under the designated health plan(s) from the insurer. The explanation shall include at least the following:

- (1) A general description of the benefits contained in each designated health plan;
- (2) A price quote for each designated health plan; and
- (3) Information describing how the eligible individual may enroll in a designated health plan.

(j) The written information described in Paragraph (i) of this Rule shall be provided within the time periods provided in Paragraph (g) of this Rule and may be provided directly to the eligible individual or delivered through an authorized agent.

(k) The price quote under Subparagraph (i)(2) of this Rule shall be for the lowest-priced designated health plan for which the eligible individual is eligible.

(l) An insurer shall maintain a toll-free telephone service that answers its telephone calls in a timely manner to provide information to eligible individuals about the availability of the designated health plan(s) in this State. The service shall provide information to callers on how to apply for designated health plan coverage from the insurer. The information may include the names and telephone numbers of agents located near to the caller or other information designed to assist the caller to locate an authorized agent or to otherwise apply for coverage.

(m) An insurer shall not require, as a condition to the offer or sale of a designated health plan to an eligible individual, that the eligible individual purchase or qualify for any other insurance product or service.

(n) An insurer shall not create financial incentives or disincentives for agents to sell or to not sell any of its individual health benefit plans, including designated health plans.

Authority G.S. 58-2-40(1); 58-68-60.

## **SECTION .0600 - REPLACEMENT REGULATIONS**

### **11 NCAC 12 .0601 PURPOSE AND SCOPE**

The purpose of this Regulation ~~rule~~ is:

- (1) To regulate the activities of ~~insurers, agents and brokers~~ insurers and producers with respect to the replacement of existing life insurance and annuities.
- (2) To protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement ~~or financed purchase transactions~~ by transactions. It will:
  - (a) ~~assuring~~ Assure that purchasers receive information with which a decision can be made in their own best interest;
  - (b) ~~reducing~~ Reduce the opportunity for misrepresentation and incomplete disclosures; and
  - (c) ~~establishing~~ Establish penalties for failure to comply with requirements of this Regulation. Rule.

Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.

### **11 NCAC 12 .0602 DEFINITION OF REPLACEMENT**

"Replacement" means ~~any transaction in which new life insurance or a new annuity is to be purchased, and it is known or should be known to the proposing agent or broker or to the proposing insurer if there is no agent, that by reason of such transaction, existing life insurance or annuity has been or is to be:~~ a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

- (1) ~~lapsed, forfeited, surrendered, or otherwise terminated;~~ partially surrendered, assigned to the replacing insurer or otherwise terminated;
- (2) ~~converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;~~
- (3) ~~amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;~~
- (4) ~~reissued with any reduction in cash value; or~~
- (5) ~~pledged as collateral or subjected to borrowing or withdrawal, whether in a single loan or under a schedule of borrowing over a period of time for amounts in the aggregate exceeding fifty percent of the loan value set forth in the policy where such loan or withdrawal is made in connection with new application or within twelve months of the date of signing the new application.~~ used in a financed purchase.

Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.

**11 NCAC 12 .0603 OTHER DEFINITIONS**

(a) ~~"Conservation" means any attempt by the existing insurer or its agent or broker to dissuade a policyowner from the replacement of existing life insurance or annuity. Conservation does not include routine administrative procedures such as late payment reminders, late payment offers or reinstatement offers.~~

(b) ~~"Deposit Fund" means an arrangement under which amounts to accumulate as interest are paid in addition to life insurance premiums or annuity considerations under provisions of individual life insurance policies or annuity contracts.~~

(c) ~~"Direct Response Sales" means any sale of life insurance or annuity where the insurer does not utilize an agent in the sale or delivery of the policy.~~

(d) ~~"Existing Insurer" means the insurance company whose policy is or will be changed or terminated in such a manner as described within the definition of "replacement".~~

(e) ~~"Existing Life Insurance or Annuity" means any life insurance or annuity in force, including life insurance under a binding or conditional receipt or a life insurance policy or annuity that is within an unconditional refund period.~~

(f) ~~"Replacing Insurer" means the insurance company that issues or proposes to issue a new policy or contract which is a replacement of existing life insurance or annuity.~~

(g) ~~"Registered Contract" means variable annuities, investment annuities, variable life insurance under which the death benefits and cash values vary in accordance with unit values of investments held in a separate account, or any other contracts issued by life insurance companies which are registered with the Federal Securities and Exchange Commission.~~

(a) "Direct-response solicitation" means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet or other mass communication media.

(b) "Existing insurer" means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of "replacement" in 11 NCAC 12.0602.

(c) "Existing policy or contract" means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

(d) "Financed purchase" means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction only, if a withdrawal, surrender or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or 13 months after the effective date of the new policy, it will be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in 11 NCAC 12 .0606.

(e) "Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in 11 NCAC 04 .0501(b)(8).

(f) "Policy summary," for the purposes of this Rule:

- (1) For policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information:
    - (A) current death benefit;
    - (B) annual contract premium;
    - (C) current cash surrender value;
    - (D) current dividend;
    - (E) application of current dividend; and
    - (F) amount of outstanding loan.
  - (2) For universal life policies, means a written statement that shall contain at least the following information:
    - (A) the beginning and end date of the current report period;
    - (B) the policy value at the end of the previous report period and at the end of the current report period;
    - (C) the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense and riders);
    - (D) the current death benefit at the end of the current report period on each life covered by the policy;
    - (E) the net cash surrender value of the policy as of the end of the current report period; and
    - (F) the amount of outstanding loans, if any, as of the end of the current report period.
- (g) "Producer," for the purpose of this Rule, shall be defined to include agents, brokers and producers.
- (h) "Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.
- (i) "Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.
- (j) "Sales material" means a sales illustration and any other written, printed or electronically presented information created, or completed or provided by the company or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased.

*Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.*

**11 NCAC 12 .0604 EXEMPTIONS**

Unless the statutes state otherwise, this ~~Chapter Section~~ shall not apply to transactions involving:

- (1) ~~Credit life insurance; G.S. 58-341 through 359;~~
- (2) ~~Group life insurance or group annuities; G.S. 58-195 through 213;~~
- (3) ~~An application to the existing insurer that issued the existing life insurance and a contractual change or a conversion privilege is being exercised, where replacing and existing~~

- ~~(4) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;~~
- ~~(5) Transactions where the replacing insurer and the existing insurer are the same, or are subsidiaries or affiliates under common ownership or control; provided, however, agents or brokers proposing replacement shall comply with the requirements of 11 NCAC 12 .0605(a);~~
- ~~(6) Life insurance policies and annuities issued in connection with a pension, profit sharing or other benefit plan qualifying for tax deductibility under the provisions of Sec. 401 of the Internal Revenue Code; provided, however, that full and complete disclosure of all material facts shall be given to the administrator or policyowner, if other than the insured, of any plan to be replaced.~~
- (2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to the provisions of 11 NCAC 12 .0608;
- (3) Group life insurance and annuities used to fund prearranged funeral contracts;
- (4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the Commissioner;
- (5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
- (6) Policies or contracts used to fund:
  - (a) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);
  - (b) A plan described by Sections 401(a), 401(k) or 403(b) of the Internal Revenue Code, where the plan, for purposes of ERISA, is established or maintained by an employer;
  - (c) A governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt

- organization under Section 457 of the Internal Revenue Code; or
- (d) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
- (7) Notwithstanding 11 NCAC 12 .0604(6), this Rule shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after tax-basis, and where the insurer has been notified that plan participants may chose from among two or more insurers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in 11 NCAC 12 .0604(6), direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement, or when initiated by an individual employee, assisting with the selection of investment options offered by a single insurer in connection with enrolling that individual employee;
- (8) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
- (9) Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;
- (10) Immediate annuities that are purchased with proceeds from an existing contract. Immediate annuities purchased with proceeds from an existing policy are not exempt from 11 NCAC 12 .0601;
- (11) Structured settlements; or
- (12) Registered contracts shall be exempt from the requirements of 11 NCAC 12 .0607 with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

*Authority G.S. 58-2-40; 58-3-115; 58-33-75; 58-58-1; 58-58-40.*

**11 NCAC 12 .0605 DUTIES OF PRODUCERS**

- ~~(a) Each agent or broker who initiates the application shall submit to the insurer to which an application for life insurance or annuity is presented, with or as part of each application the following:~~
  - ~~(1) A statement signed by the applicant as to whether replacement of existing life insurance or annuity is involved in the transaction;~~



- (2) ~~A signed statement as to whether the agent or broker knows replacement is or may be involved in the transaction.~~

The requirements of Paragraphs (a)(1) and (2) may be satisfied by suitable questions on the application.

~~(b) Where a replacement is involved, the agent or broker shall:~~

- ~~(1) Present to the applicant, not later than at the time of taking the application, a "Notice Regarding Replacement" in the form as described in Exhibit A, or other substantially similar form approved by the Commissioner. The Notice shall be signed by both the applicant and the agent or broker and a copy left with the applicant. The agent or broker shall obtain with or as part of each application a list of all existing life insurance and/or annuity to be replaced and properly identified by name of insurer, the insured and contract number. If a contract number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.~~

- ~~(2) Leave with the applicant the original or a copy of any written or printed marketing communications used for the presentation to that specific applicant, including but not limited to ledger statements, brochures, sales proposals or any other materials necessary for the buyer to make an informed purchase decision.~~

- ~~(3) Submit to the replacing insurer with the application a copy of the Replacement Notice provided pursuant to Paragraph (b)(1).~~

~~(c) Each agent or broker who uses written or printed marketing communications in a conversation shall leave with the applicant the original or a copy of such materials used.~~

~~(a) A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is "no," the producer's duties with respect to replacement are complete.~~

~~(b) If the applicant answered "yes" to the question regarding existing coverage referred to in Paragraph (a) of this Rule, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice regarding replacements in the form as described in 11 NCAC 12 .0611 or other substantially similar form approved by the Commissioner. However, no approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and left with the applicant.~~

~~(c) The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available; and shall include a statement as to whether each policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing~~

~~insurer, alternative identification, such as an application or receipt number, shall be listed.~~

~~(d) In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.~~

~~(e) Except as provided in 11 NCAC 12 .0612(c), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this Section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific policy or contract purchased.~~

Authority G.S. 58-2-40; 58-3-115; 58-33-75; 58-58-1; 58-58-40.

## **11 NCAC 12 .0606 INSURER**

## **DUTIES OF THE EXISTING**

Where a replacement is involved in the transaction, the existing insurer shall:

- ~~(1) Inform its field representatives or other personnel responsible for compliance with this Regulation of the requirements of this Regulation.~~
- ~~(2) Require with or as a part of each completed application for life insurance or annuity a statement signed by the applicant as to whether such proposed insurance or annuity will replace existing life insurance or annuity.~~
- (1) Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the Insurance Department of its state of domicile, whichever is later.
- (2) Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five business days of receipt of a notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner; and
- (3) Upon receipt of a request to borrow, surrender or withdraw any policy values, send a notice advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.

**11 NCAC 12 .0607 DUTIES OF INSURERS THAT USE PRODUCERS**

~~Each insurer that uses an agent or broker in a life insurance or annuity sale shall:~~

- ~~(1) Require with or as part of each completed applicant for life insurance or annuity, a statement signed by the agent or broker as to whether he or she knows replacement is or may be involved in the transaction.~~
- ~~(2) Where a replacement is involved:
  - ~~(a) Require from the agent or broker with the application for life insurance or annuity:
    - ~~(i) a list of all of the applicant's existing life insurance or annuity to be replaced; and~~
    - ~~(ii) a copy of the Replacement Notice provided the applicant pursuant to 11 NCAC 12 .0605(b)(1).~~~~~~

~~Such existing life insurance or annuity shall be identified by name of insurer, insured and contract number. If a number has not been assigned by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.~~

- ~~(b) Send to each existing insurer a written communication advising of the replacement or proposed replacement and the identification information obtained pursuant to 11 NCAC 12 .0607(2)(a) and a Policy Summary, Contract Summary or ledger statement containing Policy Data as required by N.C.G.S. 58-213.6-213.12 and for an annuity a contract summary as required in 11 NCAC 12 .0607(2)(c). Cost indices and equivalent level annual dividend figures need not be included in the Policy Summary or ledger statement. The aforementioned Policy Summary, Contract Summary or ledger statement shall be based upon the EXACT face amount, plan, premium and supplemental riders or agreements, if any, contained in the applicant's application to the replacing insurer. In the event that multiple applications are made by or for an applicant, Policy Summary, Contract Summary or ledger statement shall be provided for each. All required items shall be sent within five working days of the date the application is received in the replacing insurer's home or regional office, or the date the proposed policy~~

~~or contract is issued, whichever is sooner.~~

- ~~(c) Where annuities are involved, the Contract Summary must be a separate document. All information required to be disclosed must be set out in such a manner as not to minimize or render any portion thereof obscure. Any amounts which remain level for two or more contract years may be represented by a single number if it is clearly indicated what amounts are applicable for each contract year. Amounts in items (2)(c)(i) and (iii) in this Rule, in the case of flexible premium annuity contracts, shall be determined either according to an anticipated pattern of consideration payments of on the assumption that considerations payable will be one hundred dollars (\$100.00) a month or one thousand dollars (\$1,000.00) a year. "Contract Summary" means a written statement describing the elements of the annuity contract and deposit fund, including but not limited to where applicable, the following items:
  - ~~(i) One of the options under the contract available for annuity payout.~~
  - ~~(ii) A prominent statement that the contract does not provide cash surrender values if such is the case.~~
  - ~~(iii) The following amounts, where applicable, for the first ten contract years and representative contract years thereafter sufficient to clearly illustrate the patterns of considerations and benefits, including but not limited to, the twentieth contract year and at least one year from age 60 to 70 and at the scheduled commencement of annuity payments:
    - ~~(A) The gross annual or single consideration for the annuity contract. Any additional considerations for optional benefits, such as disability premium waiver, should be shown separately.~~~~~~

~~(B) — Scheduled annual or single deposit for the deposit fund, if any.~~

~~(C) — The total guaranteed death benefit and cash surrender value at the end of the year or, if no guaranteed cash surrender values are provided, the total guaranteed paid-up annuity at the end of the year. Values for deposit fund must be shown separately from those for a basic contract.~~

~~(D) — The total illustrative death benefit and cash surrender value or paid-up annuity at the end of the year, not greater in amount than that based on:~~

~~(I) — the current dividend scale and the interest rate credited by the insurer, and~~

~~(II) — current annuity purchase rates.~~

~~A dividend scale or excess interest rate which has been publicly declared by the insurer with an effective date not more than two months subsequent to the date of declaration shall be considered a current dividend scale or current excess interest rate.~~

~~(iv) — A Contract Summary which includes values based on the current dividend scale or the current dividend accumulation or excess interest rate, and a statement that such values are for illustration and are not guaranteed.~~

~~(v) — A statement of the interest rates used in calculating the guaranteed and illustrative contract or fund values.~~

~~(vi) — The date on which the Contract Summary is prepared.~~

~~(d) — Each existing insurer or such insurer's agent or broker that undertakes a conversion shall furnish the policy owner with a Policy Summary for the existing life insurance or ledger statement containing Policy Data on the existing policy and/or annuity. Such Policy Summary or ledger statement shall be completed in accordance with the provisions of N.C.G.S. 58-213.6 through 213.12, except that information relating to premiums, cash values, death benefits and dividends, if any, shall be computed from the current policy year of the existing life insurance. The Policy Summary or ledger statement shall include the amount of any outstanding indebtedness, and the sum of any dividend accumulations or additions, and may include any other information that is not in violation of any regulation or statute. Cost indices and equivalent level annual dividend figures need not be included. When annuities are involved, the disclosure information shall be that required in Subparagraph (2)(c) in this Rule. The replacing insurer may request the existing insurer to furnish it with a copy of the Summaries or ledger statement, which shall be done within five working days of the receipt of the request.~~

~~(3) — The replacing insurer shall maintain evidence of the "Notice Regarding Replacement", the Policy Summary, the Contract Summary and any ledger statements used, and a replacement register, listing the replacing agent and existing insurer to be replaced. The existing insurer shall maintain evidence of Policy Summaries, Contract Summaries or ledger statements used in any conversion. Evidence that all requirements were met shall be maintained for at least three years or until the conclusion of the next succeeding regular examination by the Insurance Department of its state of domicile, whichever is earlier.~~

~~(4) — The replacing insurer shall provide in its policy or in a separate written notice which is delivered with the policy a statement that the applicant has a right to an unconditional refund of all premiums paid, which right may be exercised within a period of twenty days commencing from the date of delivery of the policy.~~

~~(5) — Registered contracts shall be exempt from the requirements of 11 NCAC 12.0607(2)(b),(c) and (d) requiring provision of Policy Summary or ledger statement information; however,~~

~~premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required in lieu thereof.~~

Each insurer shall:

- (1) Maintain a system of supervision and control to insure compliance with the requirements of this Rule that shall include at least the following:
  - (a) Inform its producers of the requirements of this Rule and incorporate the requirements of this Rule into all relevant producer training manuals prepared by the insurer;
  - (b) Provide to each producer a written statement of the company's position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;
  - (c) A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with Paragraph (1)(b) of this Rule;
  - (d) Procedures to confirm that the requirements of this Rule have been met; and
  - (e) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer. Compliance with this Rule may include, but shall not be limited to, systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;
- (2) Have the capacity to monitor each producer's life insurance policy and annuity contract replacements for that insurer, and shall produce, upon request, and make such records available to the Insurance Department. The capacity to monitor shall include the ability to produce records for each producer's:
  - (a) Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
  - (b) Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;
  - (c) Annuity contract replacements as a percentage of the producer's total annual annuity contract sales;
  - (d) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's

monitoring system as required by Paragraph (1)(e) of this Rule; and

- (e) Replacements, indexed by replacing producer and existing insurer;
- (3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
- (4) Require with each application for life insurance or an annuity that indicates an existing policy or contract, a completed notice regarding replacements as contained in 11 NCAC 12.0611;
- (5) When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material required by 11 NCAC 12 .0605(e), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;
- (6) Ascertain that the sales material and illustrations required by 11 NCAC 12 .0605(e) meet the requirements of this Rule and are complete and accurate for the proposed policy or contract;
- (7) If an application does not meet the requirements of this Rule, notify the producer and applicant and fulfill the outstanding requirements; and
- (8) Maintains records in paper, photograph, microprocess, magnetic, mechanical or electronic media or by any process that accurately reproduces the actual document.

*Authority G.S. 58-2-40; 58-3-115; 58-33-75; 58-58-1; 58-58-40.*

#### **11 NCAC 12 .0608 DUTIES OF INSURERS WITH RESPECT TO DIRECT RESPONSE SALES**

~~(a) If in the solicitation of a direct response sale, the insurer did not propose the replacement, and a replacement is involved, the insurer shall send to the applicant with the policy a Replacement Notice as described in Exhibit A or other substantially similar form approved by the Commissioner. In such instances the insurer may delete the last sentence and the references to signatures from Exhibit A without having to obtain approval of the form from the Commissioner.~~

~~(b) If the insurer proposed the replacement it shall:~~

- ~~(1) Provide to applicants or prospective applicants with or as a part of the application a Replacement Notice as described in Exhibit A or other substantially similar form approved by the Commissioner.~~
- ~~(2) Request from the applicant with or as part of the application, a list of all existing life insurance or annuity to be replaced and~~

~~properly identified by name of insurer and insured.~~

- ~~(3) Comply with the requirements of Rule .0607(2)(b) and (c) of this Section, if the applicant furnishes the names of the existing insurers, and the requirements of Rule .0607(3) of this Section, except that it need not maintain a replacement register.~~

~~(a) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice regarding replacement in 11 NCAC 12 .0611(2), or other form approved by the Commissioner.~~

~~(b) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:~~

- ~~(1) Provide to applicants or prospective applicants with the policy or contract a notice, as described in 11 NCAC 12 .0611(3), or other substantially similar form approved by the Commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, and references not applicable to the product being sold or replaced, without having to obtain approval of the form from the Commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this Paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this Section; and~~
- ~~(2) Comply with the requirements of 11 NCAC 12 .0612(a)(2), if the applicant furnishes the names of the existing insurers, and the requirements of 12.0612(a)(2), (a)(3), (a)(4), and 12.0612(b).~~

*Authority G.S. 58-2-40; 58-3-115; 58-33-75; 58-58-1; 58-58-40.*

#### **11 NCAC 12 .0609 VIOLATIONS AND PENALTIES**

~~(a) A violation of these rules shall occur if an agent, broker or insurer recommends the replacement or conversion of an existing policy by use of a substantially inaccurate presentation or comparison of an existing contract's premiums and benefits or dividends and values, if any. Any insurer, agent, representative, officer or employee of such insurer failing to comply with the requirements of these rules shall be subject to such penalties as may be appropriate under the insurance laws.~~

~~(b) Patterns of action by policyowners who purchase replacing policies from the same agent or broker, after indicating on~~

~~applications that replacement is not involved, shall be deemed prima facie evidence of the agent's or broker's knowledge that replacement was intended in connection with the sale of those policies, and such patterns of action shall be deemed prima facie evidence of the agent's or broker's intent to violate this Regulation.~~

~~(c) These rules do not prohibit the use of additional material other than that which is required that is not in violation of these rules or any other statute or rule.~~

~~(a) Any failure to comply with this Rule shall be considered a violation of G.S. 58-63-15. Examples of violations include:~~

- ~~(1) Any deceptive or misleading information set forth in sales material;~~
- ~~(2) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;~~
- ~~(3) The intentional incorrect recording of an answer;~~
- ~~(4) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or~~
- ~~(5) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.~~

~~(b) Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this Rule.~~

~~(c) Where it is determined that the requirements of this Rule have not been met the replacing insurer shall provide to the policy owner an in force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in 11 NCAC 12 .0611(1) or (3).~~

~~(d) Violations of this Rule shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the Commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values and payment of monetary penalties pursuant to G.S. 58-2-75.~~

*Authority G.S.; 58-2-40; 58-3-100; 58-3-115; 58-33-45; 58-33-75; 58-58-1; 58-58-40.*

#### **11 NCAC 12 .0611 NOTICE REGARDING REPLACEMENT**

~~A notice be prepared by the replacing agent whenever replacement of life insurance or annuities are involved. This form shall include at a minimum a statement that the insured understands all the relevant facts, the name of the replacing company, the contract number, the name of the insured, the signature of the replacing agent, the signature of the contract~~

## PROPOSED RULES

~~owner, and the date signed. A sample form can be obtained by calling the Senior Deputy Commissioner at (919) 733-4935 or writing him at Room 347, Dobbs Building, 430 N. Salisbury-~~

~~Street, Raleigh, N.C. 27611. Notice regarding replacement shall be provided in the following form adopted by the NAIC Life Insurance and Annuities Replacement Model Regulation:~~

~~(1) The following notice shall be in no less than 12-point type:~~

### **IMPORTANT NOTICE:**

#### **REPLACEMENT OF LIFE INSURANCE OR ANNUITIES**

~~This document must be signed by the applicant and the producer, if there is one, and a copy left with the applicant. You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements. A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase. A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement. You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured. We want you to understand the effects of replacements before you make your purchase decision and ask that you answer the following questions and consider the questions on the back of this form.~~

~~1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?~~

~~YES NO~~

~~2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract?~~

~~YES NO~~

~~If you answered "yes" to either of the above questions, list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured or annuitant, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:~~

INSURER NAME

CONTRACT OR POLICY #

INSURED OR ANNUITANT

REPLACED (R) OR  
FINANCING (F)

1.

2.

3.

Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision. The existing policy or contract is being replaced because

I certify that the responses herein are, to the best of my knowledge, accurate:

Applicant's Signature and Printed Name

Date

Producer's Signature and Printed Name

Date

I do not want this notice read aloud to me. (Applicants must initial only if they do not want the notice read aloud.)

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS: Are they affordable?

Could they change?

Are your premiums higher for the proposed new policy?

How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES: New policies usually take longer to build cash values and to pay dividends.

Acquisition costs for the old policy may have been paid, you will incur costs for the new one.

What surrender charges do the policies have?

What expense and sales charges will you pay on the new policy?

Does the new policy provide more insurance coverage?



## **PROPOSED RULES**

INSURABILITY: If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.

You may need a medical exam for a new policy.

Claims on most new policies for up to the first two years can be denied based on inaccurate statements.

Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

How are premiums for both policies being paid?

How will the premiums on your existing policy be affected?

Will a loan be deducted from death benefits?

What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

Will you pay surrender charges on your old contract?

What are the interest rate guarantees for the new contract?

Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

What are the tax consequences of buying the new policy?

Is this a tax free exchange? (See your tax advisor.)

Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?

Will the existing insurer be willing to modify the old policy?

How does the quality and financial stability of the new company compare with your existing company?

(2) The following notice shall be in no less than 12-point type:

### **NOTICE REGARDING REPLACEMENT**

#### **REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY?**

Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract's benefits.

Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.

(3) The following notice shall be in no less than 12-point type:

### **IMPORTANT NOTICE:**

#### **REPLACEMENT OF LIFE INSURANCE OR ANNUITIES**

You are contemplating the purchase of a life insurance policy or annuity contract. In some cases this purchase may involve discontinuing or changing an existing policy or contract. If so, a replacement is occurring. Financed purchases are also considered replacements.

A replacement occurs when a new policy or contract is purchased and, in connection with the sale, you discontinue making premium payments on the existing policy or contract, or an existing policy or contract is surrendered, forfeited, assigned to the replacing insurer, or otherwise terminated or used in a financed purchase.

A financed purchase occurs when the purchase of a new life insurance policy involves the use of funds obtained by the withdrawal or surrender of or by borrowing some or all of the policy values, including accumulated dividends, of an existing policy, to pay all or part of any premium or payment due on the new policy. A financed purchase is a replacement.

You should carefully consider whether a replacement is in your best interests. You will pay acquisition costs and there may be surrender costs deducted from your policy or contract. You may be able to make changes to your existing policy or contract to meet your insurance needs at less cost. A financed purchase will reduce the value of your existing policy and may reduce the amount paid upon the death of the insured.

We want you to understand the effects of replacements and ask that you answer the following questions and consider the questions on the back of this form.

1. Are you considering discontinuing making premium payments, surrendering, forfeiting, assigning to the insurer, or otherwise terminating your existing policy or contract?

YES NO

2. Are you considering using funds from your existing policies or contracts to pay premiums due on the new policy or contract?

YES NO

Please list each existing policy or contract you are contemplating replacing (include the name of the insurer, the insured, and the policy or contract number if available) and whether each policy or contract will be replaced or used as a source of financing:

**INSURER NAME**

**CONTRACT OR POLICY #**

**INSURED OR ANNUITANT**

**REPLACED (R) OR  
FINANCING (F)**

1.

2.

3.

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Make sure you know the facts. Contact your existing company or its agent for information about the old policy or contract. If you request one, an in force illustration, policy summary or available disclosure documents must be sent to you by the existing insurer. Ask for and retain all sales material used by the agent in the sales presentation. Be sure that you are making an informed decision.

I certify that the responses herein are, to the best of my knowledge, accurate:

\_\_\_\_\_  
Applicant's Signature and Printed Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Producer's Signature and Printed Name

\_\_\_\_\_  
Date

A replacement may not be in your best interest, or your decision could be a good one. You should make a careful comparison of the costs and benefits of your existing policy or contract and the proposed policy or contract. One way to do this is to ask the company or agent that sold you your existing policy or contract to provide you with information concerning your existing policy or contract. This may include an illustration of how your existing policy or contract is working now and how it would perform in the future based on certain assumptions. Illustrations should not, however, be used as a sole basis to compare policies or contracts. You should discuss the following with your agent to determine whether replacement or financing your purchase makes sense:

PREMIUMS:     Are they affordable?

\_\_\_\_\_ Could they change?

\_\_\_\_\_ Are your premiums higher for the proposed new policy?

\_\_\_\_\_ How long will you have to pay premiums on the new policy? On the old policy?

POLICY VALUES:     New policies usually take longer to build cash values and to pay dividends.

\_\_\_\_\_ Acquisition costs for the old policy may have been paid, you will incur costs for the new one.

\_\_\_\_\_ What surrender charges do the policies have?

\_\_\_\_\_ What expense and sales charges will you pay on the new policy?

\_\_\_\_\_ Does the new policy provide more insurance coverage?

INSURABILITY:     If your health has changed since you bought your old policy, the new one could cost you more, or you could be turned down.

\_\_\_\_\_ You may need a medical exam for a new policy.

\_\_\_\_\_ Claims on most new policies for up to the first two years can be denied based on inaccurate statements.

\_\_\_\_\_ Suicide limitations may begin anew on the new coverage.

IF YOU ARE KEEPING THE OLD POLICY AS WELL AS THE NEW POLICY:

\_\_\_\_\_ How are premiums for both policies being paid?

\_\_\_\_\_ How will the premiums on your existing policy be affected?

\_\_\_\_\_ Will a loan be deducted from death benefits?

\_\_\_\_\_ What values from the old policy are being used to pay premiums?

IF YOU ARE SURRENDERING AN ANNUITY OR INTEREST SENSITIVE LIFE PRODUCT:

\_\_\_\_\_ Will you pay surrender charges on your old contract?

\_\_\_\_\_ What are the interest rate guarantees for the new contract?

\_\_\_\_\_ Have you compared the contract charges or other policy expenses?

OTHER ISSUES TO CONSIDER FOR ALL TRANSACTIONS:

\_\_\_\_\_ What are the tax consequences of buying the new policy?

\_\_\_\_\_ Is this a tax free exchange? (See your tax advisor.)

\_\_\_\_\_ Is there a benefit from favorable "grandfathered" treatment of the old policy under the federal tax code?

\_\_\_\_\_ Will the existing insurer be willing to modify the old policy?

\_\_\_\_\_ How does the quality and financial stability of the new company compare with your existing company?

*Authority G.S. 58-2-40; 58-3-115; 58-58-1; 58-58-40.*

### **11 NCAC 12 .0612 DUTIES OF REPLACING INSURERS THAT USE PRODUCERS**

(a) Where a replacement is involved in the transaction, the replacing insurer shall:

(1) Verify that the required forms are received and are in compliance with this rule;

(2) Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the

available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;

(3) Be able to produce copies of the notification regarding replacement required in 11 NCAC 12 .0605(b), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and

(4) Provide to the policy or contract owner notice of the right to return the policy or contract

within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract; such notice may be included in 11 NCAC 12 .0611(1) or (3).

(b) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(c) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to 11 NCAC 12 .0605(e), the insurer may:

- (1) Require with each application a statement signed by the producer that:
  - (A) Represents that the producer used only company-approved sales material; and
  - (B) States that copies of all sales material were left with the applicant in accordance with 11 NCAC 12 .0605(d); and
- (2) Within 10 days of the issuance of the policy or contract:
  - (A) Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with 11 NCAC 12 .0605(d);
  - (B) Provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
  - (C) Stress the importance of retaining copies of the sales material for future reference; and
- (3) Be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

*Authority G.S. 58-2-40; 58-3-100; 58-3-115; 58-33-45; 58-33-75; 58-58-1; 58-58-40.*

## **TITLE 13 – DEPARTMENT OF LABOR**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Labor intends to amend the rules cited as 13 NCAC 07F .0101, .0201, .0301, .0501-.0502. Notice of Rule-making Proceedings was published in the Register on August 1, 2002.*

**Proposed Effective Date:** July 1, 2003

**Public Hearing:**

**Date:** October 31, 2002

**Time:** 3:30 p.m.

**Location:** NC Dept. of Labor, 111 Hillsborough St., 3<sup>rd</sup> Floor Conference Room, Raleigh, NC

**Reason for Proposed Action:** *The North Carolina Department of Labor proposes to delete the hazard communication clarification language found in these Rules. The US Department of Labor's Hazard Communication Correction issued in December 1994 eliminated the need for North Carolina's clarifying language.*

**Comment Procedures:** *Written comments should be submitted to Barbara A. Jackson, 4 West Edenton Street, Raleigh, NC 27601. Phone (919) 733-0368, fax (919) 733-4235. Email: bjackson@mail.dol.state.nc.us. Comments should be submitted by November 14, 2002.*

**Fiscal Impact**

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

## **CHAPTER 07 - OSHA**

### **SUBCHAPTER 07F - STANDARDS**

#### **SECTION .0100 - GENERAL INDUSTRY STANDARDS**

#### **13 NCAC 07F .0101 GENERAL INDUSTRY**

The provisions for the Occupational Safety and Health Standards for General Industry, Title 29 of the Code of Federal Regulations Part 1910 promulgated as of May 24, 2001, and exclusive of subsequent amendments, are incorporated by reference except as follows:

- (1) Subpart H - Hazardous Materials, 29 CFR 1910.120, Hazardous waste operations and emergency response, 1910.120(q)(6) is amended by adding a new level of training:
  - (vi) First responder operations plus level. First responders at operations plus level are individuals who respond to hydrocarbon fuel tank leaks where the leaking tanks contain a hydrocarbon fuel which is used to propel the vehicle on which the tank is located. Only those vehicles designed for highway use or those used for industrial, agricultural or construction purposes are covered. First

responders at the operations plus level shall have received at least training equal to first responder operations level and, in addition, shall receive training or have had sufficient experience to objectively demonstrate competency in the following areas and the employer shall so certify:

- (A) Know how to select and use proper specialized personal protective equipment provided to the first responder at operations plus level;
  - (B) Understand basic hazardous materials terms as they pertain to hydrocarbon fuels;
  - (C) Understand hazard and risk assessment techniques that pertain to gasoline, diesel fuel, propane and other hydrocarbon fuels;
  - (D) Be able to perform control, containment, or confinement operations for gasoline, diesel fuel, propane and other hydrocarbon fuels within the capabilities of the available resources and personal protective equipment; and
  - (E) Understand and know how to implement decontamination procedures for hydrocarbon fuels."
- (2) Subpart I -- Personal Protective Equipment -- 29 CFR 1910.132, General requirements, is amended at 29 CFR 1910.132(b) to read:
- "(b) *Equipment.* (1) *Employer-provided equipment.* It is the responsibility of the employer to provide, at no cost to the employee, all personal protective equipment which the employee does not wear off the jobsite for use off the job.
- (2) *Employee-owned equipment.* Where employees provide their own protective equipment, the employer shall be responsible to assure its adequacy, including proper maintenance, and sanitation of such equipment."
- (3) Subpart R -- Special Industries -- incorporation by reference of final rule for 29 CFR 1910.269, Electric Power Generation, Transmission, and Distribution, including Appendices A through E, published in 59 FR (January 31, 1994) pages 4437 - 4475, all typographical and grammatical corrections to 1910.269 as published in 59 FR (June 30, 1994) pages 33660 - 33664, and the amendment to 1910.269(g)(2)(i) as published in 59 FR (August 9, 1994) page 40729, except that 29 CFR 1910.269(g)(2)(v) is amended to read:
- "(v) Fall arrest equipment, work positioning equipment, or travel restricting equipment shall be used by employees working at elevated locations more than 4 feet (1.2 m) above the ground on poles, towers or

similar structures if other fall protection has not been provided. A fall protection system as defined in 29 CFR 1926, Subpart M - *Fall Protection*, is required to be used by all employees when ascending, descending or changing locations on poles, towers or similar structures. However, the use of non-locking snap hooks with any fall protection system is prohibited as of July 1, 1995. Qualified employees may free climb wood poles if the employer can ensure (1) that the employee is able to comfortably and safely grip the pole with both hands while climbing, (2) that the pole is free from attachments or any configurations of attachments that will materially impair the ability of a qualified employee to safely free climb the pole, (3) that the pole is otherwise free from impediments, contaminants or conditions of any type, including but not limited to ice, high winds or chemical treatments which materially impair the ability of a qualified employee to safely free climb the pole, and (4) that the employee is able to climb such structures without material physical impairments including over-exertion, lack of sleep or other physical stresses."

29 CFR 1910.269 as amended above is effective January 1, 1995, except that employers have until July 1, 1995, to implement the use of locking snap hooks, and employers have until January 1, 1996, to design and implement a system of fall protection for use by employees while ascending, descending or changing locations on towers. Also, 29 CFR 1910.269(a)(2) *Training* is effective January 31, 1995, and 29 CFR 1910.269(v)(11)(xii) is effective February 1, 1996.

- (4) Subpart Z -- Toxic and Hazardous Substances:
- (a) 29 CFR 1910.1000 Air Contaminants:
- (i) The equation in 29 CFR 1910.1000(d)(1)(i) is clarified to read as follows:  

$$E = (C_a T_a + C_b T_b + \dots C_n T_n) / 8$$
  - (ii) The equation in 29 CFR 1910.1000(d)(2)(i) is clarified to read as follows:  

$$E_m = (C_1 / L_1) + (C_2 / L_2) + \dots (C_n / L_n)$$
  - (iii) The permissible exposure limits as originally published in 54 FR (January 19, 1989) pages 2331-2983 are incorporated except as otherwise specified or noted in this Rule.
  - (iv) Employee exposure to the toxic and hazardous

substances listed in the following tables shall be limited to the specified values.

**PERMISSIBLE EXPOSURE LIMITS FOR AIR CONTAMINANTS**

**Footnote (1)** Regarding Styrene Only: OSHNC recognizes that the permissible exposure limits for styrene may not be achievable solely through engineering and work practice controls for boat-building and operations comparable to boat building. Comparable operations are those that (1) employ the manual layup and sprayup process, (2) the manufactured items that utilize the same equipment and technology as that found in boat building, and (3) the same considerations of large part size, configuration interfering with air-flow control techniques, and resin usage apply. Examples of operations comparable to boat building would include the manufacture of large above-ground or below-ground storage tanks, large parts for recreational vehicles, and large duct work. Because it is impossible to define in advance every manual layup and sprayup process for which

compliance may not be feasible solely through engineering and work practice controls, some guidelines concerning part size and configuration issues are necessary. The primary question for manual layup and sprayup operations is whether the part size and configuration interfere with normal air-flow techniques. For operations making parts (such as tubs and vanities) that do not meet the guidelines described, beginning April 1, 1996, the hierarchy of controls specified in 29 CFR 1910.1000(e) shall apply to reduce styrene exposures to the new 50 ppm TWA and 100 ppm STEL. In consequence, the burden of proof shall be on the employer to show that engineering and work practice controls are not feasible for specific operations. However, with respect to boat-building operations the burden of proof shall be on OSHNC to prove that the level could be attained solely through engineering and work practice controls.

**Footnote (2)** Regarding Acrylamide, Carbon Dioxide and Silica only: The federal standards at 29 CFR 1910.1000 are adopted.

**Footnote (3)** Regarding Subtilisins only: PELs for this substance are not adopted.

**Footnote (4)** 29 CFR 1910.1000, Tables Z-2 and Z-3 are applicable only to the extent that they are referenced below.

**TABLE Z-1 -- PERMISSIBLE EXPOSURE LIMITS (PELs) FOR AIR CONTAMINANTS**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Acetaldehyde	75-07-0	100	180	150	270	--	--	--
Acetic acid	64-19-7	see 1910.1000, Table Z-1						
Acetic anhydride	108-24-7	--	--	--	--	5	20	--
Acetone	67-64-1	750	1800	1000	2400	--	--	--
Acetonitrile	75-05-8	40	70	60	105	--	--	--
2-Acetylaminofluorene	53-96-3	see 1910.1014						
Acetylene dichloride; see 1,2-Dichloroethylene								
Acetylene tetrabromide	79-27-6	see 1910.1000, Table Z-1						
Acetylsalicylic acid (Aspirin)	50-78-2	--	5	--	--	--	--	--
Acrolein	107-02-8	0.1	0.25	0.3	0.8	--	--	--
Acrylamide	79-06-1	see 1910.1000, Table Z-1						
Acrylic acid	79-10-7	10	30	--	--	--	--	X
Acrylonitrile	107-13-1	see 1910.1045						
Aldrin	309-00-2	see 1910.1000, Table Z-1						
Allyl alcohol	107-18-6	2	5	4	10	--	--	X
Allyl chloride	107-05-1	1	3	2	6	--	--	--
Allyl glycidyl ether (AGE)	106-92-3	5	22	10	44	--	--	--
Allyl propyl disulfide	2179-59-1	2	12	3	18	--	--	--
<i>alpha</i> -Alumina	1344-28-1							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Aluminum metal (as Al)	7429-90-5							
Metal								

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin design- nation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Aluminum metal (as Al)	7429-90-5							
Pyro powders		--	5	--	--	--	--	--
Welding fumes		--	5	--	--	--	--	--
Soluble salts		--	2	--	--	--	--	--
Alkyls		--	2	--	--	--	--	--
4-Aminodiphenyl	92-67-1			see 1910.1011				
2-Aminoethanol; see Ethanolamine								
2-Aminopyridine	504-29-0			see 1910.1000, Table Z-1				
Amitrole	61-82-5	--	0.2	--	--	--	--	--
Ammonia	7664-41-7	--	--	35	27	--	--	--
Ammonium chloride, Fume	12125-02-9	--	10	--	20	--	--	--
Ammonium sulfamate	7773-06-0							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
<i>n</i> -Amyl acetate	628-63-7			see 1910.1000, Table Z-1				
<i>sec</i> -Amyl acetate	626-38-0			see 1910.1000, Table Z-1				
Aniline and homologs	62-53-3	2	8	--	--	--	--	X
Anisidine ( <i>o</i> -, <i>p</i> -isomers)	29191-52-4			see 1910.1000, Table Z-1				
Antimony and compounds (as Sb)	7440-36-0			see 1910.1000, Table Z-1				
ANTU ( <i>alpha</i> -Naphthyl-thiourea)	86-88-4			see 1910.1000, Table Z-1				
Arsenic, inorganic cmpds (as As)	Varies with compound			see 1910.1018				
Arsenic, organic cmpds (as As)	7440-38-2			see 1910.1000, Table Z-1				
Arsine	7784-42-1			see 1910.1000, Table Z-1				
Asbestos				see 1910.1001				
Atrazine	1912-24-9	--	5	--	--	--	--	--
Azinphos-methyl	86-50-0			see 1910.1000, Table Z-1				
Barium, soluble compounds (as Ba);	7440-39-3			see 1910.1000, Table Z-1				
Barium sulfate	7727-43-7							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Benomyl	17804-35-2							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Benzene	71-43-2			See 1910.1028				
				See 1910.1000 Table Z-2 for limits applicable in the operations or sectors excluded in 1910.1028				
Benzydine	92-87-5			see 1910.1010				



**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
<i>p</i> -Benzoquinone; see Quinone								
Benzo(a)pyrene; see Coal tar pitch volatiles								
Benzoyl peroxide	94-36-0			see 1910.1000, Table Z-1				
Benzyl chloride	100-44-7			see 1910.1000, Table Z-1				
Beryllium and beryllium compounds (as Be);	7440-41-7	--	0.002	--	0.005 (30 min)	--	0.025	--
Biphenyl; see Diphenyl								
Bismuth telluride	1304-82-1							
Se-doped		--	5	--	--	--	--	--
Bismuth telluride	1304-82-1							
Undoped								
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Borates, tetra, sodium salts								
Anhydrous	1330-43-4	--	10	--	--	--	--	--
Decahydrate	1303-96-4	--	10	--	--	--	--	--
Pentahydrate	12179-04-3	--	10	--	--	--	--	--
Boron oxide	1303-86-2							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Boron tribromide	10294-33-4	--	--	--	--	1	10	--
Boron trifluoride	7637-07-2			see 1910.1000, Table Z-1				
Bromacil	314-40-9	1	10	--	--	--	--	--
Bromine	7726-95-6	0.1	0.7	0.3	2	--	--	--
Bromine pentafluoride	7789-30-2	0.1	0.7	--	--	--	--	--
Bromoform	75-25-2			see 1910.1000, Table Z-1				
Butadiene (1,3-Butadiene)	106-99-0			see 1910.1051; 1910.19(1)				
Butane	106-97-8	800	1900	--	--	--	--	--
Butanethiol; see Butyl mercaptan								
2-Butanone (Methyl ethyl ketone)	78-93-3	200	590	300	885	--	--	--
2-Butoxyethanol	111-76-2	25	120	--	--	--	--	X
<i>n</i> -Butyl acetate	123-86-4	150	710	200	950	--	--	--
<i>sec</i> -Butyl acetate	105-46-4			see 1910.1000, Table Z-1				
<i>tert</i> -Butyl acetate	540-88-5			see 1910.1000, Table Z-1				
Butyl acrylate	141-32-2	10	55	--	--	--	--	--
<i>n</i> -Butyl alcohol	71-36-3	--	--	--	--	50	150	X
<i>sec</i> -Butyl alcohol	78-92-2	100	305	--	--	--	--	--
<i>tert</i> -Butyl alcohol	75-65-0	100	300	150	450	--	--	--
Butylamine	109-73-9			see 1910.1000, Table Z-1				

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
<i>tert</i> -Butyl chromate (as CrO <sub>3</sub> )	1189-85-1	see 1910.1000, Table Z-1						
<i>n</i> -Butyl glycidyl ether (BGE)	2426-08-6	25	135	--	--	--	--	--
<i>n</i> -Butyl lactate	138-22-7	5	25	--	--	--	--	--
Butyl mercaptan (Butanethiol)	109-79-5	0.5	1.5	--	--	--	--	--
<i>o</i> - <i>sec</i> -Butylphenol	89-72-5	5	30	--	--	--	--	X
<i>p</i> - <i>tert</i> -Butyltoluene	98-51-1	10	60	20	120	--	--	--
Cadmium, fume and dust (as Cd)	7440-43-9	see 1910.1027						
Calcium carbonate	1317-65-3							
Total dust		see 1910.1000, Table Z-1						
Respirable fraction		see 1910.1000, Table Z-1						
Calcium cyanamide	156-62-7	--	0.5	--	--	--	--	--
Calcium hydroxide	1305-62-0	--	5	--	--	--	--	--
Calcium oxide	1305-78-8	see 1910.1000, Table Z-1						
Calcium silicate	1344-95-2							
Total dust		see 1910.1000, Table Z-1						
Respirable fraction		see 1910.1000, Table Z-1						
Calcium sulfate	7778-18-9							
Total dust		see 1910.1000, Table Z-1						
Respirable fraction		see 1910.1000, Table Z-1						
Camphor, synthetic	76-22-2	see 1910.1000, Table Z-1						
Caprolactam	105-60-2							
Dust		--	1	--	3	--	--	--
Vapor		5	20	10	40	--	--	--
Captafol (Difolatan <sup>7</sup> )	2425-06-1	--	0.1	--	--	--	--	--
Captan	133-06-2	--	5	--	--	--	--	--
Carbaryl (Sevin <sup>7</sup> )	63-25-2	see 1910.1000, Table Z-1						
Carbofuran (Furadan <sup>7</sup> )	1563-66-2	--	0.1	--	--	--	--	--
Carbon black	1333-86-4	see 1910.1000, Table Z-1						
Carbon dioxide	124-38-9	see 1910.1000, Table Z-1						
Carbon disulfide	75-15-0	4	12	12	36	--	--	X
Carbon monoxide	630-08-0	35	40	--	--	200	229	--
Carbon tetrabromide	558-13-4	0.1	1.4	0.3	4	--	--	--
Carbon tetrachloride	56-23-5	2	12.6	--	--	--	--	--
Carbonyl fluoride	353-50-4	2	5	5	15	--	--	--
Catechol (Pyrocatechol)	120-80-9	5	20	--	--	--	--	X
Cellulose	9004-34-6							
Total dust		see 1910.1000, Table Z-1						
Respirable fraction		see 1910.1000, Table Z-1						
Cesium hydroxide	21351-79-1	--	2	--	--	--	--	--
Chlordane	57-74-9	see 1910.1000, Table Z-1						
Chlorinated camphene	8001-35-2	--	0.5	--	1	--	--	X
Chlorinated diphenyl oxide	55720-99-5	see 1910.1000, Table Z-1						

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Chlorine	7782-50-5	0.5	1.5	1	3	--	--	--
Chlorine dioxide	10049-04-4	0.1	0.3	0.3	0.9	--	--	--
Chlorine trifluoride	7790-91-2			see 1910.1000, Table Z-1				
Chloroacetaldehyde	107-20-0			see 1910.1000, Table Z-1				
a-Chloroacetophenone (Phenacyl chloride)	532-27-4			see 1910.1000, Table Z-1				
Chloroacetyl chloride	79-04-9	0.05	0.2	--	--	--	--	--
Chlorobenzene	108-90-7			see 1910.1000, Table Z-1				
o-Chlorobenzylidene malononitrile	2698-41-1	--	--	--	--	0.05	0.4	X
Chlorobromomethane	74-97-5			see 1910.1000, Table Z-1				
2-Chloro-1,3-butadiene; see <i>beta</i> -Chloroprene								
Chlorodifluoromethane	75-45-6	1000	3500	--	--	--	--	--
Chlorodiphenyl (42% Chlorine) (PCB)	53469-21-9			see 1910.1000, Table Z-1				
Chlorodiphenyl (54% Chlorine) (PCB)	11097-69-1			see 1910.1000, Table Z-1				
1-Chloro-2,3-epoxypropane; see Epichlorohydrin								
2-Chloroethanol; see Ethylene chlorohydrin								
Chloroethylene; see Vinyl chloride								
Chloroform (Trichloromethane)	67-66-3	2	9.78	--	--	--	--	--
bis(Chloromethyl) ether	542-88-1			see 1910.1008				
Chloromethyl methyl ether	107-30-2			see 1910.1006				
1-Chloro-1-nitropropane	600-25-9	2	10	--	--	--	--	--
Chloropentafluoroethane	76-15-3	1000	6320	--	--	--	--	--
Chloropicrin	76-06-2			see 1910.1000, Table Z-1				
<i>beta</i> -Chloroprene	126-99-8	10	35	--	--	--	--	X
o-Chlorostyrene	2039-87-4	50	285	75	430	--	--	--
o-Chlorotoluene	95-49-8	50	250	--	--	--	--	--
2-Chloro-6-trichloromethyl pyridine	1929-82-4							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Chlorpyrifos	2921-88-2	--	0.2	--	--	--	--	X
Chromic acid and chromates (as CrO <sub>3</sub> )	Varies with compound	--	--	--	--	--	0.1	--
Chromium (II) compounds (as Cr)	Varies with compound			see 1910.1000, Table Z-1				
Chromium (III) compounds (as Cr)	Varies with compound			see 1910.1000, Table Z-1				
Chromium metal and insoluble salts (as Cr)	7440-47-3			see 1910.1000, Table Z-1				

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin desig- nation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Chrysene; see Coal tar pitch volatiles	218-01-9							
Clopidol	2971-90-6							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Coal dust (less than 5% SiO <sub>2</sub> ), Respirable quartz fraction				see 1910.1000, Table Z-3				
Coal dust (greater than or equal to 5% SiO <sub>2</sub> ), Respirable quartz fraction				see 1910.1000, Table Z-3				
Coal tar Pitch volatiles (benzene soluble fraction), anthracene, BaP, phenanthrene, acridine, chrysene, pyrene	8007-45-2			see 1910.1000, Table Z-1				
Cobalt metal, dust, and fume (as Co)	7440-48-4	--	0.05	--	--	--	--	--
Cobalt carbonyl (as Co)	10210-68-1	--	0.1	--	--	--	--	--
Cobalt hydrocarbonyl (as Co)	16842-03-8	--	0.1	--	--	--	--	--
Coke oven emissions				see 1910.1029				
Copper	7440-50-8							
Fume (as Cu)				see 1910.1000, Table Z-1				
Dusts and mists (as Cu)				see 1910.1000, Table Z-1				
Cotton dust (raw)	--			see 1910.1043; 1910.1000, Table Z-1				
Crag herbicide (Sesone),	136-78-7							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Cresol, all isomers	1319-77-3			see 1910.1000, Table Z-1				
	95-48-7			see 1910.1000, Table Z-1				
	108-39-4			see 1910.1000, Table Z-1				
	106-44-5			see 1910.1000, Table Z-1				
Crotonaldehyde	123-73-9			see 1910.1000, Table Z-1				
	4170-30-3			see 1910.1000, Table Z-1				
Crufomate	299-86-5	--	5	--	--	--	--	--
Cumene	98-82-8			see 1910.1000, Table Z-1				
Cyanamide	420-04-2	--	2	--	--	--	--	--
Cyanides (as CN)	Varies with compound	--	5	--	--	--	--	X
Cyanogen	460-19-5	10	20	--	--	--	--	--
Cyanogen chloride	506-77-4	--	--	--	--	0.3	0.6	--
Cyclohexane	110-82-7			see 1910.1000, Table Z-1				
Cyclohexanol	108-93-0	50	200	--	--	--	--	X
Cyclohexanone	108-94-1	25	100	--	--	--	--	X
Cyclohexene	110-83-8			see 1910.1000, Table Z-1				

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Cyclohexylamine	108-91-8	10	40	--	--	--	--	--
Cyclonite (RDX)	121-82-4	--	1.5	--	--	--	--	X
Cyclopentadiene	542-92-7			see 1910.1000, Table Z-1				
Cyclopentane	287-92-3	600	1720	--	--	--	--	--
Cyhexatin	13121-70-5	--	5	--	--	--	--	--
2,4-D (Dichlorophenoxyacetic acid)	94-75-7			see 1910.1000, Table Z-1				
Decaborane	17702-41-9	0.05	0.3	0.15	0.9	--	--	X
Demeton (Systox7)	8065-48-3			see 1910.1000, Table Z-1				
DDT; see Dichlorodiphenyl-trichloroethane								
DDVP; see Dichlorvos								
Diacetone alcohol (4-Hydroxy-4-methyl-2-pentanone)	123-42-2			see 1910.1000, Table Z-1				
1,2-Diaminoethane; see Ethylenediamine								
Diazinon	333-41-5	--	0.1	--	--	--	--	X
Diazomethane	334-88-3			see 1910.1000, Table Z-1				
Diborane	19287-45-7			see 1910.1000, Table Z-1				
1,2-Dibromo-3-chloropropane (DBCP)	96-12-8			see 1910.1044				
1,2-Dibromoethane; see Ethylene dibromide								
2-N-Dibutylaminoethanol	102-81-8	2	14	--	--	--	--	--
Dibutyl phosphate	107-66-4	1	5	2	10	--	--	--
Dibutyl phthalate	84-74-2			see 1910.1000, Table Z-1				
Dichloroacetylene	7572-29-4	--	--	--	--	0.1	0.4	--
<i>o</i> -Dichlorobenzene	95-50-1			see 1910.1000, Table Z-1				
<i>p</i> -Dichlorobenzene	106-46-7	75	450	110	675	--	--	--
3,3'-Dichlorobenzidine	91-94-1			see 1910.1007				
Dichlorodifluoromethane	75-71-8			see 1910.1000, Table Z-1				
1,3-Dichloro-5,5-dimethyl hydantoin	118-52-5	--	0.2	--	0.4	--	--	--
Dichlorodiphenyltrichloroethane (DDT)	50-29-3			see 1910.1000, Table Z-1				
1,1-Dichloroethane	75-34-3			see 1910.1000, Table Z-1				
1,2-Dichloroethane; see Ethylene dichloride								
1,2-Dichloroethylene	540-59-0			see 1910.1000, Table Z-1				
Dichloroethyl ether	111-44-4	5	30	10	60	--	--	X
Dichloromethane; see Methylene chloride								
Dichloromonofluoromethane	75-43-4	10	40	--	--	--	--	--
1,1-Dichloro-1-nitroethane	594-72-9	2	10	--	--	--	--	--

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
1,2-Dichloropropane; see Propylene dichloride								
1,3-Dichloropropene	542-75-6	1	5	--	--	--	--	X
2,2-Dichloropropionic acid	75-99-0	1	6	--	--	--	--	--
Dichlorotetrafluoroethane	76-14-2			see 1910.1000, Table Z-1				
Dichlorvos (DDVP)	62-73-7			see 1910.1000, Table Z-1				
Dicrotophos	141-66-2	--	0.25	--	--	--	--	X
Dicyclopentadiene	77-73-6	5	30	--	--	--	--	--
Dicyclopentadienyl iron	102-54-5							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Dieldrin	60-57-1			see 1910.1000, Table Z-1				
Diethanolamine	111-42-2	3	15	--	--	--	--	--
Diethylamine	109-89-7	10	30	25	75	--	--	--
2-Diethylaminoethanol	100-37-8			see 1910.1000, Table Z-1				
Diethylene triamine	111-40-0	1	4	--	--	--	--	--
Diethyl ether; see Ethyl ether								
Diethyl ketone	96-22-0	200	705	--	--	--	--	--
Diethyl phthalate	84-66-2	--	5	--	--	--	--	--
Difluorodibromomethane	75-61-6			see 1910.1000, Table Z-1				
Diglycidyl ether (DGE)	2238-07-5	0.1	0.5	--	--	--	--	--
Dihydroxybenzene; see Hydroquinone								
Diisobutyl ketone	108-83-8	25	150	--	--	--	--	--
Diisopropylamine	108-18-9			see 1910.1000, Table Z-1				
4-Dimethylaminoazobenzene	60-11-7			see 1910.1015				
Dimethoxymethane; see Methylal								
Dimethylacetamide	127-19-5			see 1910.1000, Table Z-1				
Dimethylamine	124-40-3			see 1910.1000, Table Z-1				
Dimethylaminobenzene; see Xylidine								
Dimethylaniline ( <i>N,N</i> -Dimethylaniline)	121-69-7	5	25	10	50	--	--	X
Dimethylbenzene; see Xylene								
Dimethyl-1,2-dibromo -2,2-dichloroethyl phosphate	300-76-5	--	3	--	--	--	--	X
Dimethylformamide	68-12-2			see 1910.1000, Table Z-1				
2,6-Dimethyl-4-heptanone; see Diisobutyl ketone								
1,1-Dimethylhydrazine	57-14-7			see 1910.1000, Table Z-1				
Dimethylphthalate	131-11-3			see 1910.1000, Table Z-1				
Dimethyl sulfate	77-78-1	0.1	0.5	--	--	--	--	X



**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Dinitolmide (3,5-Dinitro- <i>o</i> -toluamide)	148-01-6	--	5	--	--	--	--	--
Dinitrobenzene (all isomers);								
<i>ortho</i>	528-29-0			see 1910.1000, Table Z-1				
<i>meta</i>	99-65-0			see 1910.1000, Table Z-1				
<i>para</i>	100-25-4			see 1910.1000, Table Z-1				
Dinitro- <i>o</i> -cresol	534-52-1			see 1910.1000, Table Z-1				
Dinitrotoluene	121-14-2			see 1910.1000, Table Z-1				
Dioxane (Diethylene dioxide)	123-91-1	25	90	--	--	--	--	X
Dioxathion (Delnav7)	78-34-2	--	0.2	--	--	--	--	X
Diphenyl (Biphenyl)	92-52-4			see 1910.1000, Table Z-1				
Diphenylamine	122-39-4	--	10	--	--	--	--	--
Diphenylmethane diisocyanate;								
see Methylene bisphenyl isocyanate								
Dipropyl ketone	123-19-3	50	235	--	--	--	--	--
Dipropylene glycol methyl ether	34590-94-8	100	600	150	900	--	--	X
Diquat	85-00-7	--	0.5	--	--	--	--	--
Di- <i>sec</i> -octyl phthalate (Di-(2-ethylhexyl) phthalate)	117-81-7	--	5	--	10	--	--	--
Disulfiram (Antabuse <sup>7</sup> )	97-77-8	--	2	--	--	--	--	--
Disulfoton	298-04-4	--	0.1	--	--	--	--	X
2,6-Di- <i>tert</i> -butyl- <i>p</i> -cresol	128-37-0	--	10	--	--	--	--	--
Diuron	330-54-1	--	10	--	--	--	--	--
Divinyl benzene	108-57-6	10	50	--	--	--	--	--
Emery	12415-34-8							
Total dust		--	10	--	--	--	--	--
Respirable fraction			5	--	--	--	--	--
Endosulfan	115-29-7			see 1910.1000, Table Z-1				
Endrin	72-20-8			see 1910.1000, Table Z-1				
Epichlorohydrin	106-89-8	2	8	--	--	--	--	X
EPN	2104-64-5			see 1910.1000, Table Z-1				
1,2-Epoxypropane; see Propylene oxide								
2,3-Epoxy - 1-propanol; see Glycidol								
Ethanethiol; see Ethyl mercaptan								
Ethanolamine	141-43-5	3	8	6	15	--	--	--
Ethion	563-12-2	--	0.4	--	--	--	--	X
2-Ethoxyethanol (Cellosolve)	110-80-5			see 1910.1000, Table Z-1				
2-Ethoxyethyl acetate (Cellosolve acetate)	111-15-9			see 1910.1000, Table Z-1				

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin design- nation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Ethyl acetate	141-78-6			see 1910.1000, Table Z-1				
Ethyl acrylate	140-88-5	5	20	25	100	--	--	X
Ethyl alcohol (Ethanol)	64-17-5			see 1910.1000, Table Z-1				
Ethylamine	75-04-7			see 1910.1000, Table Z-1				
Ethyl amyl ketone (5-Methyl-3-heptanone)	106-68-3			see 1910.1000, Table Z-1				
Ethyl benzene	100-41-4	100	435	125	545	--	--	--
Ethyl bromide	74-96-4	200	890	250	1110	--	--	--
Ethyl butyl ketone (3-Heptanone)	106-35-4			see 1910.1000, Table Z-1				
Ethyl chloride	75-00-3			see 1910.1000, Table Z-1				
Ethyl ether	60-29-7	400	1200	500	1500	--	--	--
Ethyl formate	109-94-4			see 1910.1000, Table Z-1				
Ethyl mercaptan (Ethanethiol)	75-08-1	0.5	1	--	--	--	--	--
Ethyl silicate	78-10-4	10	85	--	--	--	--	--
Ethylene chlorohydrin	107-07-3	--	--	--	--	1	3	X
Ethylenediamine	107-15-3			see 1910.1000, Table Z-1				
Ethylene dibromide	106-93-4			see 1910.1000, Table Z-2				
Ethylene dichloride (1,2-Dichloroethane)	107-06-2	1	4	2	8	--	--	--
Ethylene glycol	107-21-1	--	--	--	--	50	125	--
Ethylene glycol dinitrate	628-96-6	--	--	--	0.1	--	--	X
Ethylene glycol methyl acetate; see Methyl cellosolve acetate								
Ethyleneimine	151-56-4			see 1910.1012				
Ethylene oxide	75-21-8			see 1910.1047				
Ethylidene chloride; see 1,1-Dichloroethane								
Ethylidene norbornene	16219-75-3	--	--	--	--	5	25	--
N-Ethylmorpholine	100-74-3	5	23	--	--	--	--	X
Fenamiphos	22224-92-6	--	0.1	--	--	--	--	X
Fensulfothion (Dasanit 7)	115-90-2	--	0.1	--	--	--	--	--
Fenthion	55-38-9	--	0.2	--	--	--	--	X
Ferbam	14484-64-1							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Ferrovandium dust	12604-58-9	--	1	--	3	--	--	--
Fluorides (as F)	Varies with compound			see 1910.1000, Table Z-2				
Fluorine	7782-41-4			see 1910.1000, Table Z-1				
Fluorotrichloromethane (Trichlorofluoromethane)	75-69-4	--	--	--	--	1000	5600	--

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Fonofos	944-22-9	--	0.1	--	--	--	--	X
Formaldehyde	50-00-0			see 1910.1048				
Formamide	75-12-7	20	30	30	45	--	--	--
Formic acid	64-18-6			see 1910.1000, Table Z-1				
Furfural	98-01-1	2	8	--	--	--	--	X
Furfuryl alcohol	98-00-0	10	40	15	60	--	--	X
Gasoline	8006-61-9	300	900	500	1500	--	--	--
Germanium tetrahydride	7782-65-2	0.2	0.6	--	--	--	--	--
Glutaraldehyde	111-30-8	--	--	--	--	0.2	0.8	--
Glycerin (mist)	56-81-5							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Glycidol	556-52-5	25	75	--	--	--	--	--
Glycol monoethyl ether; see 2-Ethoxyethanol								
Grain dust (oat, wheat, barley)	--			see 1910.1000, Table Z-1				
Graphite, natural respirable dust	7782-42-5	--	2.5	--	--	--	--	--
Graphite, synthetic	--							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Guthion7; see Azinphos methyl								
Gypsum	7778-18-9							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Hafnium	7440-58-6			see 1910.1000, Table Z-1				
Heptachlor	76-44-8			see 1910.1000, Table Z-1				
Heptane ( <i>n</i> -Heptane)	142-82-5	400	1600	500	2000	--	--	--
Hexachlorobutadiene	87-68-3	0.02	0.24	--	--	--	--	--
Hexachlorocyclopentadiene	77-47-4	0.01	0.1	--	--	--	--	--
Hexachloroethane	67-72-1			see 1910.1000, Table Z-1				
Hexachloronaphthalene	1335-87-1			see 1910.1000, Table Z-1				
Hexafluoroacetone	684-16-2	0.1	0.7	--	--	--	--	X
<i>n</i> -Hexane	110-54-3	50	180	--	--	--	--	--
Hexane isomers	Varies with compound	500	1800	1000	3600	--	--	--
2-Hexanone (Methyl <i>n</i> -butyl ketone)	591-78-6	5	20	--	--	--	--	--
Hexone (Methyl isobutyl ketone)	108-10-1	50	205	75	300	--	--	--
<i>sec</i> -Hexyl acetate	108-84-9			see 1910.1000, Table Z-1				
Hexylene glycol	107-41-5	--	--	--	--	25	125	--
Hydrazine	302-01-2	0.1	0.1	--	--	--	--	X

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Hydrogen bromide	10035-10-6	--	--	--	--	3	10	--
Hydrogen chloride	7647-01-0			see 1910.1000, Table Z-1				
Hydrogen cyanide	74-90-8	--	--	4.7	5	--	--	X
Hydrogen fluoride (as F)	7664-39-3	3	--	6	--	--	--	--
Hydrogen peroxide	7722-84-1			see 1910.1000, Table Z-1				
Hydrogen selenide (as Se)	7783-07-5			see 1910.1000, Table Z-1				
Hydrogen sulfide	7783-06-4	10	14	15	21	--	--	--
Hydrogenated terphenyls	61788-32-7	0.5	5	--	--	--	--	--
Hydroquinone	123-31-9			see 1910.1000, Table Z-1				
2-Hydroxypropyl acrylate	999-61-1	0.5	3	--	--	--	--	X
Indene	95-13-6	10	45	--	--	--	--	--
Indium and compounds (as In)	7440-74-6	--	0.1	--	--	--	--	--
Iodine	7553-56-2			see 1910.1000, Table Z-1				
Iodoform	75-47-8	0.6	10	--	--	--	--	--
Iron oxide, dust and fume (as Fe)	1309-37-1							
Total particulate				see 1910.1000, Table Z-1				
Iron pentacarbonyl (as Fe)	13463-40-6	0.1	0.8	0.2	1.6	--	--	--
Iron salts (soluble) (as Fe)	Varies with compound	--	1	--	--	--	--	--
Isoamyl acetate	123-92-2			see 1910.1000, Table Z-1				
Isoamyl alcohol (Primary and secondary)	123-51-3	100	360	125	450	--	--	--
Isobutyl acetate	110-19-0			see 1910.1000, Table Z-1				
Isobutyl alcohol	78-83-1	50	150	--	--	--	--	--
Isooctyl alcohol	26952-21-6	50	270	--	--	--	--	X
Isophorone	78-59-1	4	23	--	--	--	--	--
Isophorone diisocyanate	4098-71-9	0.005	--	0.02	--	--	--	X
2-Isopropoxyethanol	109-59-1	25	105	--	--	--	--	--
Isopropyl acetate	108-21-4	250	950	310	1185	--	--	--
Isopropyl alcohol	67-63-0	400	980	500	1225	--	--	--
Isopropylamine	75-31-0	5	12	10	24	--	--	--
N-Isopropylaniline	768-52-5	2	10	--	--	--	--	X
Isopropyl ether	108-20-3			see 1910.1000, Table Z-1				
Isopropyl glycidyl ether (IGE)	4016-14-2	50	240	75	360	--	--	--
Kaolin	1332-58-7							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Ketene	463-51-4	0.5	0.9	1.5	3	--	--	--
Lead, inorganic (as Pb)	7439-92-1			see 1910.1025				
Limestone	1317-65-3							
Total dust				see 1910.1000, Table Z-1				
Respirable				see 1910.1000, Table Z-1				
Lindane	58-89-9			see 1910.1000, Table Z-1				

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin desig- nation
		ppm	mg/m³	ppm	mg/m³	ppm	mg/m³	
Lithium hydride;	7580-67-8			see 1910.1000, Table Z-1				
L.P.G. (Liquified petroleum gas)	68476-85-7			see 1910.1000, Table Z-1				
Magnesite	546-93-0							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Magnesium oxide fume	1309-48-4							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Malathion	121-75-5							
Total dust		--	10	--	--	--	--	X
Respirable fraction		--	5	--	--	--	--	X
Maleic anhydride	108-31-6			see 1910.1000, Table Z-1				
Manganese	7439-96-5							
Compounds (as Mn)				see 1910.1000, Table Z-1				
Manganese	7439-96-5							
Fume (as Mn)		--	1	--	3	--	--	--
Manganese cyclopentadienyl tricarbonyl (as Mn)	12079-65-1	--	0.1	--	--	--	--	X
Manganese tetroxide (as Mn)	1317-35-7	--	1	--	--	--	--	--
Marble	1317-65-3							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Mercury (aryl and inorganic) (as Hg)	7439-97-6	--	--	--	--	--	0.1	X
Mercury (organo) alkyl compounds (as Hg)	7439-97-6	--	0.01	--	0.03	--	--	X
Mercury (vapor) (as Hg)	7439-97-6	--	0.05	--	--	--	--	X
Mesityl oxide	141-79-7	15	60	25	100	--	--	--
Methacrylic acid	79-41-4	20	70	--	--	--	--	X
Methanethiol; see Methyl mercaptan								
Methomyl (Lannate <sup>7</sup> )	16752-77-5	--	2.5	--	--	--	--	--
Methoxychlor	72-43-5							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
2-Methoxyethanol; see Methyl Cellosolve <sup>7</sup>								
2-Methoxyethyl acetate; see Methyl Cellosolve <sup>7</sup> acetate								
4-Methoxyphenol	150-76-5	--	5	--	--	--	--	--
Methyl acetate	79-20-9	200	610	250	760	--	--	--
Methyl acetylene (Propyne)	74-99-7			see 1910.1000, Table Z-1				

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Methyl acetylene-propadiene mixture (MAPP)	--	1000	1800	1250	2250	--	--	--
Methyl acrylate	96-33-3			see 1910.1000, Table Z-1				
Methylacrylonitrile	126-98-7	1	3	--	--	--	--	X
Methylal (Dimethoxymethane)	109-87-5			see 1910.1000, Table Z-1				
Methyl alcohol (Methanol)	67-56-1	200	260	250	310	--	--	X
Methylamine	74-89-5			see 1910.1000, Table Z-1				
Methyl amyl alcohol; see Methyl isobutyl carbinol								
Methyl <i>n</i> -amyl ketone	110-43-0			see 1910.1000, Table Z-1				
Methyl bromide	74-83-9	5	20	--	--	--	--	X
Methyl butyl ketone; see 2-Hexanone								
Methyl Cellosolve7 (2-Methoxyethanol)	109-86-4			see 1910.1000, Table Z-1				
Methyl Cellosolve7 acetate (2-Methoxyethyl acetate)	110-49-6			see 1910.1000, Table Z-1				
Methyl chloride	74-87-3	50	105	100	205	--	--	--
Methyl chloroform (1,1,1-Trichloroethane)	71-55-6	350	1900	450	2450	--	--	--
Methyl 2-cyanoacrylate	137-05-3	2	8	4	16	--	--	--
Methylcyclohexane	108-87-2	400	1600	--	--	--	--	--
Methylcyclohexanol	25639-42-3	50	235	--	--	--	--	--
<i>o</i> -Methylcyclohexanone	583-60-8	50	230	75	345	--	--	X
Methylcyclopentadienyl manganese tricarbonyl (as Mn)	12108-13-3	--	0.2	--	--	--	--	X
Methyl demeton	8022-00-2	--	0.5	--	--	--	--	X
4,4'-Methylene bis(2-chloro - aniline) (MBOCA)	101-14-4	0.02	0.22	--	--	--	--	X
Methylene bis(4-cyclohexyl- isocyanate)	5124-30-1	--	--	--	--	0.01	0.11	--
Methylene chloride	75-09-2			see 1910.1052				
Methylenedianiline (4,4'-Methylenedianiline)	101-77-9			see 1910.1050; 1926.60				
Methyl ethyl ketone (MEK); see 2-Butanone								
Methyl ethyl ketone peroxide (MEKP)	1338-23-4	--	--	--	--	0.7	5	--
Methyl formate	107-31-3	100	250	150	375	--	--	--
Methyl hydrazine (Monomethyl hydrazine)	60-34-4			see 1910.1000, Table Z-1				
Methyl iodide	74-88-4	2	10	--	--	--	--	X
Methyl isoamyl ketone	110-12-3	50	240	--	--	--	--	--
Methyl isobutyl carbinol	108-11-2	25	100	40	165	--	--	X
Methyl isobutyl ketone;								



**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
see Hexone								
Methyl isocyanate	624-83-9			see 1910.1000, Table Z-1				
Methyl isopropyl ketone	563-80-4	200	705	--	--	--	--	--
Methyl mercaptan	74-93-1	0.5	1	--	--	--	--	--
Methyl methacrylate	80-62-6			see 1910.1000, Table Z-1				
Methyl parathion	298-00-0	--	0.2	--	--	--	--	X
Methyl propyl ketone; see 2-Pentanone								
Methyl silicate	681-84-5	1	6	--	--	--	--	--
<i>alpha</i> -Methyl styrene	98-83-9	50	240	100	485	--	--	--
Methylene bisphenyl isocyanate (MDI)	101-68-8			see 1910.1000, Table Z-1				
Metribuzin	21087-64-9	--	5	--	--	--	--	--
Mica; see Silicates								
Molybdenum (as Mo)	7439-98-7							
Soluble compounds				see 1910.1000, Table Z-1				
Molybdenum (as Mo)	7439-98-7							
Insoluble compounds								
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Monocrotophos (Azodrin 7)	6923-22-4	--	0.25	--	--	--	--	--
Monomethyl aniline	100-61-8	0.5	2	--	--	--	--	X
Monomethyl hydrazine; see Methyl hydrazine								
Morpholine	110-91-8	20	70	30	105	--	--	X
Naphtha (Coal tar)	8030-30-6			see 1910.1000, Table Z-1				
Naphthalene	91-20-3	10	50	15	75	--	--	--
<i>alpha</i> -Naphthylamine	134-32-7			see 1910.1004				
<i>beta</i> -Naphthylamine	91-59-8			see 1910.1009				
Nickel carbonyl (as Ni)	13463-39-3			see 1910.1000, Table Z-1				
Nickel	7440-02-0							
Metal and insoluble compounds (as Ni)				see 1910.1000, Table Z-1				
Nickel	7440-02-0							
Soluble compounds (as Ni)		--	0.1	--	--	--	--	--
Nicotine	54-11-5			see 1910.1000, Table Z-1				
Nitric acid	7697-37-2	2	5	4	10	--	--	--
Nitric oxide	10102-43-9			see 1910.1000, Table Z-1				
<i>p</i> -Nitroaniline	100-01-6	--	3	--	--	--	--	X
Nitrobenzene	98-95-3			see 1910.1000, Table Z-1				
<i>p</i> -Nitrochlorobenzene	100-00-5			see 1910.1000, Table Z-1				
4-Nitrodiphenyl	92-93-3			see 1910.1003				

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Nitroethane	79-24-3			see 1910.1000, Table Z-1				
Nitrogen dioxide	10102-44-0	--	--	1	1.8	--	--	--
Nitrogen trifluoride	7783-54-2			see 1910.1000, Table Z-1				
Nitroglycerin	55-63-0	--	--	--	0.1	--	--	X
Nitromethane	75-52-5			see 1910.1000, Table Z-1				
1-Nitropropane	108-03-2			see 1910.1000, Table Z-1				
2-Nitropropane	79-46-9	10	35	--	--	--	--	--
N-Nitrosodimethylamine	62-75-9			see 1910.1016				
Nitrotoluene (all isomers)								
<i>o</i> -isomer	88-72-2	2	11	--	--	--	--	X
<i>m</i> -isomer	99-08-1	2	11	--	--	--	--	X
<i>p</i> -isomer	99-99-0	2	11	--	--	--	--	X
Nitrotrichloromethane; see Chloropicrin								
Nonane	111-84-2	200	1050	--	--	--	--	--
Octachloronaphthalene	2234-13-1	--	0.1	--	0.3	--	--	X
Octane	111-65-9	300	1450	375	1800	--	--	--
Oil mist, mineral	8012-95-1			see 1910.1000, Table Z-1				
Osmium tetroxide (as Os)	20816-12-0	0.0002	0.002	0.0006	0.006	--	--	--
Oxalic acid	144-62-7	--	1	--	2	--	--	--
Oxygen difluoride	7783-41-7	--	--	--	--	0.05	0.01	--
Ozone	10028-15-6	0.1	0.2	0.3	0.6	--	--	--
Paraffin wax fume	8002-74-2	--	2	--	--	--	--	--
Paraquat, respirable dust	4685-14-7	--	0.1	--	--	--	--	X
Parathion	56-38-2			see 1910.1000, Table Z-1				
Particulates not otherwise regulated	--							
Total dust				see 1910.1000, Table Z-1				
Respirable dust				see 1910.1000, Table Z-1				
PCB; see Chlorodiphenyl (42% and 54% chlorine)								
Pentaborane	19624-22-7	0.005	0.01	0.015	0.03	--	--	--
Pentachloronaphthalene	1321-64-8			see 1910.1000, Table Z-1				
Pentachlorophenol	87-86-5			see 1910.1000, Table Z-1				
Pentaerythritol	115-77-5							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Pentane	109-66-0	600	1800	750	2250	--	--	--
2-Pentanone (Methyl propyl ketone)	107-87-9	200	700	250	875	--	--	--
Perchloroethylene (Tetrachloroethylene)	127-18-4	25	170	--	--	--	--	--
Perchloromethyl mercaptan	594-42-3			see 1910.1000, Table Z-1				

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Perchloryl fluoride	7616-94-6	3	14	6	28	--	--	--
Perlite	93763-70-3							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Petroleum distillates (Naphtha)	8002-05-9	400	1600	--	--	--	--	--
Phenol	108-95-2			see 1910.1000, Table Z-1				
Phenothiazine	92-84-2	--	5	--	--	--	--	X
<i>p</i> -Phenylene diamine	106-50-3			see 1910.1000, Table Z-1				
Phenyl ether, Vapor	101-84-8			see 1910.1000, Table Z-1				
Phenyl ether - biphenyl mixture, Vapor	--			see 1910.1000, Table Z-1				
Phenylethylene; see Styrene								
Phenyl glycidyl ether (PGE)	122-60-1	1	6	--	--	--	--	--
Phenylhydrazine	100-63-0	5	20	10	45	--	--	X
Phenyl mercaptan	108-98-5	0.5	2	--	--	--	--	--
Phenylphosphine	638-21-1	--	--	--	--	0.05	0.25	--
Phorate	298-02-2	--	0.05	--	0.2	--	--	X
Phosdrin 7 (Mevinphos)	7786-34-7	0.01	0.1	0.03	0.3	--	--	X
Phosgene (Carbonyl chloride)	75-44-5			see 1910.1000, Table Z-1				
Phosphine	7803-51-2	0.3	0.4	1	1	--	--	--
Phosphoric acid	7664-38-2	--	1	--	3	--	--	--
Phosphorus (yellow)	7723-14-0			see 1910.1000, Table Z-1				
Phosphorus oxychloride	10025-87-3	0.1	0.6	--	--	--	--	--
Phosphorus pentachloride	10026-13-8			see 1910.1000, Table Z-1				
Phosphorus pentasulfide	1314-80-3	--	1	--	3	--	--	--
Phosphorus trichloride	7719-12-2	0.2	1.5	0.5	3	--	--	--
Phthalic anhydride	85-44-9	1	6	--	--	--	--	--
<i>m</i> -Phthalodinitrile	626-17-5	--	5	--	--	--	--	--
Picloram	1918-02-1							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Picric acid (2,4,6-Trinitrophenol)	88-89-1			see 1910.1000, Table Z-1				
Pindone (2-Pivalyl-1,3-indandione)	83-26-1			see 1910.1000, Table Z-1				
Piperazine dihydrochloride	142-64-3	--	5	--	--	--	--	--
Plaster of Paris	7778-18-9							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Platinum (as Pt)	7440-06-4							
Metal		--	1	--	--	--	--	--
Platinum (as Pt)	7440-06-4							

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Soluble salts		see 1910.1000, Table Z-1						
Portland cement	65997-15-1							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Potassium hydroxide	1310-58-3	--	--	--	--	--	2	--
Propane	74-98-6	see 1910.1000, Table Z-1						
Propargyl alcohol	107-19-7	1	2	--	--	--	--	X
<i>beta</i> -Propiolactone	57-57-8	see 1910.1013						
Propionic acid	79-09-4	10	30	--	--	--	--	--
Propoxur (Baygon7)	114-26-1	--	0.5	--	--	--	--	--
<i>n</i> -Propyl acetate	109-60-4	200	840	250	1050	--	--	--
<i>n</i> -Propyl alcohol	71-23-8	200	500	250	625	--	--	--
<i>n</i> -Propyl nitrate	627-13-4	25	105	40	170	--	--	--
Propylene dichloride	78-87-5	75	350	110	510	--	--	--
Propylene glycol dinitrate	6423-43-4	0.05	0.3	--	--	--	--	--
Propylene glycol monomethyl ether	107-98-2	100	360	150	540	--	--	--
Propylene imine	75-55-8	see 1910.1000, Table Z-1						
Propylene oxide	75-56-9	20	50	--	--	--	--	--
Propyne; see Methyl acetylene								
Pyrethrum	8003-34-7	see 1910.1000, Table Z-1						
Pyridine	110-86-1	see 1910.1000, Table Z-1						
Quinone	106-51-4	see 1910.1000, Table Z-1						
RDX; see Cyclonite								
Resorcinol	108-46-3	10	45	20	90	--	--	--
Rhodium (as Rh), Metal fume and insoluble compounds	7440-16-6	see 1910.1000, Table Z-1						
Rhodium (as Rh), Soluble compounds	7440-16-6	see 1910.1000, Table Z-1						
Ronnel	299-84-3	--	10	--	--	--	--	--
Rosin core solder pyrolysis products, as formaldehyde	--	--	0.1	--	--	--	--	--
Rotenone	83-79-4	see 1910.1000, Table Z-1						
Rouge	--							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Selenium compounds (as Se)	7782-49-2	see 1910.1000, Table Z-1						
Selenium hexafluoride (as Se)	7783-79-1	see 1910.1000, Table Z-1						
Silica, amorphous, precipitated and gel	--	see 1910.1000, Table Z-3						
Silica, amorphous, diatomaceous earth, containing less than 1% crystalline silica	68855-54-9	see 1910.1000, Table Z-3						

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Silica, crystalline cristobalite (as quartz), respirable dust	14464-46-1			see 1910.1000, Table Z-3				
Silica, crystalline quartz (as quartz), respirable dust	14808-60-7			see 1910.1000, Table Z-3				
Silica, crystalline tripoli (as quartz), respirable dust	1317-95-9	see 1910.1000, Table Z-3 (respirable crystalline quartz)						
Silica, crystalline tridymite (as quartz), respirable dust	15468-32-3			see 1910.1000, Table Z-3				
Silica, fused, respirable dust	60676-86-0			see 1910.1000, Table Z-3				
Silicates (less than 1% crystalline silica)								
Mica (respirable dust)	12001-26-2	--	3	--	--	--	--	--
Soapstone	--							
Total dust		--	6	--	--	--	--	--
Respirable dust		--	3	--	--	--	--	--
Talc (containing asbestos)				see 1910.1001				
Talc (not containing asbestos), less than 1% quartz, respirable dust	14807-96-6	--	2	--	--	--	--	--
Tremolite	--			see 1910.1001				
Silicon	7440-21-3							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Silicon carbide	409-21-2							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Silicon tetrahydride	7803-62-5	5	7	--	--	--	--	--
Silver, metal, dust and fume (as Ag)	7440-22-4			see 1910.1000, Table Z-1				
Soapstone; see Silicates								
Sodium azide	26628-22-8							
(as HN <sub>3</sub> )		--	--	--	--	0.1	--	X
(as NaN <sub>3</sub> )		--	--	--	--	--	0.3	X
Sodium bisulfite	7631-90-5	--	5	--	--	--	--	--
Sodium fluoroacetate	62-74-8	--	0.05	--	0.15	--	--	X
Sodium hydroxide	1310-73-2	--	--	--	--	--	2	--
Sodium metabisulfite	7681-57-4	--	5	--	--	--	--	--
Starch	9005-25-8							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Stibine	7803-52-3			see 1910.1000, Table Z-1				
Stoddard solvent	8052-41-3	100	525	--	--	--	--	--
Strychnine	57-24-9			see 1910.1000, Table Z-1				

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Styrene (Vinyl benzene); see Footnote (1)	100-42-5	50	215	100	425	--	--	--
Subtilisins (Proteolytic enzymes); see Footnote (3)								
Sucrose	57-50-1							
Total dust				see 1910.1000, Table Z-1				
Respirable fraction				see 1910.1000, Table Z-1				
Sulfur dioxide	7446-09-5	2	5	5	10	--	--	--
Sulfur hexafluoride	2551-62-4			see 1910.1000, Table Z-1				
Sulfuric acid	7664-93-9			see 1910.1000, Table Z-1				
Sulfur monochloride	10025-67-9	--	--	--	--	1	6	--
Sulfur pentafluoride	5714-22-7	--	--	--	--	0.01	0.1	--
Sulfur tetrafluoride	7783-60-0	--	--	--	--	0.1	0.4	--
Sulfuryl fluoride	2699-79-8	5	20	10	40	--	--	--
Sulprofos	35400-43-2	--	1	--	--	--	--	--
Systox7 (see Demeton)								
2,4,5-T (2,4,5-Trichloro-phenoxyacetic acid)	93-76-5			see 1910.1000, Table Z-1				
Talc; see Silicates								
Tantalum metal and oxide dust	7440-25-7			see 1910.1000, Table Z-1				
TEDP (Sulfotep)	3689-24-5			see 1910.1000, Table Z-1				
Tellurium and compounds (as Te)	13494-80-9			see 1910.1000, Table Z-1				
Tellurium hexafluoride (as Te)	7783-80-4			see 1910.1000, Table Z-1				
Temephos	3383-96-8							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
TEPP (Tetraethyl pyrophosphate)	107-49-3			see 1910.1000, Table Z-1				
Terphenyls	26140-60-3	--	--	--	--	0.5	5	--
1,1,1,2-Tetrachloro-2,2-difluoroethane	76-11-9			see 1910.1000, Table Z-1				
1,1,2,2-Tetrachloro-1,2-difluoroethane	76-12-0			see 1910.1000, Table Z-1				
1,1,2,2-Tetrachloroethane	79-34-5	1	7	--	--	--	--	X
Tetrachloroethylene; see Perchloroethylene								
Tetrachloromethane; see Carbon tetrachloride								
Tetrachloronaphthalene	1335-88-2			see 1910.1000, Table Z-1				
Tetraethyl lead (as Pb)	78-00-2			see 1910.1000, Table Z-1				
Tetrahydrofuran	109-99-9	200	590	250	735	--	--	--
Tetramethyl lead (as Pb)	75-74-1			see 1910.1000, Table Z-1				
Tetramethyl succinonitrile	3333-52-6			see 1910.1000, Table Z-1				

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Tetranitromethane	509-14-8			see 1910.1000, Table Z-1				
Tetrasodium pyrophosphate	7722-88-5	--	5	--	--	--	--	--
Tetryl (2,4,6-Trinitrophenyl methyl nitramine)	479-45-8	--	0.1	--	--	--	--	X
Thallium, soluble compounds (as Tl)	7440-28-0			see 1910.1000, Table Z-1				
4,4'-Thiobis(6- <i>tert</i> -butyl- <i>m</i> -cresol)	96-69-5							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Thioglycolic acid	68-11-1	1	4	--	--	--	--	X
Thionyl chloride	7719-09-7	--	--	--	--	1	5	--
Thiram	137-26-8			see 1910.1000, Table Z-1				
Tin, inorganic compounds (except oxides) (as Sn)	7440-31-5			see 1910.1000, Table Z-1				
Tin, organic compounds (as Sn)	7440-31-5	--	0.1	--	--	--	--	X
Tin oxide (as Sn)	7440-31-5	--	2	--	--	--	--	--
Titanium dioxide	<u>13463-67-7</u>							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Toluene	108-88-3	100	375	150	560	--	--	--
Toluene-2,4-diisocyanate (TDI)	584-84-9	0.005	0.04	0.02	0.15	--	--	--
<i>m</i> -Toluidine	108-44-1	2	9	--	--	--	--	X
<i>o</i> -Toluidine	95-53-4			see 1910.1000, Table Z-1				
<i>p</i> -Toluidine	106-49-0	2	9	--	--	--	--	X
Toxaphene; see Chlorinated camphene								
Tremolites; see Silicates								
Tributyl phosphate	126-73-8	0.2	2.5	--	--	--	--	--
Trichloroacetic acid	76-03-9	1	7	--	--	--	--	--
1,2,4-Trichlorobenzene	120-82-1	--	--	--	--	5	40	--
1,1,1-Trichloroethane; see Methyl chloroform								
1,1,2-Trichloroethane	79-00-5			see 1910.1000, Table Z-1				
Trichloroethylene	79-01-6	50	270	200	1080	--	--	--
Trichloromethane; see Chloroform								
Trichloronaphthalene	1321-65-9			see 1910.1000, Table Z-1				
1,2,3-Trichloropropane	96-18-4	10	60	--	--	--	--	--
1,1,2-Trichloro-1,2,2-trifluoroethane	76-13-1	1000	7600	1250	9500	--	--	--
Triethylamine	121-44-8	10	40	15	60	--	--	--



**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Trifluorobromomethane	75-63-8	see 1910.1000, Table Z-1						
Trimellitic anhydride	552-30-7	0.005	0.04	--	--	--	--	--
Trimethylamine	75-50-3	10	24	15	36	--	--	--
Trimethyl benzene	25551-13-7	25	125	--	--	--	--	--
Trimethyl phosphite	121-45-9	2	10	--	--	--	--	--
2,4,6-Trinitrophenol; see Picric acid								
2,4,6-Trinitrophenylmethyl nitramine; see Tetryl								
2,4,6-Trinitrotoluene (TNT)	118-96-7	--	0.5	--	--	--	--	X
Tri- <i>ortho</i> -cresyl phosphate	78-30-8	--	0.1	--	--	--	--	X
Triphenyl amine	603-34-9	--	5	--	--	--	--	--
Triphenyl phosphate	115-86-6	see 1910.1000, Table Z-1						
Tungsten (as W)	7440-33-7							
Insoluble compounds		--	5	--	10	--	--	--
Soluble compounds		--	1	--	3	--	--	--
Turpentine	8006-64-2	see 1910.1000, Table Z-1						
Uranium (as U)	7440-61-1							
Soluble compounds		see 1910.1000, Table Z-1						
Uranium (as U)	7440-61-1							
Insoluble compounds		--	0.2	--	0.6	--	--	--
<i>n</i> -Valeraldehyde	110-62-3	50	175	--	--	--	--	--
Vanadium	1314-62-1							
Respirable dust (as V <sub>2</sub> O <sub>5</sub> )		--	0.05	--	--	--	--	--
Fume (as V <sub>2</sub> O <sub>5</sub> )		--	0.05	--	--	--	--	--
Vegetable oil mist	--							
Total dust		see 1910.1000, Table Z-1						
Respirable dust		see 1910.1000, Table Z-1						
Vinyl acetate	108-05-4	10	30	20	60	--	--	--
Vinyl benzene; see Styrene								
Vinyl bromide	593-60-2	5	20	--	--	--	--	--
Vinyl chloride		see 1910.1017						
Vinyl cyanide; see Acrylonitrile								
Vinyl cyclohexene dioxide	106-87-6	10	60	--	--	--	--	X
Vinylidene chloride (1,1-Dichloroethylene)	75-35-4	1	4	--	--	--	--	--
Vinyl toluene	25013-15-4	see 1910.1000, Table Z-1						
V M & P Naphtha	8032-32-4	300	1350	400	1800	--	--	--
Warfarin	81-81-2	see 1910.1000, Table Z-1						
Welding fumes (total particulate, breathing zone)	--	--	5	--	--	--	--	--

**PROPOSED RULES**

Substance	CAS #	TWA		STEL		Ceiling		Skin designation
		ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	ppm	mg/m <sup>3</sup>	
Wood dust, all soft and hard woods, except Western Red Cedar	--	--	5	--	10	--	--	--
Wood dust, Western red cedar	--	--	2.5	--	--	--	--	--
Xylenes ( <i>o</i> -, <i>m</i> -, <i>p</i> - isomers)	1330-20-7	100	435	150	655	--	--	--
<i>m</i> -Xylene- <i>alpha</i> , <i>alpha</i> '-diamine	1477-55-0	--	--	--	--	--	0.1	X
Xylidine	1300-73-8	2	10	--	--	--	--	X
Yttrium	7440-65-5	see 1910.1000, Table Z-1						
Zinc chloride fume	7646-85-7	--	1	--	2	--	--	--
Zinc chromate (as CrO <sub>3</sub> )	Varies with compound	--	--	--	--	--	0.1	--
Zinc oxide fume	1314-13-2	--	5	--	10	--	--	--
Zinc oxide	1314-13-2							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Zinc stearate	557-05-1							
Total dust		--	10	--	--	--	--	--
Respirable fraction		--	5	--	--	--	--	--
Zirconium compounds (as Zr)	7440-67-7	--	5	--	10	--	--	--

~~(b) The modified final rule for 29 CFR 1910.1200, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170-6184 is incorporated by reference except that 1910.1200(b)(6)(ii) is amended to read: "(ii) Any hazardous substance as such term is defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 et seq), when regulated as a hazardous waste under that Act by the Environmental Protection Agency."~~

equipment (as described in 1926.28) in all operations where there is an exposure to hazardous conditions or where this part indicates the need for using such equipment to reduce the hazards to the employees."

(2) Subpart D -- Occupational Health and Environmental Controls:

~~(a)~~ Addition to 29 CFR 1926.54, Nonionizing radiation, after subpart (a) to read:

"(a1) This standard shall apply to all direct or reflected laser equipment except unmodified Class I equipment maintained in accordance with the manufacturer's recommendations. Class I equipment is defined as intrinsically safe lasers having less than 0.001 milliwatt power and lasers which cannot create eye damage if viewed accidentally or which present no direct ocular hazard, diffuse ocular hazard or fire hazards."

~~(b) Incorporation by reference of modified final rule for 29 CFR 1926.59, Hazard Communication, including Appendices A through E, published in 59 FR (February 9, 1994) pages 6170-6184 except that 1926.59(b)(6)(ii) is amended to read: "(ii) Any hazardous substance as such term is defined by the~~

Authority G.S. 95-131; 95-133; 150B-21.6.

## SECTION .0200 - CONSTRUCTION STANDARDS

### 13 NCAC 07F .0201 CONSTRUCTION

The provisions for the Occupational Safety and Health Standards for Construction, Title 29 of the Code of Federal Regulations Part 1926 promulgated as of January 19, 2001 and exclusive of subsequent amendments, are incorporated by reference except as follows:

- (1) Subpart C -- General Safety and Health Provisions -- Personal protective equipment, 1926.28(a) is amended to read as follows: "(a) The employer is responsible for requiring the wearing of appropriate personal protective

~~Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 U.S.C. 9601 et seq), when regulated as a hazardous waste under that Act by the Environmental Protection Agency;"~~

- (3) Subpart E --Personal Protective and Life Saving Equipment -- addition of (g) to 1926.104 *Safety belts, lifelines, and lanyards*, as follows:

"(g) Snaphooks shall be a locking type designed and used to prevent disengagement of the snaphook keeper by the connected member. Locking type snaphooks have self-closing, self-locking keepers which remain closed and locked until unlocked and pressed open for connection or disconnection."

- (4) Subpart R—Steel Erection – additions and amendments to 29 CFR 1926.750 *Scope*, through 1926.754 *Definitions applicable to this subpart, as follows*:

"Section 1926.750 Scope:

(b)(1) Steel erection activities include hoisting, laying out, placing, connecting, welding, burning, guying, bracing, bolting, plumbing and rigging structural steel, steel joists, bridge steel girders and metal buildings; installing metal decking and moving point-to-point while performing these activities.

(b)(2) There may be activities that occur during and are part of steel erection where conventional fall protection methods may not offer adequate protection for employees. The employer has the burden of establishing and determining when to implement employee fall protection measures as described in 1926.760 or the more protective measures described in 1926.502 "Fall Protection Systems Criteria and Practices". Where non-traditional steel or iron workers (employees not meeting requirements of 1926.761(c)) are engaged in leading edge work activities six (6) feet or more above lower levels, those employees shall be protected from falling by guardrail systems, personal fall arrest systems or safety nets. Such leading edge work activities include, but are not limited to off loading, stacking, laying out and fastening steel floor decking and metal and non-metal roof decking; positioning and securing exterior curtain walls, window walls, exterior siding systems; and moving from point to point while performing these activities.

1926.754(c)(1)(i) Tripping hazards.

Employees shall be protected from falls due to tripping hazards created by shear connectors (including, but not limited to headed steel studs, steel bars or steel lugs), reinforcing bars, deformed anchors, or threaded studs attached to the top flanges of beams, joists or

beam attachments. Such protection from falls may be accomplished by any of the following:

- (1) Shear connectors that project vertically or horizontally across the top flange of a member not being welded or applied until the metal decking or other walking/working surface is installed (field-installed shear connectors).

- (2) All employees working on members with shop or pre-installed shear connectors shall be protected from falling hazards greater than six feet by suitable, as defined in 1926.32(s), fall protection systems, including guardrail systems, personal fall arrest systems, or safety nets.

- (3) Shop or pre-installed connectors that project vertically from or horizontally across the top flange of the member shall be covered by a temporary decking, metal or wood box until the metal decking, or other walking/working surface, is installed or until final construction covers the shear connectors.

- (5) Subpart U—Blasting and Use of Explosives – additions and amendments to 29 CFR 1926.900 *General Provisions*, through 1926.914 *Definitions applicable to this subpart, as follows*:

"Section 1926.900 General provisions:

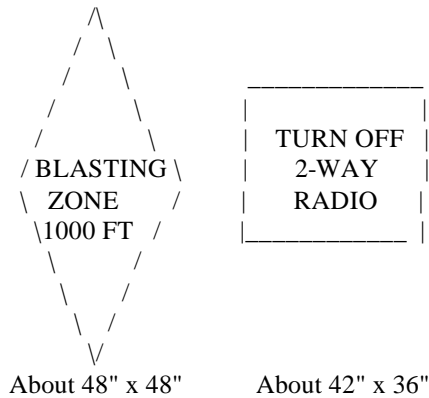
- (a) The employer shall permit only persons qualified pursuant to 1926.901 to handle and use explosives. A blaster shall be in charge of each blasting operation; hereafter, referred to as the Blaster-in-Charge.

- (b) Smoking, firearms, sparks, open flame or heat producing devices shall be prohibited where explosives are being stored, handled, transported or used. Exception: This does not apply to detonation devices specifically designed to initiate detonation, which by their nature produce heat or sparks.

- (c) See 1926.901(b).

- (d) All explosives shall be accounted for at all times. Explosives not being used and not attended shall be kept in a magazine or container that meets the U.S. Bureau of Alcohol, Tobacco and Firearms (hereafter, ATF) storage and access requirements contained in 27 CFR Part 55, which is incorporated herein by reference, including any subsequent amendments and editions. Each employer shall maintain an inventory

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|     | and use record of all explosives in that employer's possession. The employer, or employer authorized person, shall comply with all applicable local, State and federal laws and regulations requiring notification of any loss, theft, or unauthorized entry into a magazine or container.                                                                                                                                                                  | (3)  | (i) The prominent display of adequate signs, warning against the use of mobile radio transmitters, (e.g., telephones and 2-way radios) on all roads within 1,000 feet of electric blasting operations. If adherence to the 1,000-foot distance would create an operational handicap, then a competent person (as defined in 29 CFR 1926 Subparts L and P) shall be consulted to evaluate the particular situation, and alternative provisions may be made which are designed to prevent any premature firing of electric detonators. A description of any such alternatives shall be reduced to writing and shall be certified by the competent person consulted as meeting the purposes of this subdivision. The description shall be maintained at the construction during the duration of the work, and shall be available for inspection by representatives of the Commissioner of Labor. |
| (g) | Original containers, ATF Type 2, Type 3, Type 4 or Type 5 magazines or Institute of Makers of Explosives (hereafter, IME) - 22 containers, shall be used for taking detonators and other explosives from storage magazines to the blast site.                                                                                                                                                                                                               |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| (h) | In proximity to people, a structure, railway, highway or any other installation, the blaster shall take additional precautions to control the throw of fragments and to prevent bodily injury to employees and people not working directly on the blasting operation. Such additional precautions shall be taken in the loading, delaying, initiation and confinement of each blast and shall include confinement with mats or with mats and other methods. |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| (i) | All blast site employees shall follow the directions of the Blaster-in-Charge. All blast site employees shall use and adhere to every precaution to ensure employee safety including, but not limited to, visual and audible warning signals, flags, or barricades.                                                                                                                                                                                         |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| (k) | Precautions shall be taken to prevent accidental discharge of electric detonators from current induced by radar, radio transmitters including 2-way radios and mobile telephones, lightning, adjacent powerlines, dust storms, or other sources of extraneous electricity. These precautions shall include:                                                                                                                                                 |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|     | (1) See Section 1926.906(a) and (b).                                                                                                                                                                                                                                                                                                                                                                                                                        |      |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|     | (2) At the approach and progress of an electric storm, blasting operations shall be suspended and personnel removed to an area safe from concussion (shock wave), flying material, or gases from an explosion.                                                                                                                                                                                                                                              | (ii) | Examples of signs which would meet the requirements of Paragraphs (i) and (k)(3) of this Section are the following:                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           |



- (4) Ensuring that mobile transmitters including telephones and 2-way radios which are less than 100 feet away from electric detonators, in other than original containers, shall be de-energized and effectively prevented from operating, (e.g., locked);
- (5) The Blaster-in-Charge shall comply with the recommendations of IME with regard to blasting in the vicinity of radio transmitters as stipulated in Safety Guide for the Prevention of Radio Frequency Radiation Hazards in the Use of Commercial Electric Detonators (Blasting Caps), IME Safety Library Publication No. 20, 2000, which is incorporated herein by reference, including any subsequent amendments and editions.
- (l) Empty boxes and associated paper and fiber packing materials, which have previously contained explosives, shall not be used for any purpose, other than that associated with the blasting operation. Such boxes, paper and packing materials shall be disposed of in a manner that prevents reuse and does not constitute a hazard. Disposal may include but shall not be limited to burning. The method used for disposal shall comply with all applicable local, State or federal laws.
- (n) Delivery and issue of explosives shall only be made by and to authorized persons (as defined in 27 CFR Part 55) and into magazines or temporary storage or handling areas that meet the ATF storage requirements contained in 27 CFR Part 55.
- (o) Blasting operations in the proximity of overhead power lines, communication lines, utility services, or other services and structures shall not commence until the operators or owners have been notified and measures for safe control have been taken.
- (q) All loading and firing shall be directed and supervised by the Blaster-in-Charge.
- (r) All blasts shall be fired under the control of a blaster, with an initiation system in accordance with manufacturer's recommendations. All blasts shall be fired in accordance with the manufacturer's recommendations.
- (s) Buildings used for the mixing of blasting agents or water-based explosives shall conform to the requirements of this section.
  - (3) All fuel oil storage facilities shall be separated from the mixing plant and located in such a manner that in case of tank rupture, the oil will be contained and will not drain toward the mixing plant building.
  - (4) The building shall be adequately ventilated to prevent explosive or hazardous substance hazards.
  - (5) Heating units may be used in the building if they do not depend on combustion processes, and are properly designed and located to prevent explosive or other hazards. All direct sources of heat shall be provided exclusively from units

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|     | located outside the mixing building.                                                                                                                                                                                                                                                                                                                                                                                     |     | competency in handling explosives and performing in a safe manner the type of blasting that will be required.                                                                                                                                                                                                                                                                                                                                                                           |
| (6) | All internal-combustion engines used for electric power generation shall be located outside the mixing plant building, or shall be isolated by a firewall and shall be properly ventilated to prevent explosive or exhaust gas hazards to employees. The exhaust systems on all such engines shall be located so any heat or spark generated or emitted cannot be a hazard to any materials in or adjacent to the plant. | (e) | Blasters shall be knowledgeable in the use of each type of blasting method used.                                                                                                                                                                                                                                                                                                                                                                                                        |
|     |                                                                                                                                                                                                                                                                                                                                                                                                                          | (f) | Pursuant to 29 CFR 1926.21(b), the employer shall instruct each employee in the recognition and avoidance of unsafe conditions and the regulations applicable to the employee's work and work environment."                                                                                                                                                                                                                                                                             |
| (t) | See .900(s).                                                                                                                                                                                                                                                                                                                                                                                                             |     | "Section 1926.902 Surface transportation of explosives:                                                                                                                                                                                                                                                                                                                                                                                                                                 |
| (1) | See .900(s)(1).                                                                                                                                                                                                                                                                                                                                                                                                          | (a) | Surface transportation of explosives and blasting agents shall be in accordance with applicable U.S. Department of Transportation (hereafter, DOT) regulations. Where DOT regulations do not normally apply (e.g., off-road vehicles), compliance shall be in accordance with either the directly related DOT regulation or 1926.902(b) through 1926.902(1), as applicable. Where DOT regulations do not exist, 1926.902(b) through 1926.902(1) apply.                                  |
| (2) | See .900(s)(2).                                                                                                                                                                                                                                                                                                                                                                                                          |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (3) | See .900(s)(3).                                                                                                                                                                                                                                                                                                                                                                                                          | (b) | Motor vehicles or conveyances transporting explosives shall only be driven by, and be in the charge of, a licensed driver. The driver shall be familiar with the local, State, and Federal regulations governing the transportation of explosives.                                                                                                                                                                                                                                      |
| (4) | See .900(s)(4).                                                                                                                                                                                                                                                                                                                                                                                                          |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (5) | See .900(s)(5).                                                                                                                                                                                                                                                                                                                                                                                                          | (d) | Explosives, blasting agents, and blasting supplies shall not be transported with other materials or cargoes. Blasting caps and detonators shall not be transported in the same vehicle with other explosives unless the provisions of the IME Safety Publication No. 22, "Recommendations for the Safe Transportation of Detonators in a Vehicle with other Explosive Materials," which is incorporated herein by reference including subsequent amendments and editions, are followed. |
| (6) | See .900(s)(6).                                                                                                                                                                                                                                                                                                                                                                                                          |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (u) | To guard against unauthorized entry or initiation of a blast, a blast site shall be attended if loading is suspended or loaded holes are awaiting firing. Additionally, the blast site shall be barricaded, posted, and flagged as necessary to prevent unauthorized access.                                                                                                                                             | (f) | When explosives are transported by a vehicle with an open body, an ATF Type 2, ATF Type 3, IME 22 or original manufacturer's container shall be securely attached to the vehicle to contain the cargo.                                                                                                                                                                                                                                                                                  |
| (v) | No one shall carry explosives or explosives detonating materials (e.g., blasting caps, detonators, fuse, primers) of any kind on his or her person. This does not prohibit hand-carrying or passing such materials when a hole is being loaded."                                                                                                                                                                         | (h) | Every motor vehicle or conveyance used for transporting explosives shall be marked or placarded on both sides, the front, and the rear with the word                                                                                                                                                                                                                                                                                                                                    |
|     | "1926.901 Blaster qualifications:                                                                                                                                                                                                                                                                                                                                                                                        |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (a) | Blasters shall be able to understand and give written and oral orders.                                                                                                                                                                                                                                                                                                                                                   |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (b) | Blasters and others authorized to handle or transport explosive materials or conduct blast site activities shall be in sufficiently good physical condition to perform the work safely and not be addicted to, or under the influence of, narcotics, intoxicants, or similar types of drugs.                                                                                                                             |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (c) | Blasters shall be qualified, by reason of training, knowledge, or experience, in the field of transporting, storing, handling, and use of explosives, and have a working knowledge of State, federal and local laws and regulations which pertain to explosives.                                                                                                                                                         |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |
| (d) | Blasters shall be required by the employer to furnish evidence satisfactory to the employer of                                                                                                                                                                                                                                                                                                                           |     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |

- "Explosives" in red letters, not less than 4 inches in height, on white background. The motor vehicle or conveyance may also display, in such a manner that it will be readily visible from all directions, a red flag 18 inches by 30 inches, with the word "Explosives" painted, stamped, or sewed thereon, in white letters, at least 6 inches in height.
- (i) Each vehicle used for transportation of explosives shall be equipped with a fully charged fire extinguisher, in good condition (as described in 29 CFR 1926.150). An extinguisher, approved by a nationally recognized testing laboratory, of not less than 10-ABC rating will meet the minimum requirement. The driver shall be trained in the use of the extinguisher on the vehicle.
- (j) Motor vehicles or conveyances carrying explosives or blasting agents, shall not be taken inside a garage or shop for repairs or servicing.
- (l) In order to prevent explosives hazards, explosive materials shall be transported to the storage or blast site without delay."
- "Section 1926.903 Underground transportation of explosives:
- (a) In order to prevent explosives hazards, all explosives or blasting agents in transit underground shall be taken to the place of use or storage without delay.
- (b) The quantity of explosives or blasting agents taken to an underground loading area shall not exceed the amount estimated by the Blaster-in-Charge to be necessary for the blast.
- (h) Vehicles containing explosive material shall be occupied only by persons necessary for handling the explosive material while in transit.
- (m) Any powder car or conveyance used for transporting explosives or blasting agents shall bear a reflecting sign on each side with the word "Explosives". The sign's letters shall be a minimum of 4 inches in height and shall be on a background of sharply contrasting color.
- (n) Compartments for transporting detonators and explosives in the same car or conveyance shall meet IME-22 container specifications or shall be physically separated by a distance of 24 inches or by a solid partition at least 6 inches thick.
- (q) Explosives or blasting agents, not in original containers, shall be placed in a nonconductive, closed container when transported manually."
- "Section 1926.904 Storage of explosives and blasting agents:
- (a) Explosives and blasting agents shall be stored in magazines or containers that meet the applicable provisions of the regulations contained in 27 CFR Part 55, Commerce in Explosives.
- (b) Blasting caps and other detonators shall not be stored in the same magazine or container with other explosives or blasting agents. Surplus primers shall be disassembled and components stored separately.
- (c) Smoking and open flames shall not be permitted within 50 feet of explosive, detonators, or blasting agents storage.
- (d) No explosives or blasting agents shall be permanently stored in any underground operation until the operation has at least two modes of exit.
- (e) Permanent underground explosive materials storage shall be at least 300 feet from any shaft, edit, or active underground working area.
- (f) Permanent underground explosive materials storage containing detonators shall not be located closer than 50 feet to any storage containing other explosives or blasting agents."
- "Section 1926.905 Loading of explosives or blasting agents:
- (a) Procedures that permit safe and efficient loading shall be established by the Blaster-in-Charge or the employer before loading is started.
- (b) Drill holes shall be sufficiently large to admit easy insertion of the cartridges of explosives.
- (c) Tamping shall be done only with non-metal, non-sparking tamping poles without exposed metal parts, except that nonsparking metal connectors may be used for jointed poles. Violent tamping shall be prohibited. The primer shall never be tamped.
- (d) No holes shall be loaded except those to be fired in the next round of blasting. After loading, remaining explosives and detonators shall be promptly moved to a safe location and attended or stored pursuant to ATF storage requirements contained in 27 CFR Part 55.
- (e) Drilling shall not be started until all visible butts of old holes are examined for unexploded charges,



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| <p>(h) and if any are found, they shall be disposed of in accordance with 1926.911, before work proceeds.</p> <p>Machines, personnel and tools not required for the blasting operation shall be removed from the blast site before explosives are removed from storage or transportation vehicles. Blasting operation related vehicles or equipment shall not be driven over, or near enough to, explosive material or initiation systems to come into contact with the explosive material or initiation systems. Equipment not needed for the final blast shall not be operated within 50 feet of loaded holes.</p> <p>(i) During loading the only activity permitted within the blast site shall be that required to successfully and safely load the hole.</p> <p>(j) Powerlines and portable electric cables for equipment being used shall be kept a safe distance from explosives or blasting agents. The blaster shall assure that cables in the proximity of loaded holes are deenergized and locked out. Additionally, when using electric detonators, the provisions of 1926.906(b) apply.</p> <p>(k) Holes shall be checked prior to loading to determine depth and conditions. Only those holes determined by the Blaster-in-Charge to be satisfactory shall be loaded.</p> <p>(l) When loading a line of holes with more than one loading crew, the crews shall be separated by practical distance consistent with safe and efficient operation and supervision of crews.</p> <p>(m) No explosive shall be loaded or used underground in the presence of combustible gases or combustible dusts, unless the work is performed in accordance with the Mine Safety and Health Administration (MSHA) standards at 30 CFR 75 related to such environments, which are incorporated herein by reference, including subsequent amendments and editions, and unless the explosives have been approved as permissible explosives for use in gassy or dusty environments by MSHA.</p> <p>(n) No explosives other than those in IME Fume Class 1 shall be used. However, explosives complying with the requirements of IME Fume Class</p> | <p>2 and IME Fume Class 3 may be used if adequate ventilation has been provided to prevent explosive or hazardous substance hazards to employees.</p> <p>(q) A bore hole shall never be sprung when there is a risk of a premature detonation of a loaded hole.</p> <p>(s) Areas in which loading is suspended or loaded holes are awaiting firing shall be attended, and barricaded, posted, or flagged as needed to guard against unauthorized entry or initiation.</p> <p>(t) The blaster shall keep an accurate, up-to-date record of explosives, blasting agents, and blasting supplies used in each blast and shall keep an accurate running inventory of all explosives and blasting agents in the blaster's custody.</p> <p>(u) When loading blasting agents pneumatically over electric detonators, semiconductive delivery hose shall be used and the equipment shall be bonded and grounded.</p> <p>(v) Primers shall be made up just before their time of use and at the point of use.</p> <p>(w) Holes shall not be drilled in a manner that disturbs or intersects a loaded hole."</p> <p>"Section 1926.906 Initiation of explosive charges-electric blasting:</p> <p>(a) Electric detonators shall not be used where sources of extraneous electricity make the use of electric detonators dangerous. Except during testing, electric detonator leg wires shall be kept short-circuited (shunted) until they are connected into the circuit for firing.</p> <p>(b) If the presence of extraneous electricity is possible, the blaster shall conduct a stray current survey. No holes shall be loaded using electric detonators until the danger of extraneous electricity is eliminated.</p> <p>(c) In any single blast using electric detonators, all detonators shall be of the same style or function, and of the same manufacture.</p> <p>(d) Electric initiation shall be carried out by using blasting machines or power circuits in accordance with the manufacturer's recommendations.</p> <p>(e) When firing a circuit of electric detonators, an adequate quantity of delivered current must be available, in accordance with the manufacturer's recommendations.</p> |
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- (h) When firing electrically, the insulation on all firing lines shall be in good condition and shall be adequate to prevent voltage leaks.
  - (i) A power circuit used for firing electric detonators shall not be grounded.
  - (k) In underground operations there shall be a "lightning" gap of at least 15 feet in the firing system ahead of the main firing switch; that is, between this switch and the source of power. This gap shall be bridged by a flexible jumper cord just before firing the blast.
  - (n) When firing with blasting machines, the connections shall be made as recommended by the manufacturer of the electric detonators used.
  - (o) The number of electric detonators connected to a blasting machine shall not be in excess of its rated capacity. A series circuit shall contain no more detonators than the limits recommended by the manufacturer of the electric detonators in use.
  - (p) A blaster shall be in charge of the blasting machines.
  - (q) A blaster shall test blasting circuits for:
    - (1) Continuity of electric detonator in the blast hole prior to stemming and connection of the blasting line.
    - (2) Resistance of individual series or the resistance of multiple balanced series to be connected in parallel prior to their connection to the blasting line.
    - (3) Continuity of blasting lines prior to the connection of electric detonator series.
    - (4) Total blasting circuit resistance prior to connecting to the power source. A blasting galvanometer, or other instrument specifically designed for testing blasting circuits, shall be used to conduct these tests.
  - (r) Whenever the possibility exists that a leading line or blasting wire might be thrown over a live powerline by the force of an explosion, the total length of wires shall be kept too short to hit the lines, or the wires shall be securely anchored to the ground. If neither of these requirements can be satisfied, a nonelectric system shall be used.
  - (s) The blaster shall assure that all connections are made from the bore hole back to the source of firing current, and that the leading wires remain shorted, except during testing, and not connected to the blasting machine or other source of current until the blast is to be fired. Only the blaster, or a qualified person (as described in 1926.900(a) and 1926.901) under the direct control of the blaster, shall make lead wire connections or fire the shot."
- "Section 1926.907 Use of safety fuse:
- (a) A safety fuse that has been hammered or injured in any way shall not be used.
  - (d) Only a cap crimper shall be used for attaching blasting caps to safety fuse. Crimpers shall be kept in good repair and accessible for use.
  - (h) Safety fuses of at least the following minimum lengths shall be used:
    - (1) At least a 36-inch length for 40-second-per-foot safety fuse and
    - (2) At least a 48-inch length for 30-second-per-foot safety fuse.
  - (i) At least two people shall be present when multiple cap and fuse blasting is done by hand lighting methods."
- "Section 1926.908 Use of detonating cord and shock tube:
- (a) A detonating cord consistent with the type and physical condition of the bore hole and stemming and the type of explosives shall be used.
  - (b) Detonating cord shall be handled and used in the same manner as other explosives.
  - (d) Detonating cord shall be handled and used with care to avoid damaging or severing the cord during and after loading and hooking-up. Shock tube shall never be pulled, stretched, kinked, twisted, mashed or abused in any way which could cause the tube to break or otherwise malfunction.
  - (e) Detonating cord connections, shock tube connections and splices shall be competent and positive in accordance with the manufacturer's recommendations. Knot-type or other cord-to-cord connections shall be made only with detonating cord in which the explosive core is dry. Down-the-hole shock tube splices are prohibited.

- (g) All detonating cord connections, shock tube connections and splices shall be inspected before firing the blast.
  - (h) When detonating cord or shock tube millisecond-delay connectors or short-interval-delay electric detonators are used with detonating cord or shock tube, the practice shall conform strictly to the manufacturer's recommendations.
  - (i) When connecting a detonator to detonating cord or shock tube, the detonator shall be taped or otherwise attached securely along the side or the end of the detonating cord, with the end of the detonator containing the explosive charge pointed in the direction in which the detonation is to proceed.
  - (k) Shock tube shall not be connected to the initiation device until the blast is to be fired.
- "Section 1926.909 Firing the blast:
- (a) The Blaster-in-Charge shall establish a code of blasting signals and all blast site employees shall familiarize themselves with and conform to the code. As a minimum, the code shall:
    - (1) contain audible pre-blast and audible all clear signals, and
    - (2) contain an emergency method for guards, flagmen, or other authorized employees to signal "do not fire", and
    - (3) prohibit sounding of the all clear signal until the blaster has checked the blast site for misfires. Table U-1 is an example of a code of blasting signals that would meet these requirements. Further, the Blaster-in-Charge shall require the placement of Danger signs and posting of the blasting signals when personnel not associated with the blasting operation are within the blast area.
  - (b) Before a blast is fired, the Blaster-in-Charge shall make certain that all surplus explosives are in an area meeting the ATF explosive storage requirements contained in 27 CFR 55 and that all persons are at a safe distance, or under sufficient cover.
  - (c) Flagmen shall be safely stationed on highways which pass through the blast area so as to stop traffic during blasting.
  - (d) The Blaster-in-Charge shall fix the time of blasting.
  - (e) Before firing an underground blast, warning shall be given, and all possible entries into the blast area, and any entrances to any working place where a drift, raise, or other opening is about to hole through, shall be carefully guarded to prevent entry into the area. The Blaster-in-Charge shall make sure that all surplus employees have been removed from the blast area and that all personnel are out of the blast area."
- "Section 1926.910 Inspection after blasting:
- (b) Sufficient time shall be allowed, not less than 15 minutes in tunnels, for the smoke and fumes to dissipate before returning to the blast site. Subsequently, the blaster shall inspect the blast site and surrounding rubble for signs of misfires. If a misfire is found, employee access to the blast area shall be controlled pursuant to 1926.911. Where fumes, fire, or dust are a potential hazard (e.g., in tunnels), the muck pile shall be wetted down prior to general employees returning to the blast site."

"Section 1926.911 Misfires:

    - (a) If a misfire is found, the Blaster-in-Charge shall invoke sufficient safeguards to exclude all employees from the potential blast area.
    - (b) No work shall be done except that necessary to remove the hazard of the misfire. Only those employees necessary to do the work shall enter the potential blast area. Only the Blaster-in-Charge, and the absolute minimum number of competent, personnel (as defined in 29 CFR 1926 Subparts Land P), necessary to assess the situation shall approach the hole to inspect the misfire.
    - (c) The Blaster-in-Charge shall determine the safest steps for removing the hazard of the misfire. During development and implementation of these steps, the Blaster-in-Charge shall comply with the manufacturer's recommendations. Further, the guidelines of the Safety in the Transportation, Storage, Handling and Use of Explosive Materials, IME Safety Library Publication No. 17, which is incorporated herein by reference,

- including any subsequent amendments and editions, shall be utilized.
- (d) If there are any misfires while using safety fuse and blasting cap, all employees shall remain out of the potential blast area for at least 30 minutes. If electric detonators, shock tube, gas tube or detonating cord systems or materials were used and a misfire occurred, the waiting period may be reduced to 15 minutes. In either case, the Blaster-in-Charge shall assess the circumstances and invoke a safe waiting period before allowing any personnel to enter the potential blast area. All lines shall be carefully traced and a search made for unexploded charges.
- (e) No drilling, digging, or picking shall be permitted until all misfires have been detonated or the Blaster-in-Charge approves the work."
- "Section 1926.912 Underwater blasting:
- (a) In underwater blasting, no shot shall be fired without the approval of the Blaster-in-Charge.
- (c) Only water-resistant detonators and detonating cords shall be used for all marine blasting. Loading shall be done through a nonsparking loading tube when tube is necessary.
- (d) No blast shall be fired while any vessel under way is closer than 1,500 feet to the blast site. Those on board vessels or craft moored or anchored within 1,500 feet shall be notified before a blast is fired. Note: The warning signals and personnel safety provisions of 1926.909 also apply.
- (g) The storage and handling of explosives aboard vessels used in underwater blasting operations shall be in accordance with the provisions of this Standard on handling and storing explosives.
- (h) Prior to firing the blast, the blaster shall determine the method(s) that will be used for detecting misfires and take preparatory steps (e.g., noting obvious indications of misfire, attaching float(s) that will be released by the firing, staging underwater cameras, or other appropriate means). Misfires shall be handled in accordance with the requirements of 1926.911."
- "Section 1926.913 Blasting in excavation work under compressed air:
- (b) When detonators or explosives are brought into an air lock, the only employees who shall be permitted to enter the airlock are the powderman, blaster, lock tender and the employees necessary for carrying the detonators or explosives. No other material, supplies, or equipment shall be locked through with the explosives.
- (d) See 1926.900(a) and 1926.901.
- (f) The explosives suitable for use in wet holes shall be water-resistant and shall be IME Fume Class 1."
- "Section 1926.914 Definitions applicable to this subpart:
- (a) "American Table of Distances" (also known as Quantity Distance Tables)--the current edition of the American Table of Distances for Storage of Explosives approved by IME.
- (b) "Approved storage facility"-A facility for the storage of explosive materials conforming to the requirements of this part and covered by a license or permit issued under authority of the ATF. (See 27 CFR Part 55.)
- (c) "Blast area" - The area within the influence of flying debris, gases, and concussion from an explosion that may cause injury to property or persons.
- (e) "Blasting agent" - A blasting agent is a mixture consisting of a fuel and oxidizer used for blasting where the finished (mixed) product cannot be detonated with a No. 8 test blasting cap when confined.
- (j) "Detonator"- Blasting caps, electric blasting caps, electric delay blasting caps, and non-electric delay blasting caps.
- (k) "Electric detonator" - A detonator designed for and capable of detonation by means of an electric current.
- (l) "Electric blasting circuitry"
- (1) Bus wire. An expendable wire, used in parallel or series, in parallel circuits, to which are connected the leg wires of electric detonators.
- (2) Connecting wire. An insulated expendable wire used between electric detonators and the leading wires or between the bus wire and the leading wires.
- (3) Lead wire. An insulated wire used between the electric power source and the electric detonator circuit.

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| <p>(4) Permanent firing line. A permanently mounted insulated wire used between the electric power source and the electric detonator circuit.</p> <p>(m) "Electric delay detonators" - Detonators designed to detonate at a predetermined period of time after energy is applied to the ignition system.</p> <p>(n) "Explosives"</p> <p>(1) Any chemical compound, mixture, or device, the primary or common purpose of which is to function by explosion; that is, with substantially instantaneous release of gas and heat, unless such compound, mixture or device is otherwise specifically classified by the U.S. Department of Transportation (USDOT).</p> <p>(2) Any material designated as a Class 1 Explosive by the USDOT. Under the USDOT classification system, Class 1 materials are divided into the following six divisions:<br/> Division 1.1 - Mass exploding (Formerly Class A)<br/> Division 1.2 - Projection hazard (Formerly Class A or B)<br/> Division 1.3 - Fire hazard, minor blast or projection hazard (Formerly Class B)<br/> Division 1.4 - Minor explosion hazard, not mass detonating (Formerly Class C)<br/> Division 1.5 - Insensitive explosives, very little probability of initiation or transition from burning to detonation during transport. (Formerly Blasting Agent).<br/> Division 1.6 - Insensitive articles which do not mass detonate. (No commercial explosives in this division)</p> <p>(p) "Magazine" - Any container, building or structure, other than an explosives manufacturing building, used for the storage of explosives.</p> <p>(s) "Non-electric delay detonator" - A detonator with an integral delay element in conjunction with and</p> | <p>capable of being detonated by a detonation impulse or signal from miniaturized detonating cord or shock tube.</p> <p>(v) "Safety fuse" - A flexible cord containing an internal burning medium by which fire is conveyed at a continuous and uniform rate for the purpose of firing detonators.</p> <p>(x) "Stemming" - An inert incombustible material or device used to confine or separate explosives in a drill hole, or to cover explosives in mud-capping.</p> <p>(z) "Water-based explosives" - Explosive materials that contain substantial quantities of water in their formulation. They may be bulk or packaged products and may be cap sensitive or non cap sensitive (blasting agents). Examples of water-based explosives include emulsions, slurries and water gels.</p> <p>(bb) "Appropriate authorities" or "Authorities having jurisdiction" - local, State and federal law enforcement authorities required to be notified by law or permit or this Standard.</p> <p>(cc) "Blaster-in-Charge" - The person who meets the qualifications contained in §1926.901 and who is authorized to oversee the blasting operations and to use explosives for blasting purposes.</p> <p>(dd) "Blast site" - The area where explosive material is handled during loading, including the perimeter formed by loaded blast holes, and 50 feet (15.2 meters) in all directions from loaded holes. A minimum distance of 30 feet (9.1 meters) may replace the 50 feet (15.2 meters) if the perimeter of loaded holes is demarcated with a barrier. The 50 feet (15.2 meters) and alternative 30 feet (9.1 meters) requirements also apply in all directions along the full depth of the holes. In underground mines, 15 feet of solid rib or pillar may be substituted for the 50 feet distance.</p> <p>(ee) "Shock tube" - A small diameter plastic tube used for initiating detonators. Shock tube contains a limited amount of reactive material so that the energy transmitted through the tube by means of detonation wave is guided through, and confined within, the walls of the tube.</p> <p>(ff) "Blasting operation" - Any work or activities associated with the use of explosives on a blast site.</p> |
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(gg) "Attended" - Presence of an individual or continuous monitoring to prevent unauthorized entry or access."

(6) Subpart V -- Power Transmission and Distribution -- 1926.950(c)(1)(i) is rewritten to read as follows: "(i) The employee is insulated or guarded from the energized part (insulating gloves or insulating gloves with sleeves rated for the voltage involved shall be considered insulation of the employee only with regard to the energized part upon which work is being performed), or"

(7) Subpart Z -- Toxic and Hazardous Substances -- incorporation of the existing standard for Bloodborne Pathogens, 29 CFR 1910.1030, excluding subparagraph (e) HIV and HBV Research Laboratories and Production Facilities, into the Safety & Health Regulations for Construction at 29 CFR 1926.1130. Final rule as published in 56 FR (December 6, 1991) pages 64175 - 64182, including Appendix A -- Hepatitis B Vaccine Declination (Mandatory) -- with corrections as published in 57 FR (July 1, 1992) page 29206, and with the following revision to the definition of Occupational Exposure under subsection (b) Definitions:

"Occupational Exposure means reasonably anticipated skin, eye, mucous membrane, or parenteral contact with blood or other potentially infectious materials that may result from the performance of collateral first aid duties by an employee in the areas of construction, alteration, or repair, including painting and decorating."

Authority G.S. 95-131; 150B-21.6.

### SECTION .0300 - AGRICULTURE STANDARDS

#### 13 NCAC 07F .0301 AGRICULTURE

The provisions for the Occupational Safety and Health Standards for Agriculture, Title 29 of the Code of Federal Regulations Part 1928, promulgated as of October 15, 1997, and exclusive of subsequent amendments, are incorporated by reference except as follows:

~~(1) Subpart B -- Applicability of Standards -- In 29 CFR 1928.21(a)(5), the identical application of 29 CFR 1910.1200(b)(6)(ii) is amended to read as specified in 13 NCAC 07F .0101.~~

(2) Subpart I - General Environmental Controls - 29 CFR 1928.110, Field Sanitation, the scope shall not be limited to any specific number of employees.

Authority G.S. 95-131; 150B-21.6.

### SECTION .0500 - MARITIME STANDARDS

#### 13 NCAC 07F .0501 SHIPYARD EMPLOYMENT

~~(a) The provisions for the Occupational Safety and Health Standards for Shipyard Employment, Title 29 of the Code of Federal Regulations Part 1915 promulgated as of February 22, 1999, and exclusive of subsequent amendments, are incorporated by reference except that in 29 CFR 1915.1200 the identical application of 29 CFR 1910.1200(b)(6)(ii) is amended to read as specified in 13 NCAC 07F .0101.~~

~~(b) The provisions of 29 CFR 1915 shall apply only to public sector employees of local governments or of the State of North Carolina.~~

Authority G.S. 95-131; 150B-21.6.

#### 13 NCAC 07F .0502 MARINE TERMINALS

~~(a) The provisions of the Occupational Safety and Health Regulations for Marine Terminals, Title 29 of the Code of Federal Regulations Part 1917, promulgated as of June 30, 2000, and exclusive of subsequent amendments are incorporated by reference except that in 29 CFR 1917.1(a)(2)(vi) the identical application of 1910.1200(b)(6)(ii) is amended to read as specified in 13 NCAC 07F .0101.~~

~~(b) The provisions of 29 CFR 1917 shall apply only to public sector employees of local governments or of the State of North Carolina.~~

Authority G.S. 95-131; 150B-21.6.

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*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Labor intends to adopt the rules cited as 13 NCAC 15 .0430-.0438. Notice of Rule-making Proceedings was published in the Register on August 1, 2002.*

**Proposed Effective Date:** July 1, 2003

**Public Hearing:**

**Date:** October 30, 2002

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

**Location:** NC Dept. of Labor, 111 Hillsborough St., 3<sup>rd</sup> floor Conference Room, Raleigh, NC

**Reason for Proposed Action:** The North Carolina Department of Labor Elevator and Amusement Device Bureau proposes to promulgate rules governing the installation, operation and inspection of inflatable or air-supported amusement devices in this State. The rules are consistent with the Department's legislative mandate to ensure that the public is not exposed to unsafe conditions while enjoying amusement devices in this State.

**Comment Procedures:** Comments from the public shall be directed to Barbara A. Jackson, 4 West Edenton St., Raleigh, NC 27601, phone (919) 733-0368, fax (919) 733-4235, and email [bjackson@mail.dol.state.nc.us](mailto:bjackson@mail.dol.state.nc.us). Comments shall be received through November 14, 2002.

**Fiscal Impact**

☐ State  
☐ Local

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

**CHAPTER 15 – ELEVATOR AND AMUSEMENT DEVICE  
DIVISION**

**SECTION .0400 – AMUSEMENT DEVICES**

**13 NCAC 15 .0430 REGULATION OF INFLATABLE  
OR AIR-SUPPORTED AMUSEMENT DEVICES**

These Rules give guidance and set forth the standards that must be met for the operation of inflatable or air-supported amusement devices in this State. In addition, the owner and/or operator of any inflatable or air-supported amusement device shall comply with G.S. 95, Article 14B and Title 13, Chapter 15 of the North Carolina Administrative Code.

*Authority G.S. 95-111.1; 95-111.2; 95-111.4.*

**13 NCAC 15 .0431 DEFINITIONS**

(a) The definitions found in G.S. 95-111.3 and 13 NCAC 15 .0103, are applicable throughout this Chapter unless a different meaning is plainly required by the context.

(b) The following definition of an Inflatable or Air-Supported Amusement Device applies throughout this Chapter: Inflatable or Air-Supported Amusement Device is defined as an air-filled structure designed to allow riders to bounce, slide or climb on it. Such a device is made from flexible fabric, kept inflated by one or more blowers, and relies on air pressure to maintain its shape.

*Authority G.S. 95-111.4.*

**13 NCAC 15 .0432 RIDE DESIGN**

(a) All inflatable or air-supported amusement devices shall meet the requirements of the ASTM Committee F-24-1159.

(b) All electrical wiring and equipment for inflatable or air-supported amusement devices shall comply with the National Electrical Code Section 525. All electrical service used in connection with the operation of the device shall have over current protection by either GFI receptacle or GFI electrical cord.

*Authority G.S. 95-111.2; 95-111.4.*

**13 NCAC 15 .0433 ANCHORAGE OR TIE-DOWN**

(a) All inflatable or air-supported amusement devices shall be anchored according to the manufacturer's specifications.

(b) The number and location of tie-downs shall be in accordance with the manufacturer's specifications.

(c) Non-load bearing positioning loops shall not be used as tie-downs or anchor points.

(d) All anchor ropes, tethers and tie-down ropes shall be attached to permanent structures, stakes, or be anchored by an on-ground anchor weight. Anchor ropes, tethers and tie-down ropes and anchors shall not be attached to motor vehicles.

(e) Ground stakes, except as otherwise specified by the manufacturer, shall meet the following requirements:

- (1) All ground stakes shall be a minimum of 40 inches in length, with at least 10 inches exposed above ground when used;

(2) All ground stakes shall be equipped with a restraining hook, collar, or other similar device, in order to prevent the attached ropes from sliding up and being released; and

(3) All ground stakes shall be protected or covered to prevent tripping or other accidental contact.

(f) On-Ground anchor weights shall meet the following requirements:

(1) For bounce-type inflatable or air-supported amusement devices, the on-ground anchor weights shall be at least 75 pounds for each recommended anchor position, or the amount recommended by the manufacturer; and

(2) For slide-type inflatable or air-supported amusement devices, the on-ground anchor weights shall be at least 500 pounds for each recommended anchor position, or the amount recommended by the manufacturer.

(g) All anchor ropes, tethers and tie-down ropes shall have a tensile strength of at least 3700 pounds or 370-pound test rated, or the amount recommended by the manufacturer.

*Authority G.S. 95-111.2; 95-111.4.*

**13 NCAC 15 .0434 OPERATION OF INFLATABLE  
OR AIR-SUPPORTED AMUSEMENT DEVICES**

(a) All inflatable or air-supported amusement devices shall have at least one operator on duty any time the device is inflated. If the operator cannot see the entire device from entrance to exit, an additional operator shall be placed in a position to observe the exit area of the device.

(b) Unless otherwise specified by the manufacturer, all inflatable or air-supported slides 20 feet or higher shall have a minimum of two operators, one of which shall be located at the top of the slide and one of which shall be located at the bottom of the slide.

(c) The operator shall assist the riders while they enter and exit the device.

(d) The operator shall not exceed the manufacturer's requirements for maximum loads or rated capacities for individual devices.

(e) The operator shall ensure that an appropriate mix of persons use the device, such that children are not in danger of injury from adults using the device at the same time.

(f) The operator(s) shall be located in close proximity to the entrance and exit of the device, and shall supervise the riders at all times.

(g) The operator shall remove from the device any rider who is acting in a manner that may endanger the safety of other riders.

*Authority G.S. 95-111.2; 95-111.4.*

**13 NCAC 15 .0435 BLOWERS**

(a) All inflatable or air-supported amusement devices shall be equipped with blowers that meet the manufacturers specifications for the size and type of device.

(b) If a power failure or other emergency occurs which disables the blowers, provision shall be made to keep the inflatable or air-supported amusement device substantially erect for at least five minutes or the time required to evacuate the manufacturer's rated capacity, whichever is longer. This may be accomplished by



ensuring that the device is equipped with a sealed chamber or non-return valve that prevents the rapid collapse of ceilings and walls.

(c) Blowers shall be protected or guarded in order to prevent riders from coming into contact with them.

*Authority G.S. 95-111.2; 95-111.4.*

**13 NCAC 15 .0436 WIND SPEED**

(a) No person may operate an inflatable or air-supported amusement device when the sustained wind speed exceeds the manufacturer's recommendation.

(b) All inflatable or air-supported amusement devices shall be immediately unloaded and deflated when the sustained wind speed exceeds 25 m.p.h.

*Authority G.S. 95-111.2; 95-111.4.*

**13 NCAC 15 .0437 SIGNS**

The operator shall ensure that signs are displayed at the entrance of each inflatable or air-supported amusement device which contain the following information, at a minimum:

- (1) A statement that all riders must remove their shoes prior to entering the device;
- (2) A statement that all riders must remove all loose or sharp objects from their person prior to entering the device;
- (3) A statement that the operator shall assist the riders when they enter and exit the ride.

*Authority G.S. 95-111.4.*

**13 NCAC 15 .0438 OPERATING MANUAL AND DOCUMENTATION**

(a) The owner shall maintain the manufacturer's operating manual for each inflatable or air-supported amusement device. The operating manual may include the procedures established by the manufacturer for the safe operation of the device, including the following: site layout, inflation procedures, ropes, tethers, tie-downs, anchors, use temperature range, maximum number of riders, size of riders, washing, repair, deflation, wind speed, drying, storage and transportation.

(b) The owner shall maintain a training manual that contains a complete description of the training program required for operators of each device. The training manual may include the following:

- (1) the proper method of operating the device;
- (2) how to ensure the safe entry and exit of riders;
- (3) safe methods of assembling and dismantling the device, where applicable;
- (4) how to conduct daily inspections;
- (5) how to anchor the device;
- (6) measures to be taken in the event of a power failure or other emergency; and
- (7) procedures for reporting accidents, defects or breakdowns.

(c) The operator and each member of the operating staff shall have a thorough knowledge of the operating manual and the training manual.

(d) A copy of the operating manual and the training manual shall be maintained on site, and shall be provided to representatives of the Department upon request.

(e) In the case of a rental, the owner shall ensure that the renter receives and understands the device operating procedures (including the operating manual and the training manual), and the rules and regulations pertaining to the operation of the device rented.

*Authority G.S. 95-111.2; 95-111.4.*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

**CHAPTER 18 - BOARD OF EXAMINERS OF ELECTRICAL CONTRACTORS**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Examiners of Electrical Contractors intends to adopt the rules cited as 21 NCAC 18B .0907-.0908, amend the rules cited as 21 NCAC 18B .0701, .0902, and repeal the rules cited as 21 NCAC 18B .0702-.0704, .0706. Notice of Rule-making Proceedings was published in the Register on August 15, 2002.*

**Proposed Effective Date:** April 15, 2003

**Public Hearing:**

**Date:** November 14, 2002

**Time:** 8:30 a.m.

**Location:** State Board of Examiners of Electrical Contractors, 1200 Front Street, Suite 105, Raleigh, NC

**Reason for Proposed Action:** *To define terms routinely used in disciplinary proceedings before the Board and to describe the disciplinary procedures currently being used by the Board more accurately and to shorten and clarify procedures used in granting license by reciprocity to persons holding license from other states.*

**Comment Procedures:** *Written comments should be sent to the Rulemaking Coordinator, State Board of Examiners of Electrical Contractors, 1200 Front Street, Suite 105, Raleigh, NC 27609. Phone (919) 733-9042. Comments should be submitted by November 14, 2002.*

**Fiscal Impact**

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

**SUBCHAPTER 18B - BOARD'S RULES FOR THE IMPLEMENTATION OF THE ELECTRICAL CONTRACTING LICENSING ACT**

**SECTION .0700 - LICENSING RECIPROCITY**

**21 NCAC 18B .0701 GENERAL REQUIREMENTS**

(a) The Board ~~may has enter entered~~ into ~~a series of~~ reciprocal licensing agreements with ~~contracting~~ contractor licensing boards

## PROPOSED RULES

of ~~several other~~ states whereby electrical contractors licensed by the other state boards may obtain a North Carolina electrical contracting license without written examinations provided:

- (1) the applicant furnishes to the Board a written statement from the state licensing board certifying that the applicant holds a current electrical contracting license issued by that board;
- (2) the proposed qualified individual for the applicant is the same individual who is duly qualified for the license currently issued to the applicant by the state licensing board;
- (3) the applicant files an application on a form provided by the Board requesting a license under the licensing reciprocity agreement currently in effect between the Board and the applicant's state licensing board;
- (4) except for the written examination requirement, the applicant furnishes to the Board information satisfactorily verifying to the Board that he meets all of the requirements in Sections .0200, .0300 and .0400 of this Subchapter applicable to the specific license classification requested; ~~and~~
- (5) the applicant pays to the Board the annual license fee as required in Rule .0404 of this Subchapter for the specific license classification ~~requested~~; ~~requested~~; and

(6) the license classification for which application is made is a classification for which the license from the other state is treated as equivalent under the agreement with that state.

(b) The expiration date for each license issued under a reciprocal agreement shall be as prescribed in G.S. 87-44.

(c) The renewal application due date and late filing penalty for a license issued under a reciprocal agreement shall be as prescribed in Rule .0405 of this Subchapter.

(d) Copies of all reciprocity agreements and applications are available from the Board.

(e) In the absence of a current reciprocity agreement in force between the contractor licensing board of a particular state and this Board, there is no waiver of examination.

Authority G.S. 87-42; 87-50.

### 21 NCAC 18B .0702 RECIPROCITY: SOUTH CAROLINA

~~Pursuant to the provisions of Rule .0701 of this Section and the reciprocal agreement between the Board and the South Carolina Licensing Board for Contractors, licensees of the South Carolina board are eligible to apply for and obtain a North Carolina electrical contracting license, and North Carolina licensees are eligible to apply to the South Carolina board and obtain a South Carolina electrical contracting license in classifications as prescribed in the following table:~~

<del>SOUTH CAROLINA LICENSEE</del>	<del>ELIGIBLE FOR NORTH CAROLINA LICENSE</del>
<del>Limited</del>	<del>Limited or intermediate</del>
<del>Intermediate</del>	<del>Limited, intermediate or unlimited</del>
<del>Unlimited</del>	<del>Limited, intermediate or unlimited</del>

<del>NORTH CAROLINA LICENSEE</del>	<del>ELIGIBLE FOR SOUTH CAROLINA LICENSE</del>
<del>Intermediate</del>	<del>Limited or intermediate</del>
<del>Unlimited</del>	<del>Limited, intermediate or unlimited</del>

Authority G.S. 87-42; 87-50.

### 21 NCAC 18B .0703 RECIPROCITY: VIRGINIA

~~Pursuant to the provisions of Rule .0701 of this Section and the reciprocal agreement between the Board and the Virginia Board~~

~~for Contractors, licensees of the Virginia board are eligible to apply for and obtain a North Carolina electrical contracting license, and North Carolina licensees are eligible to apply to the Virginia board and obtain a Virginia electrical contracting license in classifications as prescribed in the following table:~~

<del>VIRGINIA LICENSEE</del>	<del>ELIGIBLE FOR NORTH CAROLINA LICENSE</del>
<del>Class B</del>	<del>Limited or intermediate</del>
<del>Class A</del>	<del>Limited, intermediate or unlimited</del>

<del>NORTH CAROLINA LICENSEE</del>	<del>ELIGIBLE FOR VIRGINIA LICENSE</del>
<del>Intermediate</del>	<del>Class A or Class B</del>
<del>Unlimited</del>	<del>Class A or Class B</del>

Authority G. S. 87-42; 87-50.

### 21 NCAC 18B .0704 RECIPROCITY: ALABAMA

~~Pursuant to the provisions of Rule .0701 of this Section and the reciprocal agreement between the Board and the Alabama~~

~~Electrical Contractors Licensing Board, licensees of the Alabama board are eligible to apply for and obtain a North Carolina electrical contracting license, and North Carolina licensees are eligible to apply to the Alabama board and obtain an Alabama electrical contracting license in classifications as prescribed in the following table:~~

<del>ALABAMA LICENSEE</del>	<del>ELIGIBLE FOR NORTH CAROLINA LICENSE</del>
<del>Unrestricted</del>	<del>Unlimited</del>

**NORTH CAROLINA LICENSEE**

Unlimited

**ELIGIBLE FOR ALABAMA LICENSE**

Unrestricted

Authority G.S. 87-42; 87-50.

**21 NCAC 18B .0706 RECIPROCITY: FLORIDA**

Pursuant to the provisions of Rule .0701 of this Section and the reciprocal agreement between the Board and the Florida

Electrical Contractors Licensing Board, licensees of the Florida board are eligible to apply for and obtain a North Carolina electrical contracting license, and North Carolina licensees are eligible to apply to the Florida board and obtain a Florida electrical contracting license in classifications as prescribed in the following table:

**FLORIDA LICENSEE**

Unlimited

**ELIGIBLE FOR NORTH CAROLINA LICENSE**

Unlimited

**NORTH CAROLINA LICENSEE**

Unlimited

**ELIGIBLE FOR FLORIDA LICENSE**

Unlimited

Authority G.S. 87-42; 87-50.

**SECTION .0900 - VIOLATIONS AND CONTESTED CASE HEARINGS**

**21 NCAC 18B .0902 CHARGES AND PRELIMINARY PROCEDURES**

(a) The authority given to the Board's executive director in this Rule shall include the executive director's authority to delegate to other members of the Board's staff.

(b) Charges filed pursuant to G.S. 87-47(a4) shall be handled according to the progressive steps set out in Paragraphs (c) through (f) of this Rule.

(c) A charge shall be handled initially by the executive director. The executive director may, recommend to the Board that the charge be dismissed as unfounded or trivial, without a hearing. Unless so recommended, the executive director shall:

- (1) issue and cause to be served on the accused a written notice of violation, including a proposed sanction pursuant to G.S. 87-47(a2) or civil penalty reprimand, or including an assessment of a civil penalty in a specific amount pursuant to G.S. 87-47(a3)–G.S. 87-47(a3), or both; and a reprimand; or
- (2) give the accused written notice of the charge, including a request that the accused respond to it in writing within 20 days.

(d) The executive director may, upon receipt and evaluation of the response, recommend to the Board that the charge be dismissed as unfounded or trivial, without a hearing, or the executive director may issue and cause to be served on the accused a written notice of violation, including a proposed sanction pursuant to G.S. 87-47(a2) or civil penalty pursuant to G.S. 87-47(a3), or both, or may turn the matter over to the Board's Disciplinary disciplinary Review review– Committee, committee.

(e) The Disciplinary disciplinary Review review Committee committee will review regularly the actions of staff, and as to any particular matter, may take the actions outlined in Paragraph(c) of this Rule or may schedule a conference before the Committee with the accused. If a conference is held, the Committee will issue its findings in the form of a Recommended Order, which will be provided to the accused and proposed for adoption by the full board as a Final Order in the absence of objection by the accused in 20 days, recommend to the Board

that the charge be dismissed as unfounded or trivial, without a hearing. Unless so recommended, the committee shall:

- (1) ~~issue and cause to be served on the accused a written notice of violation, including a reprimand, or including an assessment of a civil penalty in a specific amount pursuant to G.S. 87-47(a3) and a reprimand; or~~
- (2) ~~recommend to the Board that a penalty or penalties be imposed pursuant to G.S. 87-47(a2) and (a3) or that an offer in compromise pursuant to G.S. 87-47(e) be accepted.~~

(f) The Board will review the report and recommendations of the Disciplinary Review Committee and as to any matter may, without a hearing, dismiss the charge as unfounded or ~~trivial~~ trivial, adopt the unopposed recommendations of the Committee, schedule a hearing on matters not resolved, or . Unless it is dismissed, the Board shall:

- (1) ~~issue and cause to be served on the accused a written notice of violation, which shall include the imposition of a penalty or penalties pursuant to G.S. 87-47(a2) and (a3), and which may include notice that the Board will accept an offer in compromise pursuant to G.S. 87-47(e); or~~
- (2) ~~set an administrative hearing on the charge, notice of which may include a statement that the Board will accept an offer in compromise pursuant to G.S. 87-47(e).~~

(g) Before an administrative hearing is held, the Board may direct the disciplinary review committee to meet with the accused and the complainant in a final effort to effect a settlement.

(h) Each notice of violation or Recommended Order shall include a statement of the right to request a hearing, pursuant to G.S. 87-47(a4).

Authority G.S. 87-42; 87-47.

**21 NCAC 18B .0907 RESPONSIBILITY OF LICENSEES AND QUALIFIED INDIVIDUALS**

(a) "Gross negligence" within the meaning of G.S. 87-47 means such a lack of due care as evidences reckless disregard of human life or the safety of the person exposed to its dangerous effects, or creating a clear and present danger of personal injury, illness or property damage, or that entire want of care as would raise the presumption of a conscious indifference to the rights of others, which is equivalent to an intentional violation of the law.

## PROPOSED RULES

(b) "Gross Incompetence" refers to such lack of knowledge, supervision or technical competence as to correspond or create risk similar to the consequences of gross negligence.

(c) "Supervision" The general supervision required by the Board is that degree of supervision which is necessary and sufficient to ensure that the project is carried out in a workmanlike manner and with the requisite skill and that the installation is made properly, safely and in accordance with applicable codes and rules. General supervision means active onsite review of the work by a competent individual while the work is in progress.

*Authority G.S. 87-42; 87-50.*

### **21 NCAC 18B .0908 MALPRACTICE**

(a) The Board recognizes the provisions of the North Carolina Building Code, including the provisions of the National Electrical Code as modified and adopted by the Building Code Council of North Carolina from time to time, as a minimum standard of competence applicable to contractors licensed by the Board. Malpractice consists in failure to design and install systems which meet or exceed the minimum standards of the

North Carolina State Building Code, Manufacturer's specifications and installation instructions and accepted standards prevailing in the industry.

(b) Malpractice may consist in substantial lack of knowledge of Code, Manufacturer's specifications and industry standards, in a failure to apply such technical knowledge, in undertaking a project which is not adequately planned and supervised, or in undertaking a project which the licensee may not reasonably expect to complete satisfactorily.

(c) Where work is carried out by employees of the licensee, failure to provide adequate supervision of such employees, whether by consistent absence from the workplace or jobsite, or as demonstrated by the failure of the work to comply with this rule, also constitutes malpractice on the part of the licensee.

(d) Where more than one qualified individual, as defined in G.S. 87-41.1(1) is employed at a firm, each such person is responsible for the work of the firm.

*Authority G.S. 87-42; 87-50.*

*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.*

**EXPIRED TEMPORARY RULES**

The following temporary rules have expired and are removed from the NC Administrative Code. The date shown to the right of the rule citation is the date that the temporary rule expired.

<u>Rule Citation</u>	<u>Expiration Date</u>
Department of Administrative/Council for Women	
1 NCAC 17 .0701-.0713	June 28, 2002
DHHS/Facility Services	
10 NCAC 42C .3003	October 13, 2001
10 NCAC 42C .3702	October 13, 2001
10 NCAC 42D .2401-.2403	October 13, 2001
DHHS/Commission for Health Services	
15A NCAC 21A .0815-.0822	September 13, 2002
DHHS/Medical Assistance	
10 NCAC 26B .0102	May 29, 2001
10 NCAC 26D .0101	June 29, 2001
10 NCAC 26H .0102	August 30, 2002
10 NCAC 26H .0211	August 30, 2002
10 NCAC 26H .0215	September 29, 2002
10 NCAC 26H .0304	September 29, 2002
10 NCAC 26H .0401	June 28, 2002
10 NCAC 26H .0502	August 30, 2002
10 NCAC 26H .0506	August 30, 2002
10 NCAC 26H .0602	August 30, 2002
DHHS/Commission for MH/DD/SAS	
10 NCAC 14G .0102	August 30, 2002
10 NCAC 14V .0104	August 30, 2002
10 NCAC 14V .0202-.0204	August 30, 2002
DHHS/Social Services Commission	
10 NCAC 49G .0101	September 29, 2002
DOJ/Criminal Justice Education and Training Standards Commission	
12 NCAC 09G .0401	December 20, 2001
12 NCAC 09G .0405-.0407	December 20, 2001
ENR/Coastal Resources Commission	
15A NCAC 07J .0701-.0703	October 12, 2002
ENR/Environmental Management Commission	
15A NCAC 02H .0103	February 26, 2002
15A NCAC 02H .0106	February 26, 2002
ENR/Commission for Health Services	
15A NCAC 18A .1210	January 11, 2002
Public Education	
16 NCAC 06C .0311	March 29, 2002
Transportation	
19A NCAC 02D .0642	August 12, 2001
Auctioneer Licensing Commission	
21 NCAC 04B .0202	August 12, 2002
21 NCAC 04B .0801-.0802	July 29, 2002
21 NCAC 04B .0804	July 29, 2002
Massage and Body Therapy Board	
21 NCAC 30 .0305	December 10, 2000
21 NCAC 30 .0605-.0606	December 28, 2001

*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
01	NCAC	40	.0301-.0303	16:08 NCR
01	NCAC	40	.0304-.0305*	16:08 NCR
10	NCAC	50B	.0102	16:24 NCR
11	NCAC	08	.1101*	17:01 NCR
11	NCAC	08	.1103*	17:01 NCR
11	NCAC	08	.1105*	17:01 NCR
11	NCAC	08	.1112-.1114*	17:01 NCR
13	NCAC	15	.0701-.0704	17:01 NCR
15A	NCAC	02H	.0103*	16:19 NCR
15A	NCAC	02H	.1301-.1305*	16:18 NCR
15A	NCAC	02I	.0501-.0503*	16:16 NCR
15A	NCAC	03K	.0104*	16:13 NCR
15A	NCAC	06H	.0101-.0105*	16:12 NCR
15A	NCAC	07B	.0702*	16:24 NCR
15A	NCAC	07H	.1101*	16:24 NCR
15A	NCAC	07H	.1201*	16:24 NCR
15A	NCAC	07H	.1205*	16:24 NCR
15A	NCAC	07H	.1301	16:24 NCR
15A	NCAC	07H	.1401*	16:24 NCR
15A	NCAC	07H	.2001*	16:24 NCR
15A	NCAC	07H	.2101*	16:24 NCR
15A	NCAC	07H	.2201*	16:24 NCR
15A	NCAC	07H	.2401	16:24 NCR
21	NCAC	36	.0211*	16:18 NCR
21	NCAC	36	.0218*	16:18 NCR
25	NCAC	01E	.0804*	16:16 NCR

## **TITLE 1 – DEPARTMENT OF ADMINISTRATION**

### **01 NCAC 40 .0304      REVOCATION OF DRIVING ELIGIBILITY CERTIFICATES**

(a) Each nonpublic school and educational program shall revoke a driving eligibility certificate held by one of its students, no matter whether it was issued by that school or program or not:

- (1) When the student fails to meet the requirements for the certificate set out in 01 NCAC 40 .0303; or
- (2) When the student is no longer enrolled in the school or program and does not possess a high school diploma or its equivalent upon the student's removal from the school's or program's rolls, if the student will not be

enrolled in another school (public, conventional nonpublic, home school, educational program or community college).

(b) Upon revocation of a certificate, the chief administrator of the school or program shall send written notification of the revocation to the Division within five calendar days of the revocation, unless the student protests the decision. If the Appeals Committee upholds the school's or program's decision to revoke the certificate, the notification to the Division will be made within five days from the school's or program's receipt of the committee's decision.

(c) The notification to the Division shall include:

- (1) The student's legal name (first, middle and last name as on the student's birth certificate);
- (2) The student's social security number;

- (3) The student's residence address (including street, city and zip code);
- (4) The student's date of birth;
- (5) The student's gender;
- (6) The student's race;
- (7) The student's learner's permit or driver's license number;
- (8) The name of the parent/guardian with whom the student is living;
- (9) A statement of the reasons for the revocation of the certificate;
- (10) The date of the student's ineligibility or removal from the school's or program's rolls;
- (11) The type of nonpublic school, whether conventional or home school, or educational program;
- (12) The name of the nonpublic school or educational program;
- (13) The county in which the nonpublic school or educational program is located; and
- (14) The name of the chief administrator of the nonpublic school or educational program.

(d) Within five calendar days of the Division's receipt of the written notification of revocation from the on public school, or educational program, the Director of the Division or the Director's designee, shall inform the North Carolina Division of Motor Vehicles of the revocation.

(e) If a student's certificate is revoked, the chief administrator of the nonpublic school or educational program, or the chief administrator's designee, shall immediately inform the student of the school's or program's decision and the availability and details of the school's or program's appeals process.

*History Note: Authority G.S. 115C-566;  
Eff. April 1, 2003.*

**01 NCAC 40 .0305 STUDENT APPEALS PROCESS**

(a) Each conventional nonpublic school and educational program that enrolls students that are at least 15 years of age shall establish a Driving Eligibility Certificate Appeals Committee to receive and act upon student protests that a driving eligibility certificate was improperly denied or revoked. All student protests shall be made within five days of the school's or program's decision and directed to the chief administrator of the conventional nonpublic school or educational program. The Appeals Committee shall:

- (1) Be appointed by and serve at the pleasure of the chief administrator of the conventional nonpublic school or educational program, or the chief administrator's designee; and
- (2) Consist of at least three members, each of which shall be a member of the school's or program's governing board, administration or staff, or a parent/guardian with a child currently enrolled in the school or program.

(b) The Division shall establish a Home School Driving Eligibility Certificate Appeals Committee exclusively to receive and act upon student protests that a driving eligibility certificate was improperly denied or revoked by a home school. All home school student protests shall be made within five days of the school's decision and directed to the Director of the Division or

the Director's designee, at Division of Nonpublic Education, Department of Administration, 1309 Mail Service Center, Raleigh, North Carolina 27699-1309. The Home School Driving Eligibility Certificate Appeals Committee shall:

- (1) Be appointed by, and serve on a voluntary basis at the pleasure of, the Director of the Division or the Director's designee; and
- (2) Consist of at least three members, each being the chief administrator of a home school currently operating under G.S. 115C, Article 39, Part 3. The members shall not receive per diem or any other type of compensation for their service. The Director, or the Director's designee, shall appoint a chairperson from the committee's membership. The chairperson shall then direct the decision-making work of the committee.

(c) All Driving Eligibility Certificate Appeals Committees shall:

- (1) Consider the written protest of the student as to why the driving eligibility certificate was improperly denied or revoked;
- (2) Decide the protest based on whether the requirements for the certificate were met or whether the certificate was properly revoked; and
- (3) Render its decision within 30 calendar days of receipt of the written protest from the student, and promptly notify the student and the chief administrator of the school or program of the decision.

(d) The decision of the appropriate appeals committee shall be final.

*History Note: Authority G.S. 115C-566;  
Eff. April 1, 2003.*

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**TITLE 11 – DEPARTMENT OF INSURANCE**

**SECTION .1100 - N.C. HOME INSPECTOR STANDARDS  
OF PRACTICE AND CODE OF ETHICS**

**11 NCAC 08 .1101 DEFINITIONS**

The following definitions apply to this Section:

- (1) "Automatic safety controls" means devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions.
- (2) "Central air conditioning" means a system that uses ducts to distribute cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet.
- (3) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as



- |      |                                                                                                                                                                                                                                                                                                                                                                                                                    |      |                                                                                                                                                                                                                                                                                                                                                                             |
|------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|      | boards or nails where many similar pieces make up the component.                                                                                                                                                                                                                                                                                                                                                   |      | by stored items, furniture, or building components.                                                                                                                                                                                                                                                                                                                         |
| (4)  | "Cosmetic damage" means superficial blemishes or defects that do not interfere with the functionality of the component or system.                                                                                                                                                                                                                                                                                  | (20) | "Readily visible" means seen by using natural or artificial light without the use of equipment or tools other than a flashlight.                                                                                                                                                                                                                                            |
| (5)  | "Cross connection" means any physical connection or arrangement between potable water and any source of contamination.                                                                                                                                                                                                                                                                                             | (21) | "Representative number" means for multiple identical components such as windows and electrical outlets - one such component per room. For multiple identical exterior components - one such component on each side of the building.                                                                                                                                         |
| (6)  | "Dangerous or adverse situations" means situations that pose a threat of injury to the inspector, or those situations that require the use of special protective clothing or safety equipment.                                                                                                                                                                                                                     | (22) | "Roof drainage systems" means gutters, downspouts, leaders, splashblocks, and similar components used to carry water off a roof and away from a building.                                                                                                                                                                                                                   |
| (7)  | "Describe" means report in writing a system or component by its type, or other observed characteristics, to distinguish it from other components used for the same purpose.                                                                                                                                                                                                                                        | (23) | "Shut down" means a piece of equipment or a system which cannot be operated by the device or control that a home owner should normally use to operate it. If its safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the inspector is not required to reestablish the circuit for the purpose of operating the equipment or system. |
| (8)  | "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance.                                                                                                                                                                           | (24) | "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, woodstoves (room heaters), central furnaces, and combinations of these devices.                                                                                     |
| (9)  | "Enter" means to go into an area to observe all visible components.                                                                                                                                                                                                                                                                                                                                                | (25) | "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads).                                                                                                                                                                                                                             |
| (10) | "Functional drainage" means a drain is functional when it empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously.                                                                                                                                                                                                                                             | (26) | "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions.                                                                                                                                                                                                                                                     |
| (11) | "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously.                                                                                                                                                                                                                                                                                    | (27) | "Technically exhaustive" means an inspection involving the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations.                                                                                                                                                        |
| (12) | "Installed" means attached or connected such that the installed item requires tools for removal.                                                                                                                                                                                                                                                                                                                   | (28) | "Underfloor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.                                                                                                                                                                                                            |
| (13) | "Normal operating controls" means homeowner operated devices such as a thermostat, wall switch, or safety switch.                                                                                                                                                                                                                                                                                                  |      |                                                                                                                                                                                                                                                                                                                                                                             |
| (14) | "Observe" means the act of making a visual examination.                                                                                                                                                                                                                                                                                                                                                            |      |                                                                                                                                                                                                                                                                                                                                                                             |
| (15) | "On-site water supply quality" means water quality is based on the bacterial, chemical, mineral, and solids content of the water.                                                                                                                                                                                                                                                                                  |      |                                                                                                                                                                                                                                                                                                                                                                             |
| (16) | "On-site water supply quantity" means the rate of flow of on-site well water.                                                                                                                                                                                                                                                                                                                                      |      |                                                                                                                                                                                                                                                                                                                                                                             |
| (17) | "Operate" means to cause systems or equipment to function.                                                                                                                                                                                                                                                                                                                                                         |      |                                                                                                                                                                                                                                                                                                                                                                             |
| (18) | "Readily accessible" means approachable or enterable for visual inspection without the risk of damage to any property or alteration of the accessible space, equipment, or opening.                                                                                                                                                                                                                                |      |                                                                                                                                                                                                                                                                                                                                                                             |
| (19) | "Readily openable access panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted in place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked |      |                                                                                                                                                                                                                                                                                                                                                                             |

*History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. May 1, 2003.*

**11 NCAC 08 .1103 PURPOSE AND SCOPE**

- (a) Home inspections performed according to this Section shall provide the client with a better understanding of the property conditions, as observed at the time of the home inspection.
- (b) Home inspectors shall:

- (1) Provide a written contract, signed by the client, before the home inspection is performed that shall:
    - (A) State that the home inspection is in accordance with the Standards of Practice of the North Carolina Home Inspector Licensure Board;
    - (B) Describe what services shall be provided and their cost; and
    - (C) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components;
  - (2) Observe readily visible and readily accessible installed systems and components listed in this Section; and
  - (3) Submit a written report to the client that shall:
    - (A) Describe those systems and components specified to be described in Rules .1106 through .1115 of this Section;
    - (B) State which systems and components designated for inspection in this Section have been inspected, and state any systems or components designated for inspection that were not inspected, and the reason for not inspecting;
    - (C) State any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling;
    - (D) State whether the condition reported requires repair or subsequent observation, or appears to warrant further investigation by a specialist; and
    - (E) State the name, license number, and signature of the person supervising the inspection and the name, license number, and signature of the person conducting the inspection.
- (c) This Section does not limit home inspectors from:
- (1) Reporting observations and conditions or rendering opinions of items in addition to those required in Paragraph (b) of this Rule; or
  - (2) Excluding systems and components from the inspection if requested by the client, and so stated in the written contract.
- (d) Written reports required by this Rule for pre-purchase home inspections of three or more systems shall include a separate section labeled "Summary" that includes any system or component that:
- (1) does not function as intended or adversely affects the habitability of the dwelling; or
  - (2) appears to warrant further investigation by a specialist or requires subsequent observation.
- This summary shall not contain recommendations for routine upkeep of a system or component to keep it in proper

functioning condition or recommendations to upgrade or enhance the function, efficiency, or safety of the home. This summary shall contain the following statements: "This summary is not the entire report. The complete report may include additional information of concern to the client. It is recommended that the client read the complete report."

*History Note: Authority G.S. 143-151.49; Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996; Temporary Adoption Eff. October 24, 1996; Eff. July 1, 1998; Amended Eff. May 1, 2003; July 1, 2000.*

#### **11 NCAC 08 .1105 GENERAL EXCLUSIONS**

- (a) Home inspectors are not required to report on:
- (1) Life expectancy of any component or system;
  - (2) The causes of the need for a repair;
  - (3) The methods, materials, and costs of corrections;
  - (4) The suitability of the property for any specialized use;
  - (5) Compliance or non-compliance with codes, ordinances, statutes, regulatory requirements or restrictions;
  - (6) The market value of the property or its marketability;
  - (7) The advisability or inadvisability of purchase of the property;
  - (8) Any component or system that was not observed;
  - (9) The presence or absence of pests such as wood damaging organisms, rodents, or insects; or
  - (10) Cosmetic damage, underground items, or items not permanently installed.
- (b) Home inspectors are not required to:
- (1) Offer warranties or guarantees of any kind;
  - (2) Calculate the strength, adequacy, or efficiency of any system or component;
  - (3) Enter any area or perform any procedure that may damage the property or its components or be dangerous to or adversely affect the health or safety of the home inspector or other persons;
  - (4) Operate any system or component that is shut down or otherwise inoperable;
  - (5) Operate any system or component that does not respond to normal operating controls;
  - (6) Move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;
  - (7) Determine the presence or absence of any suspected adverse environmental condition or hazardous substance, including but not limited to toxins, carcinogens, noise, contaminants in the building or in soil, water, and air;
  - (8) Determine the effectiveness of any system installed to control or remove suspected hazardous substances;
  - (9) Predict future condition, including but not limited to failure of components;

- (10) Project operating costs of components;
  - (11) Evaluate acoustical characteristics of any system or component;
  - (12) Observe special equipment or accessories that are not listed as components to be observed in this Section; or
  - (13) Disturb insulation, except as required in Rule .1114 of this Section.
- (c) Home inspectors shall not:
- (1) Offer or perform any act or service contrary to law; or
  - (2) Offer or perform engineering, architectural, plumbing, electrical or any other job function requiring an occupational license in the jurisdiction where the inspection is taking place, unless the home inspector holds a valid occupational license, in which case the home inspector shall inform the client that the home inspector is so licensed, and therefore qualified to go beyond this Section and perform additional inspections beyond those within the scope of the basic inspection.

*History Note: Authority G.S. 143-151.49;  
Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996;  
Temporary Adoption Eff. October 24, 1996;  
Eff. July 1, 1998;  
Amended Eff. May 1, 2003.*

**11 NCAC 08 .1112 AIR CONDITIONING**

- (a) The home inspector shall observe:
- (1) Central air conditioning and through-the-wall installed cooling systems including:
    - (A) Cooling and air handling equipment; and
    - (B) Normal operating controls.
  - (2) Distribution systems including:
    - (A) Fans, pumps, ducts and piping, with associated supports, dampers, insulation, air filters, registers, fan-coil units; and
    - (B) The presence of an installed cooling source in each room.
- (b) The home inspector shall describe:
- (1) Energy sources; and
  - (2) Cooling equipment type.
- (c) The home inspector shall operate the systems using normal operating controls.
- (d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.
- (e) The home inspector is not required to:
- (1) Operate cooling systems when weather conditions or other circumstances may cause equipment damage;
  - (2) Observe window air conditioners; or
  - (3) Observe the uniformity or adequacy of cool-air supply to the various rooms.

*History Note: Authority G.S. 143-151.49;*

*Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996;  
Temporary Adoption Eff. October 24, 1996;  
Eff. July 1, 1998;  
Amended Eff. May 1, 2003.*

**11 NCAC 08 .1113 INTERIORS**

- (a) The home inspector shall observe:
- (1) Walls, ceiling, and floors;
  - (2) Steps, stairways, balconies, and railings;
  - (3) Counters and a representative number of built-in cabinets; and
  - (4) A representative number of doors and windows.
- (b) The home inspector shall:
- (1) Operate a representative number of windows and interior doors; and
  - (2) Report signs of abnormal or harmful water penetration into the building or signs of abnormal or harmful condensation on building components.
- (c) The home inspector is not required to observe:
- (1) Paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors;
  - (2) Carpeting; or
  - (3) Draperies, blinds, or other window treatments.

*History Note: Authority G.S. 143-151.49;  
Codifier determined that agency findings did not meet criteria for temporary rule Eff. October 15, 1996;  
Temporary Adoption Eff. October 24, 1996;  
Eff. July 1, 1998;  
Amended Eff. May 1, 2003.*

**11 NCAC 08 .1114 INSULATION AND VENTILATION**

- (a) The home inspector shall observe:
- (1) Insulation and vapor retarders in unfinished spaces;
  - (2) Ventilation of attics and foundation areas;
  - (3) Kitchen, bathroom, and laundry venting systems; and
  - (4) The operation of any readily accessible attic ventilation fan, and, when temperature permits, the operation of any readily accessible thermostatic control.
- (b) The home inspector shall describe:
- (1) Insulation in unfinished spaces; and
  - (2) Absence of insulation in unfinished space at conditioned surfaces.
- (c) The home inspector is not required to report on:
- (1) Concealed insulation and vapor retarders; or
  - (2) Venting equipment that is integral with household appliances.
- (d) The home inspector shall:
- (1) Move insulation where readily visible evidence indicates the possibility of a problem; and
  - (2) Move insulation where chimneys penetrate roofs, where plumbing drain/waste pipes penetrate floors, adjacent to earth filled stoops or porches, and at exterior doors.

*History Note: Authority G.S. 143-151.49;  
Codifier determined that agency findings did not meet criteria  
for temporary rule Eff. October 15, 1996;  
Temporary Adoption Eff. October 24, 1996;  
Eff. July 1, 1998;  
Amended Eff. May 1, 2003.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT  
AND NATURAL RESOURCES**

**15A NCAC 02H .0103 DEFINITION OF TERMS**

The terms used in this Section shall be as defined in G.S. 143-213 and as follows:

- (1) "Authorization to Construct" means a permit required for the construction of water pollution control facilities necessary to comply with the terms and conditions of an NPDES permit.
- (2) "Certificate of Coverage" means the approval given dischargers that meet the requirements of coverage under a general permit.
- (3) "Commission" means the Environmental Management Commission.
- (4) "Committee" means the NPDES committee of the Environmental Management Commission.
- (5) "Decontamination" means the physical or chemical process of reducing contamination and preventing the spread of contamination from persons and equipment at biological or chemical agent incidents.
- (6) "Department" means the Department of Environment and Natural Resources.
- (7) "Director" means the Director of the Division of Water Quality, Department of Environment and Natural Resources or his designee.
- (8) "Discharges associated with biological or chemical decontamination" means the wastewater that is produced during activities intended to reduce potential biological or chemical contaminants and that are performed under the specific conditions listed in 15A NCAC 02H .0106(f)(11).
- (9) "Division" means the Division of Water Quality, Department of Environment and Natural Resources.
- (10) "EPA" means the United States Environmental Protection Agency.
- (11) "Existing", with respect to implementing the NPDES permitting program, means:
  - (a) Facilities which physically exist and have been legally constructed, i.e., health department or other agency approval or constructed prior to any regulatory requirements.
  - (b) Facilities which have received an NPDES Permit and have received an Authorization to Construct and have constructed or begun significant construction of any wastewater treatment facilities within the term of the current permit.
- (c) Facilities which have received a phased NPDES Permit and have received an Authorization to Construct for a phase of the permitted flow and have constructed or begun significant construction of the phased wastewater treatment facilities.

For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.

(12) "General Permit" means a "permit" issued under G.S. 143-215.1(b)(3) and (4) and 40 CFR 122.28 authorizing a category of similar discharges to surface waters.

(13) "Mine dewatering" means discharges of uncontaminated infiltrate and stormwater from mine excavation and the water that is removed to lower the water table to allow mining in an area.

(14) "Municipality" means a city, town, borough, county, parish, district, or other public body created by or under State law.

(15) "NPDES Permit" means a National Pollutant Discharge Elimination System permit required for the operation of point source discharges in accordance with the requirements of Section 402 of the Federal Water Pollution Control Act, 33 U.S.C. Section 1251 et seq.

(16) "New", with respect to implementing the NPDES permitting program, means:

- (a) Proposed facilities that do not have a NPDES Permit nor have any facilities constructed.
- (b) Facilities which physically exist, however are illegally constructed, i.e., no required agency approvals.
- (c) Facilities which have received an NPDES Permit and have received an Authorization to Construct but have not begun significant construction of any wastewater treatment facilities within the term of the current permit.

Any increases in treatment plant hydraulic capacity, which has not received an Authorization to Construct shall be considered new and new effluent limitations and other requirements, if applicable, would be imposed for the entire facility.

For the purpose of this definition, significant construction shall be considered as more than a token or nominal investment of money or other resources in the actual construction of the wastewater treatment facility, based on the facility size, complexity, cost and the required construction time for completion.

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| <p>(17) "New Source" means any industrial installation, from which there may be a discharge, the construction or modification of which is commenced on or after the date of publication of new source performance standards or pretreatment standards for new sources by the Environmental Protection Agency.</p> <p>(18) "New Source Performance Standards" means those standards of performance applied to industrial discharges defined as new sources.</p> <p>(19) "Notice of Intent" means formal written notification to the Division that a discharge, facility or activity is intended to be covered by a general permit and takes the place of "application" used with individual permits.</p> <p>(20) "Oil terminal storage facilities" means petroleum bulk storage, product transfer, loading, unloading, and related areas but does not include marinas or facilities primarily engaged in the retail sale of petroleum products. Oil/water separators such as those at maintenance garages, gas stations, and National Guard and military reserve facilities are included in this definition.</p> <p>(21) "Once-through non-contact cooling water" means water taken from wells, surface waters, or water supply systems and used in a non-contact cooling system without the addition of biocides or other chemical additives. Boiler blowdown waters are included in this definition. Nuclear and fossil fuel electric generating plants are not included in this definition.</p> <p>(22) "Point Source Discharge" means any discernible, confined, and discrete conveyance, including, but specifically not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or concentrated animal-feeding operation from which wastes are or may be discharged to the surface waters of the State.</p> <p>(23) "POTW" means Publicly Owned Treatment Works.</p> <p>(24) "Pretreatment standard" means any regulation containing pollutant discharge limits for indirect dischargers for ensuring compliance with Section 307(b) and (c) of the Clean Water Act, 33 U.S.C. Section 1251 et seq. This term includes prohibited discharge limits and local sewer use ordinance limits.</p> <p>(25) "Primary industry" means an industry listed in 40 CFR 122, Appendix A which is hereby incorporated by reference including any subsequent amendments. Copies of this publication are available from the Government Institutes, Inc., 4 Research Place, Suite 200, Rockville, MD 20850-1714 for a cost of thirty-six (\$36.00) each plus four dollars (\$4.00) shipping and handling. Copies are also available at the Division of Water Quality,</p> | <p>Archdale Building, 512 N. Salisbury Street, Raleigh, North Carolina 27604.</p> <p>(26) "Professional Engineer" means a person who is presently registered and licensed as a professional engineer by the North Carolina State Board of Registration For Professional Engineers and Land Surveyors.</p> <p>(27) "Sand dredge" means a facility to remove sand from river bottoms. No other mining activities are included in this definition.</p> <p>(28) "Seafood packing facility" means a business which is engaged in the sorting and packing of fresh seafood and which has a discharge consisting entirely of washdown and rinse water. Trout packing facilities are included in this definition. Wastewaters from seafood processing plants are not included in this definition.</p> <p>(29) "Seafood processing facility" means a business which is engaged in the removal of heads, entrails, fins or scales, filleting, cooking, canning, or preparation of fresh seafood.</p> <p>(30) "Staff" means the staff of the Division of Water Quality, Department of Environment and Natural Resources.</p> <p>(31) "Stormwater" is defined in G.S. 143, Article 21.</p> <p>(32) "Swimming pool filter backwash" means normal filter backwash water from both public and private swimming pools as well as spas with backwash filter facilities.</p> <p>(33) "Tourist Gem Mine" means a business which is engaged in the recreational practice of removing gems and semi-precious stones from mined material.</p> <p>(34) "Trout farm" means a facility for the commercial production of trout.</p> <p>(35) "Water filtration facility" means backwash filters and sludge disposal systems associated with water treatment plants and backwash filters associated with wells.</p> |
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*History Note: Authority G.S. 106-399.4; 143-215.1(a); 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. September 1, 1995; March 1, 1993; August 3, 1992; August 1, 1991; Temporary Amendment Eff. May 11, 2001; Temporary Amendment Expired on February 26, 2002; Amended Eff. April 1, 2003.*

## **SECTION .1300 – DISCHARGES TO ISOLATED WETLANDS AND ISOLATED WATERS**

### **15A NCAC 02H .1301 SCOPE AND PURPOSE**

(a) The provisions of this Section shall apply to Division of Water Quality (Division) regulatory and resource management determinations regarding isolated wetlands and isolated classified surface waters. This Section shall only apply to discharges resulting from activities that require state review after the effective date of this Rule and which require a Division

determination concerning effects on isolated wetlands and isolated classified surface waters. For the purpose of this Section, discharge shall be the deposition of dredged or fill material including but not limited to fill, earth, construction debris and soil.

(b) This Section outlines the application and review procedures for permitting of discharges into isolated wetlands and isolated classified surface waters which have been listed in 15A NCAC 02B .0300. If the US Army Corps of Engineers or its designee determines that a particular water or wetland is isolated and not regulated under Section 404 of the Clean Water Act, then discharges to that water or wetland shall be covered by this Section (15A NCAC 02H .1301 - .1305).

(c) Activities which result in a discharge may be authorized by the issuance of either an Individual Permit or a Certificate of Coverage to operate under a General Permit. Individual Permits shall be issued on a case-by-case basis using the procedures outlined in this Section. These Individual Permits do not require approval by the U.S. Environmental Protection Agency. Certificates of Coverage for General Permits may be issued for types or groups of discharges resulting from activities that are similar in nature and considered to have minimal impact. General Permits include but are not limited to activities such as maintenance, utility lines, and road crossings. General Permits shall be given public notice at least 45 days before the proposed effective date of the General Permit. These General Permits do not require approval by the U.S. Environmental Protection Agency. Individual Permits and Certificates of Coverage for General Permits shall be issued for a period of five years after which time the Permit shall be void unless the discharge is complete or an extension is granted as described in 15A NCAC 02H .1304(e).

(d) Discharges resulting from activities which receive an Individual Permit or Certificate of Coverage under a General Permit pursuant to this Section shall not be considered to remove existing uses of the isolated wetland or isolated surface waters.

(e) The following are exempt from this Section:

- (1) Activities that are described in 15A NCAC 02B .0230;
- (2) Discharges to isolated, man-made ponds or isolated ditches except for those wetlands or waters constructed for compensatory mitigation or for on-site stormwater management;
- (3) Discharges of treated effluent into isolated wetlands and isolated classified surface waters resulting from activities which receive NPDES Permits or State Non-Discharge Permits;
- (4) Discharges for water dependent structures as defined in 15A NCAC 02B .0202(67);
- (5) A discharge resulting from an activity if:
  - (A) The discharge resulting from the activity requires a 401 Certification and 404 Permit and these were issued prior to the effective date of this Rule;
  - (B) The project requires a state permit, such as landfills, NPDES discharges of treated effluent, Non-Discharge Permits, land application of residuals and road construction activities, that

has begun construction or are under contract to begin construction and have received all required state permits prior to the effective date of this Rule;

- (C) The project is being conducted by the N.C. Department of Transportation and they have completed 30% of the hydraulic design for the project prior to the effective date of this Rule; or
- (D) The applicant has been authorized for a discharge into isolated wetlands or isolated waters for a project which has established a Vested Right under North Carolina law prior to the effective date of this Rule.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c);*

*Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001; Temporary Adoption Eff. October 22, 2001; Eff. April 1, 2003.*

#### **15A NCAC 02H .1302 APPLICATION PROCESS**

(a) Application for a Permit. Any person, as defined in G.S. 143, Article 21, desiring issuance of a State Individual Permit or Certificate of Coverage under a General Permit for discharges resulting from activities which affect isolated classified surface waters or isolated wetlands shall file with the Director of the North Carolina Division of Water Quality (Director), an original and six copies of an application for a Permit. The application shall specify:

- (1) the date of application;
- (2) the name, address, and phone number of the property owner;
- (3) if the applicant is a corporation, the state in which it is domesticated, the name and address of the North Carolina process agency, and the name of the individual who shall be primarily responsible for the conduct of the discharge resulting from an activity for which a Permit is sought;
- (4) the nature of the discharge including cumulative impacts to isolated and non-isolated wetlands and isolated and non-isolated waters that cause or will cause a violation of downstream water quality standards resulting from an activity to be conducted by the applicant;
- (5) whether the discharge has occurred or is proposed;
- (6) the location and extent of the discharge, stating the applicable municipality, the county; the drainage basin; the name of the nearest named surface waters; and the location of the point of discharge with regard to the nearest named surface waters;
- (7) an application fee as required by G.S. 143-215.3D(e) with a check or money order to be made payable to the North Carolina Division

- (8) of Water Quality. If payment of a fee is required for a 401 Water Quality Certification, then that fee shall suffice for this Rule; and the information requested in Subparagraphs (1) through (7) of this Rule must be provided on or attached to the most current version of the North Carolina Division of Water Quality Isolated Wetlands Notification application form.

(b) Maps. There shall be attached to the application form a map(s) with scales and north arrows and of sufficient detail to accurately delineate the boundaries of the lands owned or to be utilized by the applicant in carrying out the discharge; the location, dimensions and type of any structures that affect isolated wetlands or waters for use in connection with the discharge; and the location and extent of the isolated waters (preferably surveyed or located with Global Positioning System equipment) including wetlands within the boundaries of said lands.

(c) Request For Additional Information. The Director may request, in writing within 60 days of receipt of an application and the applicant shall furnish, any additional information that may be found necessary for the proper consideration of the application. Incomplete applications shall be returned to the applicant.

(d) Omissions From Applications. If the applicant believes that it is not feasible or is unnecessary to furnish any portion of the information required by Paragraphs (a), (b) and (c) of this Rule, applicant shall submit a detailed statement explaining the reasons for omission of any such information. The final decision regarding the completeness of the application shall be made by the Division of Water Quality based on the information required in Paragraphs (a), (b) and (c), and any explanation provided by the applicant regarding omitted information provided in Paragraph (e).

(e) Investigations. The staff of the Department of Environment and Natural Resources (Department) shall conduct such investigation as the Director deems necessary and applicant shall cooperate in the investigation to the extent that it shall furnish necessary information, allow the staff access to the lands and facilities of the applicant and lend such assistance as shall be reasonable.

(f) Who Must Sign Applications. The application shall be considered a "valid application" only if the application bears the signature of a responsible officer of the company, municipal official, partner or owner. This signature certifies that the applicant has title to the property, has been authorized by the owner to apply for a Permit or is a public entity and has the power of eminent domain. Said official in signing the application shall also certify that all information contained therein or in support thereof is true and correct to the best of his knowledge.

(g) Applications for discharges to Isolated Wetlands and Waters must be made on forms provided or approved by the Division of Water Quality.

(h) Other applications for permitting or certification by a Division of the Department of Environment and Natural Resources shall suffice for application for this Permit as long as the application contains all of the information specified in Paragraphs (a) and (b) of this Rule and it is clearly specified to the Division by the applicant that authorization is sought under

this Rule. This application must be submitted to the Division of Water Quality for review under this Permit.

*History Note: Authority G.S. 143-214.1; 143-215.1(a)(6); 143-215.3(a)(1); Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001; Temporary Adoption Eff. October 22, 2001; Eff. April 1, 2003.*

## **15A NCAC 02H .1303 PUBLIC NOTICE AND PUBLIC HEARING**

(a) Notice of Publication. Within 30 days of receipt of a complete application, the Director shall decide whether to issue a public notice for an Individual Permit for a project or whether the project is eligible for a General Permit:

- (1) Individual Permit. Notice of the Director's intent to issue or deny a complete application for an Individual Permit shall be published one time in a newspaper having general circulation in the county in which the discharge will occur. Publication shall be made at least 30 days prior to proposed final action by the Director on the application. The applicant shall pay to the Department the costs of advertising the public notice for an Individual Permit. The Permit shall not be issued until such costs have been paid as allowed under G.S. 143-215.3(a)(1e). A copy of this notice shall be sent to a subset of individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule who request to be notified of these Permits.

- (2) General Permit. The Division shall provide public notice for proposed General Permits. This notice shall be sent to all individuals on the Wetland Permit Mailing List described in Paragraph (d) of this Rule and in selected newspapers with general circulation in the geographic areas affected by the proposed General Permit. Publication shall be made at least 30 days prior to proposed final action by the Director.

(b) Contents of Notice. The notice shall set forth the name and address of the applicant; the action requested in the application; the nature and location of the discharge; and the proposed date of final action to be taken by the Director on the application. The notice shall also state where additional information is on file with the Department and may be inspected at any time during normal working hours. Copies of such information on file shall be made available upon request and upon payment of the cost thereof to the Department. Any person who desires a public hearing on an Individual or General Permit application shall so request in writing to the Director within 30 days following the publication of the notice of intent.

(c) Notice of Hearing. Within 30 days of receipt of a request for a public hearing, the Director shall decide whether a public hearing is necessary unless the applicant agrees in writing to an extension. If the Director determines that there is significant public interest in holding a hearing, the Director shall publish notice of the hearing one time in a newspaper having general

circulation in the county in which the discharge will occur. In any county in which there is more than one newspaper having general circulation in that county, the Director shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Director in his discretion determines may be necessary to assure that such notice is generally available in the county. The notice shall be published at least 30 days prior to the date of the hearing. The notice shall state the time, place and nature of the hearing.

(d) Wetland Permit Mailing List. Any person may request that he or she be mailed copies of all public notices required by this Rule. The Director shall add the name of any such person to a Wetland Permit Mailing List and shall mail copies of notices to all persons on the list.

(e) If other public hearings are being held by Divisions of the Department of Environment and Natural Resources, then any public hearing held for this Rule may be coordinated with those hearings.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(a)(1e); 143-215.3(c); Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001; Temporary Adoption Eff. October 22, 2001; Eff. April 1, 2003.*

#### **15A NCAC 02H .1304 DECISION ON APPLICATION FOR PERMITS OR CERTIFICATES OF COVERAGE**

(a) Not later than 60 days following the publication of the notice of intent or decision to process the project under a General Permit, or within 90 days following a public hearing, the Director shall issue, issue with modifications, or deny the complete Permit application or complete application for Certificate of Coverage. Failure to take action within 60 or 90 days, respectively, shall result in the waiver of the permit requirement by the Director.

(b) Conditions of Permit. Any Permit or Certificate of Coverage issued pursuant to this Section may contain such conditions as the Director shall deem necessary to insure compliance with this Section including written post-discharge notification to the Division.

(c) Modification or Revocation of Permit or Certificate of Coverage:

- (1) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification for violation of conditions of the Permit or Certificate of Coverage; and
- (2) Any Permit or Certificate of Coverage issued pursuant to this Section may be subject to revocation or modification upon a determination that information contained in the application or presented in support thereof is incorrect or if the Director finds that the discharge has violated or may violate a downstream water quality standard.

(d) Notification of Unapproved Application. In the event that the Director denies the application for a Permit or Certificate of Coverage or for any reason is unable to approve the application, the Director shall so notify the applicant by certified or

registered mail, return receipt requested, specifying in such notification the reasons for the denial or inability to be approved.

(e) Permit or Certificate of Coverage renewals shall require a new application and payment of a fee to the Division of Water Quality unless the applicant requests and is granted an extension in writing which shall be granted for a time period not to exceed one additional year provided that the construction has commenced or is under contract to commence.

(f) Contested Case Hearing for Applicant. An applicant whose Permit or Certificate of Coverage is denied or granted subject to unacceptable conditions, shall have the right to seek a contested case hearing pursuant to the provisions of G.S. 143-215.1(e) by filing a petition under G.S. 150B-23 within 30 days after the Director notifies the applicant or permittee of its decision in writing.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.1(b); 143-215.3(a)(1); 143-215.3(c); Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001; Temporary Adoption Eff. October 22, 2001; Eff. April 1, 2003.*

#### **15A NCAC 02H .1305 REVIEW OF APPLICATIONS**

(a) In evaluating requests for an Individual Permit or Certificate of Coverage under a General Permit based on the procedures outlined in Paragraphs (c) through (d) of this Rule, the Director shall determine if the proposed discharge resulting from an activity has the potential to remove or degrade those existing uses in 15A NCAC 02B .0231(a) and (b) which are present in the isolated wetland or listed in the classification for classified isolated surface water. Discharges resulting from activities which would not remove or degrade existing uses shall be reviewed according to the procedures found in Subparagraphs (c)(2) through (c)(6) or (d)(2) through (d)(6) of this Rule. An applicant may also demonstrate that designated uses are not present at a particular site using a wetland evaluation procedure approved by the Director according to the criteria found in 15A NCAC 02B .0103(c); otherwise the designated uses as outlined at 15A NCAC 02B .0231(a) and (b) are assumed to exist, and the appropriate review procedures shall be undertaken. An Individual Permit or Certificate of Coverage under a General Permit shall be issued where the Director determines water quality standards will be met, including protection of existing uses.

(b) Discharges from Activities Deemed to be Permitted: Discharges resulting from activities in isolated wetlands or waters that are below the thresholds described in Subparagraphs (c)(2) and (d)(2) of this Rule, are deemed to be permitted as long as they fully comply with conditions listed below and may proceed without review procedures outlined in Subparagraphs (c)(1) through (c)(6) and (d)(1) through (d)(6) of this Rule. However, the Director may require that any discharge resulting from an activity obtain an Individual Permit or Certificate of Coverage under a General Permit if the Director determines that the discharge would result in a violation of water quality or wetland standards listed in 15A NCAC 02B .0200. This determination shall be made based on existing or projected environmental impacts. Conditions which must be met for projects deemed to be permitted:



- (1) Erosion and sediment control practices shall equal or exceed those required by the N.C. Division of Land Resources or its local delegated program for the Sedimentation Pollution Control Act and shall be in full compliance with all specifications governing the proper design, installation, operation and maintenance of such Best Management Practices in order to help assure compliance with the appropriate turbidity and other water quality standards;
  - (2) All erosion and sediment control practices placed in isolated wetlands or isolated classified surface waters must be removed and the original grade restored within two months after the Division of Land Resources or local delegated program determines that the land disturbance project is completed and the file is closed out;
  - (3) Live or fresh concrete shall not come into contact with surface water until the concrete has hardened; and
  - (4) Measures shall be taken to ensure that the hydrology of any remaining isolated wetland or isolated classified surface waters is not affected by the discharge.
- (c) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that existing uses are not removed or degraded by a discharge to isolated classified surface waters for a discharge resulting from an activity which:
- (1) has no practical alternative under the criteria outlined in Paragraph (e) of this Rule;
  - (2) will minimize adverse impacts to the isolated classified surface waters under criteria outlined in Paragraph (f) of this Rule, or impacts less than or equal to 1/3 acre of isolated classified surface waters or less than or equal to 150 linear feet of isolated streams for the entire project;
  - (3) does not result in the violation of groundwater standards, or water quality standards in the remaining surface waters;
  - (4) does not result in cumulative impacts which are environmental impacts resulting from incremental effects of an activity when added to other past, present, and reasonably foreseeable future activities regardless of what entities undertake such other actions, and that cause or will cause a violation of downstream water quality standards;
  - (5) provides for protection of downstream water quality standards through the use of on-site stormwater control measures; and
  - (6) provides for replacement of existing uses through mitigation with the following provisions:
    - (A) Impacts to all surface waters on the site which total less than one acre of surface waters or less than 150 linear feet of streams do not require compensatory mitigation;
    - (B) Mitigation shall be at a 2:1 ratio of acreage of waters or length of isolated stream of mitigation to the acreage of waters or length of isolated stream;
    - (C) Mitigation for impacts to waters shall be conducted within the same river basin and physiographic province when practical; and
    - (D) In-kind mitigation will be required unless other forms of mitigation provide greater water quality or aquatic life benefit.
- (d) The Director shall issue an Individual Permit or Certificate of Coverage under a General Permit upon determining that existing uses are not removed or degraded by a discharge to isolated wetlands for a discharge resulting from an activity which:
- (1) has no practical alternative as described in Paragraph (e) of this Rule;
  - (2) will minimize adverse impacts to the isolated wetlands under Paragraph (f) of this Rule on consideration of existing topography, vegetation, fish and wildlife resources, and hydrological conditions or impacts less than or equal to 1/3 acre of isolated wetlands east of I-95 and less than or equal to 0.1 acre of isolated wetlands west of I-95 for the entire project;
  - (3) does not result in the violation of groundwater standards, or wetland standards in the remaining wetlands;
  - (4) does not result in cumulative impacts which are described in Subparagraph (c)(4) of this Rule and that cause or will cause a violation of downstream water quality standards;
  - (5) provides protection for downstream water quality standards through the use of on-site stormwater control measures; and
  - (6) provides for replacement of existing uses through wetland mitigation as described in Subparagraphs (g)(1) through (g)(9) of this Rule.
- (e) A lack of practical alternatives may be shown by demonstrating that, considering the potential for a reduction in size, configuration or density of the proposed project and all alternative designs that the basic project purpose cannot be practically accomplished in an economically viable manner which would avoid or result in less adverse impact to isolated classified surface waters or isolated wetlands.
- (f) Minimization of discharges may be demonstrated by showing that any remaining isolated classified surface waters or wetlands are able to continue to support the existing uses after project completion, or that the discharges are required due to:
- (1) The spatial and dimensional requirements of the project; or
  - (2) The location of any existing structural or natural features that may dictate the placement or configuration of the proposed project; or

- (3) The purpose of the project and how the purpose relates to placement, configuration or density.
- (g) Replacement or mitigation of unavoidable losses of existing uses in isolated wetlands shall be reviewed in accordance with the following guidelines:
- (1) The Director shall coordinate mitigation requirements with other permitting agencies that are requiring mitigation for a specific project.
  - (2) Mitigation shall not be required for discharges resulting from activities that impact a total of less than one acre of isolated and other wetlands.
  - (3) Participation in wetland restoration programs coordinated by the Department of Environment and Natural Resources or approved mitigation banks (those mitigation banks which have been approved by the United States Army Corp of Engineers through the Mitigation Banking Review Team process) shall be required whenever the Director finds that such participation is available and satisfies the other requirements of this Paragraph, unless the applicant can demonstrate that participation in these restoration programs is not practical.
  - (4) Acceptable methods of wetlands mitigation are listed below:
    - (A) Restoration: Re-establishment of hydrology to the natural or reference condition which are sites within a specific geographic region that are chosen, for the purposes of functional assessment or mitigation, to encompass the known variation of a group or class of wetlands, including both natural and disturbance variations and is in an area that contains hydric soils. Vegetation must also be re-established if it differs from the natural or reference condition;
    - (B) Creation: Construction of wetlands in an area where wetlands did not exist in the past;
    - (C) Enhancement: Increasing one or more of the functions of an existing wetland by manipulation of vegetation or hydrology; and
    - (D) Preservation: Protection of wetlands through purchase, donation or conveyance of a conservation easement to a government or non-profit agency for management.
  - (5) Restoration or creation shall be the required method of wetland mitigation. The other methods may be utilized if the applicant can demonstrate that restoration or creation is not practical or that the proposed alternative is the

- most ecologically viable method of replacing the lost functions and values.
- (6) For all discharges resulting from activities which impact, in total, more than one acre of isolated and other wetlands, the mitigation ratio shall be 2:1 acres of mitigation to the acreage impacted. This mitigation must include at least a 1:1 ratio of restoration or creation except as outlined in Subparagraph (g)(7) of this Rule. The acres of required mitigation for other types of mitigation shall be determined by multiplying the 2:1 ratio by 1.5 for creation, 2 for enhancement, and 5 for preservation. The multiplier ratios listed in this Paragraph do not apply to mitigation sites where the state and federal review agencies have approved credit/debit ratios.
- (7) All mitigation proposals shall provide for the replacement of wetland acres lost due to the proposed discharge resulting from an activity at a minimum of a 1:1 ratio through restoration or creation prior to utilizing enhancement or preservation to satisfy the mitigation requirements, unless the Director determines that other forms of mitigation would provide greater water quality or aquatic life benefit.
- (8) Mitigation for impacts to isolated wetlands designated in Paragraph (b) of this Rule shall be conducted within the same river basin and physiographic province when practical.
- (9) In-kind mitigation is required unless other forms of mitigation provide greater water quality or aquatic life benefit.

*History Note: Authority G.S. 143-215.1(a)(6); 143-215.3(a)(1); 143-215.3(c);*  
*Codifier determined that findings did not meet criteria for temporary rule on September 26, 2001 and October 12, 2001;*  
*Temporary Adoption Eff. October 22, 2001;*  
*Eff. April 1, 2003.*

## **SECTION .0500 - PETITIONS FOR RULEMAKING**

### **15A NCAC 021 .0501 FORM AND CONTENTS OF PETITION**

(a) Any person wishing to request the adoption, amendment, or repeal of a rule of the Environmental Management Commission (hereinafter referred to as the Commission) shall make his request in a petition addressed to the Director of the appropriate division of the Department of Environment and Natural Resources, and a copy should also be sent to the Recording Clerk of the Commission:

Director  
 Division of Air Quality  
 1641 Mail Service Center  
 Raleigh, North Carolina 27699-1641

Director  
 Division of Water Quality  
 1617 Mail Service Center  
 Raleigh, North Carolina 27699-1617

Director  
Division of Water Resources  
1611 Mail Service Center  
Raleigh, North Carolina 27699-1611

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

(c) When petitions and supporting documents and data exceed 10 pages in length, 20 copies of the whole petition and any attachments shall be submitted.

(d) Petitions failing to contain the required information shall be returned by the Director on behalf of the Chairman.

*History Note: Authority G.S. 143B-282; 150B-20; Eff. April 1, 2003.*

**15A NCAC 02I.0502 REVIEW BY A COMMITTEE OF THE COMMISSION**

(a) The Chairman shall refer complete petitions to the appropriate subject area committee of the Commission for review and recommended action. Copies of Petitions for Rulemaking shall be distributed to the Commission members when referred to a committee of the Commission.

(b) Within 10 days of the assignment of the complete petition, the chairman of the committee assigned to review a submitted petition for rulemaking shall announce the date of a meeting to consider the petition.

(c) At least 15 days before the committee meeting, notice of the committee meeting shall be sent to the petitioner, members of the Commission, and persons who have requested notice of petitions for rulemaking.

(d) The petitioner shall be afforded the opportunity to present the petition for rulemaking to the committee. The Director, through staff, may make a presentation to the committee.

(e) The Chairman of the committee shall allow one interested person to present the viewpoint of those who oppose initiating rulemaking. The Chairman of the committee may determine whether additional interested persons shall make oral presentations before the committee. Interested persons must

request the opportunity to make a presentation to the committee through the Director. The request shall:

- (1) state the interest of the person;
- (2) state the person's position on the petition for rulemaking; and
- (3) be accompanied by supporting materials.

(f) During the committee's review, members of the Commission, other than committee members, who are present may participate as a member of the committee in discussions of the petition but may not vote on the recommended action on the petition.

*History Note: Authority G.S. 143B-282; 150B-20; Eff. April 1, 2003.*

**15A NCAC 02I.0503 PRESENTATION TO THE COMMISSION**

(a) Petitions for Rulemaking, after review by the appropriate committee under 15A NCAC 02I.0502, shall be presented to the Environmental Management Commission for its consideration and determination at a regularly scheduled meeting of the Commission within 120 days following the date of referral of the petition to the appropriate committee. The Petition for Rulemaking and the committee's recommended action shall be presented through the committee chairman or other designated member of the committee during the business session of the Commission. Unless the Chairman of the Commission rules otherwise, discussion on the petition shall be limited to the members of the Commission, counsel to the Commission, and the Director.

(b) Within 120 days following referral of the petition to the appropriate committee, the Environmental Management Commission shall:

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

*History Note: Authority G.S. 143B-282; 150B-20; Eff. April 1, 2003.*

**15A NCAC 03K.0104 PERMITS FOR PLANTING SHELLFISH FROM PROHIBITED/POLLUTED AREAS**

(a) It is unlawful to take oysters or clams from prohibited (polluted) public waters for planting on leases and franchises except as authorized by G.S. 113-203. Lease and franchise holders shall first obtain a permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken. The procedures and requirements for obtaining permits are found in 15A NCAC 03O.0500.

(b) The season for relaying clams shall be between April 1 and May 15 and the season for relaying oysters shall be for a specified six week period between the date of the statewide closure of oyster season and June 30, as determined by the Fisheries Director based on the status of oyster resources available for harvest from public bottom and market factors affecting sale of oysters from public bottom which will assist in

determining the statewide closure date and manpower available to monitor the relaying activity.

(c) For areas designated by the Fisheries Director as sites where shellfish would otherwise be destroyed in maintenance dredging operations, the season as set out in Paragraph (b) of this Rule shall not apply.

(d) The Fisheries Director, acting upon recommendations of the Division of Environmental Health, shall close and reopen by proclamation any private shellfish beds for which the owner has obtained a permit to relay oysters and clams from prohibited (polluted) public waters.

*History Note: Authority G.S. 113-134; 113-182; 113-203; 113-221; 143B-289.52;*  
*Eff. January 1, 1991;*  
*Amended Eff. March 1, 1996; September 1, 1991;*  
*Temporary Amendment Eff. October 1, 2001;*  
*Amended Eff. April 1, 2003.*

**15A NCAC 06H .0101 PURPOSE**

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

*History Note: Authority G.S. 139-4; 143B-294;*  
*Temporary Adoption Eff. October 22, 2001;*  
*Eff. April 1, 2003.*

**15A NCAC 06H .0102 DEFINITIONS**

When used in this Subchapter:

- (1) "Best Management Practice" (BMP) means a structural or nonstructural management practice used singularly or in combination to reduce nonpoint source inputs to receiving waters.
- (2) "Certified Animal Waste Management Plan" means the animal waste management plan certified by a technical specialist as required in the EMC Nondischarge Rule for Animal Waste Management Systems (15A NCAC 02H .0217).
- (3) "Commission" means the Soil and Water Conservation Commission.
- (4) "Department" means the Department of Environment and Natural Resources.
- (5) "EMC" means the Environmental Management Commission.
- (6) "NCCES" means the North Carolina Cooperative Extension Service.
- (7) "NRCS" means the USDA Natural Resources Conservation Service.
- (8) "Nutrient management" means a BMP for managing the amount, source, placement, form and timing of nutrients to ensure adequate

fertility for plant production and to minimize the potential for water quality impairment.

- (9) "Technical Specialist" means an individual designated by the Commission to certify that the planning, design and implementation of BMPs are to the standards and specifications of the Commission or NRCS.
- (10) "Technical specialist designation category" means a designation specific to any of several individual or groups of BMPs.
- (11) "Water management" means a BMP for control of water levels in the soil profile, including but not limited to, the use of flashboard risers or other similar structures placed in drainage ditches to benefit crop water needs and reduce nutrient loss.

*History Note: Authority G.S. 139-4; 143B-294;*  
*Temporary Adoption Eff. October 22, 2001;*  
*Eff. April 1, 2003.*

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

(a) The Commission may approve individual BMPs or systems of BMPs in conjunction with water quality protection programs for agriculture and other nonpoint sources.

(b) Approved BMPs shall meet the minimum technical standards of the USDA Natural Resources Conservation Service Technical Guide, Raleigh, North Carolina, except as specified in Paragraph (c) of this Rule.

(c) The Commission shall approve alternative BMPs Practices, Technical or Performance Specifications, and Operation and Maintenance requirements where any of the following criteria are met:

- (1) Where no existing USDA technical standard specifically achieves the desired water quality protection benefits;
- (2) Where an existing USDA technical standard includes design or installation requirements for purposes other than those necessary to achieve the desired water quality protection benefits; or
- (3) Where there is a need for additional operator flexibility to reduce the initial cost of installing or implementing the BMP, while providing equivalent water quality protection benefits.

(d) In approving BMPs, the Commission shall consider technical input from persons engaged in agriculture or experienced in nonpoint source management.

*History Note: Authority G.S. 139-4; 143B-294;*  
*Temporary Adoption Eff. October 22, 2001;*  
*Eff. April 1, 2003.*

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

(a) Technical specialist designation categories and roles are as follows:

- (1) The Structural Animal Waste category provides for the design and construction

- inspection of lagoons, storage ponds, dry stacks and other similar structures.
  - (2) The Waste Utilization Plan category provides for:
    - (A) The development of land application plans including crop acreages available to meet nutrient and hydraulic loading rates, application windows, determination of animal waste nutrient amounts, evaluation of fields for phosphorous loss, field buffers and related measures;
    - (B) Confirmation of storage volumes, exterior lots, lagoon closures, and cropping systems; and
    - (C) Development and establishment of buffers and setbacks to manage runoff from exterior lots.
  - (3) The Runoff Control category provides for the approval of the design and implementation of filter strips, diversions, grass channels and related BMPs which manage runoff from exterior lots.
  - (4) The Irrigation Equipment category provides for the design and installation of irrigation systems to include pipe size, pump horsepower, nozzle size, system layout, and other system parameters.
  - (5) The Wettable Acres category provides for the determination of irrigated acreage in accordance with a Certified Animal Waste Management Plan.
  - (6) The Waste Utilization Plan/Nutrient Management category provides for the items included in Subparagraph (a)(2) of this Rule and the authority to approve river basin nutrient management plans and to certify the land application component of a USDA Comprehensive Management Plan.
  - (7) The Inorganic Fertilizer/Nutrient Management category provides for approval of river basin nutrient management plans for inorganic fertilizer only.
  - (8) The Water Management category provides for design and installation of subsurface water management systems.
- (b) The Commission designates the following as technical specialists:
- (1) Individuals who have been assigned approval authority for a designation category by the USDA NRCS, the North Carolina Department of Agriculture and Consumer Services, the Division of Soil and Water Conservation, or the North Carolina Cooperative Extension Service. Soil and Water Conservation District employees are assigned approval authority by the USDA NRCS. Agency employees who do not have a designation at the time this Rule becomes effective must meet the training requirements included in Subparagraph (c)(2) of this Rule in order to receive a designation;
  - (2) Professional engineers subject to the "The NC Engineering and Land Surveying Act" for the categories of structural animal waste, waste utilization plan, runoff control, irrigation equipment and water management designation; and
  - (3) Individuals not included in Subparagraph (b)(1) and (b)(2) who meet the criteria in Paragraph (c) of this Rule.
- (c) Those individuals not designated in Subparagraphs (b)(1) or (b)(2) of this Rule must have an existing designation at the time this Rule becomes effective under 15A NCAC 06F .0105 or must meet the following criteria and training requirements:
- (1) Minimum criteria for each designation category are:
    - (A) The Irrigation Equipment designation requires designation as an irrigation designer by the National Irrigation Association or three years experience in the design of irrigation systems for waste application.
    - (B) The Wettable Acres designation requires holding either the waste utilization plan or irrigation equipment designation.
    - (C) The Waste Utilization Plan/Nutrient Management and the Inorganic Fertilizer Only/Nutrient Management designations require either three years experience in nutrient management, a four year degree in agronomy or related field or a combination of education and experience totaling four years.
    - (D) The Structural Animal Waste, Runoff Control and Water Management designations are reserved only for those individuals included in Subparagraphs (b)(1) or (b)(2).
  - (2) Training requirements are:
    - (A) For the category of Waste Utilization Plan/Nutrient Management, North Carolina Nutrient Management Course taught by the NCCES or the NRCS and the North Carolina Nutrient Management Software Course taught by the Division or the NCCES.
    - (B) For the category of Inorganic Fertilizer Only/Nutrient Management, North Carolina Inorganic Fertilizer Nutrient Management Course taught by the NCCES or the NRCS and the North Carolina Nutrient Management Software Course taught by the Division or the NCCES.
    - (C) For the category of Wettable Acres, the North Carolina Wettable Acres Course taught by the NCCES.
  - (3) Provide to the Division an "Application for Designation for Technical Specialist" and

evidence of experience and training required for each designation category. A list of three references who can attest to the applicant's technical competence must accompany the application.

- (4) Be determined by the Commission to meet the requirements of this Rule for designation.

(d) Professional Engineers included in Subparagraph (b)(2) who are licensed after the effective date of this Rule must attend the North Carolina Nutrient Management Course and the North Carolina Nutrient Management Software Course in order to use the waste utilization plan designation.

(e) All technical specialists must attend training as provided by the Division, NRCS or NCCES when new areas evolve within their designation in order to maintain their designation.

(f) Upon the finding by the Commission that the work of a technical specialist designated under Subparagraph (b)(3) of this Rule fails to comply with the requirements of 15A NCAC 02H .02017(a), 15A NCAC 06F, the NRCS Technical Guide or any applicable state or federal laws, or submits false data or is in any other way dishonest, the Commission may withdraw its designation of the technical specialist in any or all categories. Upon the finding by the commission that the work of a technical specialist designated under Subparagraph (b)(1) of this Rule the Commission shall forward these findings to the respective agency with the request that the agency provide documentation that their technical specialist has received training to correct deficiencies in the area of work to retain a designation. If the agency fails to provide such documentation, the Commission may withdraw its designation of the technical specialist for any or all categories.

*History Note: Authority G.S. 139-4; 143B-294;  
Temporary Adoption Eff. October 22, 2001;  
Eff. April 1, 2003.*

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

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

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

*History Note: Authority G.S. 139-4; 143B-294;  
Temporary Adoption Eff. October 22, 2001;  
Eff. April 1, 2003.*

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

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

(b) Community Concerns and Aspirations:

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

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

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

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

- (vii) Water supply watersheds or wellhead protection areas;
- (viii) Primary nursery areas, where mapped;
- (ix) Environmentally fragile areas, such as, but not limited to wetlands, natural heritage areas, areas containing endangered species, prime wildlife habitats, or maritime forests; and
- (x) Additional natural features or conditions identified by the local government.

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



- (ii) Description of any land use conflicts;
    - (iii) Description of any land use – water quality conflicts;
    - (iv) Description of development trends using indicators. These development trends may include, but are not limited to the following: building permits and platted but un-built lots; and
    - (v) Location of areas expected to experience development during the five years following plan certification by the CRC and a description of any potential conflicts with Class II or Class III land identified in the natural systems analysis.
  - (C) Historic, cultural, and scenic areas designated by a state or federal agency or by local government. These areas and sites shall be located on either the existing land use map or a separate map; and
  - (D) Projections of future land needs. The analysis shall include short term (five and ten year) and long term (20-year) projections of residential land area needed to accommodate the planning jurisdiction's projected future permanent and seasonal population (population projections as defined in Part (c)(1)(D) of this Rule (Analysis of Existing and Emerging Conditions). The projections of land needs may be increased up to 50% to allow for unanticipated growth and to provide market flexibility. For local governments experiencing low or no growth (as shown in Figure 1 in 15A NCAC 07B .0701), the projections of land needs may consider economic strategies in the final calculations.
- (4) Analysis of Community Facilities. The purpose of the analysis of community facilities is to evaluate existing and planned capacity, location, and adequacy of key community facilities that serve the community's existing and planned population and economic base; that protect important environmental factors such as water quality; and that guide land development in the coastal area. This analysis shall include:
- (A) Public and private water supply and wastewater systems. The analysis of water and sewer systems shall include a description and map(s) of existing public and private systems, including existing condition and capacity; location of pipelines, documentation of any overflows, bypasses, or other problems that may degrade water quality or constitute a threat to public health; existing and planned service areas; and future needs based on population projections. If any required information is not available for private systems, the local government shall so state in the plan and this factor may be eliminated from the analysis.
  - (B) Transportation systems. The analysis of the transportation system shall include a map showing: the existing highway system; any segments deemed by the North Carolina Department of Transportation (NCDOT) as having unacceptable service levels; highway facilities on the current thoroughfare plan; and facilities on the current transportation improvement program. The analysis shall also assess the impact of planned highway or other transportation facilities on growth levels and development patterns.
  - (C) Stormwater systems. The analysis of public and permitted private stormwater systems shall include identification of existing drainage problems in the planning area; identification of water quality issues related to point-source discharges of stormwater runoff; and an overview of potential stormwater system requirements for local governments subject to the EPA's Storm Water Phase II Final Rules.
  - (D) Other facilities. The local government may include additional facilities and services such as solid waste and health and safety in the analysis.
- (5) Land Suitability Analysis. The purpose of the land suitability analysis is to determine the planning area's supply of land suited for development based on the following considerations: natural system constraints, compatibility with existing land uses and development patterns, the existing land use and development criteria of local, state, and federal agencies and the availability and capacity of water, sewer, stormwater management facilities, and transportation systems. The analysis shall include a land suitability map showing vacant or under-utilized land that is suitable for development. The following factors shall be considered to assess land suitability:
- (A) Water quality;

- (B) Land Classes I, II, and III summary environmental analysis;
  - (C) Proximity to existing developed areas and compatibility with existing land uses;
  - (D) Potential impact of development on areas and sites designated by local historic commissions or the North Carolina Department of Cultural Resources as historic, culturally significant, or scenic;
  - (E) Land use and development requirements of local development regulations, CAMA Use Standards and other applicable state regulations, and applicable federal regulations; and
  - (F) Availability of community facilities, including water, sewer, stormwater and transportation.
- (6) Review of Current CAMA Land Use Plan. The purpose of the review of the current CAMA Land Use Plan is for the local governing body to review its success in implementing the policies and programs adopted in the plan and the effectiveness of those policies in achieving the goals of the plan. The review shall include consideration of the following factors:
- (A) Consistency of existing land use and development ordinances with current CAMA Land Use Plan policies;
  - (B) Adoption of the land use plan's implementation measures by the governing body; and
  - (C) Efficacy of current policies in creating desired land use patterns and protecting natural systems.
- (d) Plan for the Future. This element of the plan is intended to guide the development and use of land in the planning jurisdiction in a manner that achieves its goals for the community and CAMA. Policies affecting AECs shall also be used in making CAMA permit decisions. The plan for the future includes the local government's goals, land use and development policies, and future land use map:
- (1) Land use and development goals. The following shall be considered in the development of the plan's goals:
    - (A) Community concerns and aspirations identified at the beginning of the planning process; and
    - (B) Needs and opportunities identified in the analysis of existing and emerging conditions.
  - (2) Policies:
    - (A) Policies included in the land use plan shall be consistent with the goals of the CAMA, shall address the CRC management topics for land use plans, and comply with all state and federal rules. The CAMA Land Use Plan shall demonstrate how the land use and development goals, policies and future land use map, as required in Subparagraph (d)(4) of this Rule, will guide the development and use of land in the planning jurisdiction in a manner that is consistent with the specific management goal(s), planning objective(s) and land use plan requirements of each Management Topic.
- (B) The plan shall contain a description of the type and extent of analysis completed to determine the impact of CAMA Land Use Plan policies on the management topics; a description of both positive and negative impacts of the land use plan policies on the management topics; and a description of the policies, methods, programs and processes to mitigate any negative impacts on applicable management topics.
- (C) The plan shall contain a statement that the governing body either accepts state and federal law regarding land uses and development in AECs or, that the local government's policies exceed the requirements of state and federal agencies. If local policies exceed the State and Federal requirements, the CAMA Land Use Plan shall identify which policies exceed these requirements and to what extent. If the governing body intends to rely on Federal and State laws and regulations it shall reference these in the plan.
- (3) Land Use Plan Management Topics. The purposes of the CRC management topics are to insure that CAMA Land Use Plans support the goals of CAMA, to define the CRC's expectations for the land use planning process, and to give the CRC a substantive basis for review and certification of CAMA Land Use Plans. Each of the following management topics (Public Access, Land Use Compatibility, Infrastructure Carrying Capacity, Natural Hazard Areas, Water Quality, and Local Areas of Concern) include three components: a management goal, a statement of the CRC's planning objective, and requirements for the CAMA Land Use Plans:
- (A) Public Access:
    - (i) Management Goal: Maximize public access to the beaches and the public trust waters of the coastal region.
    - (ii) Planning Objective: Develop comprehensive

- policies that provide beach and public trust water access opportunities for the public along the shoreline within the planning jurisdiction. Policies shall address access needs and opportunities, include strategies to develop public access, and identify feasible funding options.
- (iii) Land Use Plan Requirements: Land use plan policies on ocean and public waterfront access shall establish local criteria for frequency and type of access facilities. These policies shall contain provisions for public access for all segments of the community, including persons with disabilities, and shall establish access criteria for beach areas targeted for nourishment.
- (B) Land Use Compatibility:
- (i) Management Goal: Ensure that development and use of resources or preservation of land minimizes direct and secondary environmental impacts, avoids risks to public health, safety and welfare and is consistent with the capability of the land based on considerations of interactions of natural and manmade features.
- (ii) Planning Objective:
- (I) Adopt and apply local development policies that balance protection of natural resources and fragile areas with economic development.
- (II) Policies shall provide direction to assist local decision making and consistency for zoning, divisions of land, and public and private projects.
- (iii) Land Use Plan Requirements:
- (I) Establish building intensity and density criteria, such as floor area ratio and units per acre, consistent with the land suitability analysis for each land use designation on the Future Land Use Map.
- (II) Establish local mitigation criteria and concepts. These may include, but are not limited to the following: cluster subdivision design, enacting local buffers, impervious surface limits, and innovative storm-water management alternatives.
- (C) Infrastructure Carrying Capacity:
- (i) Management Goal: Ensure that public infrastructure systems are appropriately sized, located and managed so the quality and productivity of AECs and other fragile areas are protected or restored.
- (ii) Planning Objective: Establish level of service policies and criteria for infrastructure consistent with Part (c)(3)(D) (Projections of Future Land Needs) of this Rule.
- (iii) Land Use Plan Requirements:
- (I) Identify/establish service area boundaries for existing and future infrastructure.
- (II) Correlate future land use map categories with existing and planned infrastructure such as wastewater, water infrastructure and transportation.
- (D) Natural Hazard Areas:
- (i) Management Goal: Conserve and maintain barrier dunes, beaches, flood plains, and other coastal features for their natural

- |       |                                                                                                                                                                                                                                                                |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|       | storm protection functions and their natural resources giving recognition to public health, safety, and welfare issues.                                                                                                                                        |       | limits, vegetated riparian buffers, natural areas, natural area buffers, and wetland protection.                                                                                                                                                                                                                                                                                                                                                                              |
| (ii)  | Planning Objective: Develop policies that minimize threats to life, property, and natural resources resulting from development located in or adjacent to hazard areas, such as those subject to erosion, high winds, storm surge, flooding, or sea level rise. | (II)  | Establish policies and land use categories aimed at protecting open shellfishing waters and restoring closed or conditionally closed shellfishing waters.                                                                                                                                                                                                                                                                                                                     |
| (iii) | Land Use Plan Requirements:                                                                                                                                                                                                                                    | (F)   | Local Areas of Concern:                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|       | (I) Develop location, density, and intensity criteria for new, existing development and redevelopment including public facilities and infrastructure so that they can better avoid or withstand natural hazards.                                               | (i)   | Management Goal: Integrate local concerns with the overall goals of CAMA in the context of land use planning.                                                                                                                                                                                                                                                                                                                                                                 |
|       | (II) Correlate existing and planned development with existing and planned evacuation infrastructure.                                                                                                                                                           | (ii)  | Planning Objective: Identify and address local concerns and issues, such as cultural and historic areas, scenic areas, economic development, downtown revitalization or general health and human services needs.                                                                                                                                                                                                                                                              |
| (E)   | Water Quality:                                                                                                                                                                                                                                                 | (iii) | Land Use Plan Requirements: Evaluate local concerns and issues for the development of goals, policies and implementation strategies. These may include timelines and identification of funding options.                                                                                                                                                                                                                                                                       |
|       | (i) Management Goal: Maintain, protect and where possible enhance water quality in all coastal wetlands, rivers, streams and estuaries.                                                                                                                        | (4)   | Future land use map. This map depicts application of the policies for growth and development, and the desired future patterns of land use and land development with consideration given to natural system constraints and infrastructure policies. The local government shall include such categories and descriptions of land uses and development as are required to accurately illustrate the application of its policies. At a minimum, the map shall show the following: |
|       | (ii) Planning Objective: Adopt policies for coastal waters within the planning jurisdiction to help ensure that water quality is maintained if not impaired and improved if impaired.                                                                          | (A)   | 14-digit hydrological units encompassed by the planning area;                                                                                                                                                                                                                                                                                                                                                                                                                 |
|       | (iii) Land Use Plan Requirements:                                                                                                                                                                                                                              | (B)   | areas and locations planned for conservation or open space and a description of compatible land uses and activities;                                                                                                                                                                                                                                                                                                                                                          |
|       | (I) Devise policies that help prevent or control nonpoint source discharges (sewage and storm water) such as, but not limited to the following:                                                                                                                | (C)   | areas and locations planned for future growth and development with descriptions of the following characteristics:                                                                                                                                                                                                                                                                                                                                                             |
|       | impervious surface                                                                                                                                                                                                                                             |       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |

- (i) predominant and supporting land uses that are encouraged in each area;
- (ii) overall density and development intensity planned for each area; and
- (iii) infrastructure required to support planned development in each area.
- (D) areas in existing developed areas for infill, preservation, and redevelopment;
- (E) existing and planned infrastructure, including major roads, water, and sewer.

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

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

- (1) Guide for land use decision-making. Describe the specific role and the status of the land use plan policies and future land use plan map in local decisions regarding land use and development.
- (2) Existing development program. Describe the community's existing development management program, including local ordinances, codes, and policies, state and federal laws and regulations, and the role that the existing management program plays in implementing the plan. This description shall also include the community's approach to coordinating these codes and rules to implement the land use and development policies.
- (3) Additional tools. Describe any of the following additional tools selected by the local government to implement the CAMA land use plan policies:
  - (A) Ordinances:
    - (i) Amendments or adjustments in existing development codes required for consistency with the plan;
    - (ii) New ordinances or codes to be developed;

- (B) Capital improvements program. New, upgraded or expanded community facilities, such as but not limited to the following: water, sewer, stormwater, transportation, and other facilities, and policies regarding connections to and extensions of community facilities;
  - (C) Acquisition program. Planned acquisition of property, easements, or rights-of-way; and
  - (D) Specific projects to reach goals.
- (4) Action plan/schedule. Describe the priority actions that will be taken by the local government to implement the CAMA Land Use Plan and specify the fiscal year(s) in which each action is anticipated to start and finish. The document shall contain a description of the specific steps that the local government plans to take to involve the public in monitoring implementation of the CAMA Land Use Plan, including the adoption of local ordinances that affect AECs. The action plan shall be used to prepare the implementation status report for the CAMA Land Use Plan.

*History Note: Authority G.S. 113A-102; 113A-107(a); 113A-110, 113A-111, 113A-124; Eff. August 1, 2002; Amended Eff. April 1, 2003.*

#### **15A NCAC 07H .1101 PURPOSE**

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

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. April 1, 2003.*

#### **15A NCAC 07H .1201 PURPOSE**

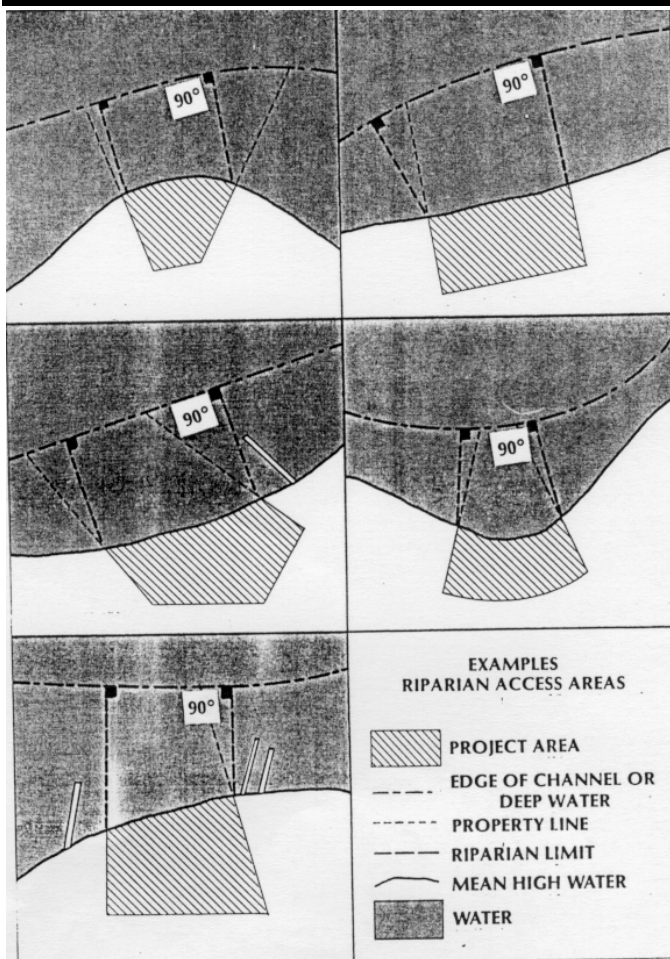
A permit under this Section shall allow the construction of new piers, docks, and boat houses in the estuarine and public trust waters AECs and construction of new piers and docks within coastal wetlands AECs according to the authority provided in Subchapter 07J .1100 and according to the Rules in this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

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984; Amended Eff. April 1, 2003.*

**15A NCAC 07H .1205 SPECIFIC CONDITIONS**

- (a) Piers, docks, and boat houses may extend or be located up to a maximum of 400 feet waterward from the normal high water line or the normal water level, whichever is applicable.
- (b) Piers, docks, and boat houses shall not extend beyond the established pier length along the same shoreline for similar use. This restriction shall not apply to piers 100 feet or less in length unless necessary to avoid unreasonable interference with navigation or other uses of the waters by the public such as blocking established navigation routes or interfering with access to adjoining properties. The length of piers shall be measured from the waterward edge of any wetlands that border the water body.
- (c) Piers longer than 200 feet shall be permitted only if the proposed length gives access to deeper water at a rate of at least one foot at each 100 foot increment of pier length longer than 200 feet, or if the additional length is necessary to span some obstruction to navigation. Measurements to determine pier lengths shall be made from the waterward edge of any coastal wetland vegetation, which borders the water body.
- (d) Piers and docks shall be no wider than six feet and shall be elevated at least three feet above any coastal wetland substrate as measured from the bottom of the decking.
- (e) Any portion of a pier (either fixed or floating) extending from the main structure and six feet or less in width shall be considered either a "T" or a finger pier.
- (f) Except in the case of boat houses, any portion of a structure (either fixed or floating) greater than six feet wide shall be considered a platform or deck.
- (g) "T"s, finger piers, platforms, and decks of piers on lots with shorelines 100 feet or greater in length shall not exceed a combined total area of 400 square feet. The combined total area for lots less than 100 feet shall not exceed four square feet per linear foot of shoreline.
- (h) Platforms and decks shall have no more than six feet of any dimension extending over coastal wetlands.
- (i) The width requirements established in Paragraphs (d), (e), (f), (g) and (h) of this Rule shall not apply to pier structures in existence on or before July 1, 2001 when structural modifications are needed to prevent or minimize storm damage. In these cases, pilings and cross bracing may be used to provide structural support as long as they do not extend more than of two feet on either side of the principal structure. These modifications may not be used to expand the floor decking of platforms and piers.
- (j) Boathouses shall not exceed 400 square feet and shall have sides extending no further than one-half the height of the walls as measured in a downward direction from the top wall plate or header and only covering the top half of the walls.

- Measurements of square footage shall be taken of the greatest exterior dimensions. Boathouses shall not be allowed on lots with less than 75 linear feet of shoreline.
- (k) The area enclosed by a boat lift shall not exceed 400 square feet.
- (l) Piers, docks, decks, platforms and boat houses shall be single story. They may be roofed but shall not be designed to allow second story use.
- (m) Pier alignments along federally maintained channels must also meet Corps of Engineers regulations for pier construction pursuant to Section 10 of the Rivers and Harbors Act.
- (n) Piers, docks, and boat houses shall in no case extend more than 1/4 the width of a natural water body, human-made canal or basin. Measurements to determine widths of the water body, human-made canals or basins shall be made from the waterward edge of any coastal wetland vegetation which borders the water body. The 1/4 length limitation shall not apply when the proposed pier is located between longer piers within 200 feet of the applicant's property. However, the proposed pier shall not be longer than the pier head line established by the adjacent piers, nor, longer than 1/3 the width of the water body.
- (o) Piers, docks and boat houses shall not interfere with the access to any riparian property, and shall have a minimum setback of 15 feet between any part of the pier and the adjacent property lines extended into the water at the points that they intersect the shoreline. The minimum setbacks provided in the rule may be waived by the written agreement of the adjacent riparian owner(s), or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the pier commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the Division of Coastal Management prior to initiating any development of the pier, dock, or boat house. The line of division of areas of riparian access shall be established by drawing a line along the channel or deep water in front of the property, then drawing a line perpendicular to the line of the channel so that it intersects with the shore at the point the upland property line meets the water's edge. Application of this Rule may be aided by reference to the approved diagram in Paragraph (r) of this Rule illustrating the rule as applied to various shoreline configurations. Copies of the diagram may be obtained from the Division of Coastal Management. When shoreline configuration is such that a perpendicular alignment cannot be achieved, the pier shall be aligned to meet the intent of this Rule to the maximum extent practicable.
- (p) Piers, and mooring facilities shall be designed to provide docking space for no more than two boats.
- (q) Applicants for authorization to construct a dock or pier shall provide notice of the permit application to the owner of any part of a shellfish franchise or lease over which the proposed dock or pier would extend. The applicant shall allow the lease holder the opportunity to mark a navigation route from the pier to the edge of the lease.
- (r) The diagram shown below illustrates the various shoreline configurations:



*History Note:* Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;  
 Eff. March 1, 1984;  
 Amended Eff. December 1, 1991; May 1, 1990; March 1, 1990;  
 RRC Objection due to ambiguity Eff. March 18, 1993;  
 Amended Eff. August 1, 1998; April 23, 1993;  
 Temporary Amendment Eff. December 20, 2001;  
 Amended Eff. April 1, 2003.

#### 15A NCAC 07H .1401 PURPOSE

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

*History Note:* Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;  
 Eff. March 1, 1984;  
 Amended Eff. April 1, 2003.

#### 15A NCAC 07H .2001 PURPOSE

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

*History Note:* Authority G.S. 113A-107; 113A-118.1;  
 Eff. October 1, 1993;  
 Amended Eff. April 1, 2003.

#### 15A NCAC 07H .2101 PURPOSE

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

*History Note:* Authority G.S. 113A-107; 113A-118.1;  
 Eff. June 1, 1994;  
 Amended Eff. April 1, 2003; August 1, 2000.

#### 15A NCAC 07H .2201 PURPOSE

A general permit pursuant to this Section shall allow the construction of freestanding moorings in the estuarine waters and public trust areas AECs according to the procedures provided in 15A NCAC 07J .1100 and according to the rules in this Section. This permit shall not apply to waters adjacent to oceanfront shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those shorelines that feature characteristics of the Estuarine Shoreline AEC. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than the adjacent Ocean Erodible Area.

*History Note:* Authority G.S. 113A-107; 113A-118.1;  
 Eff. February 1, 1996;  
 Amended Eff. April 1, 2003.

#### 15A NCAC 07H .2401 PURPOSE

The general permit for placement riprap for wetland protection in estuarine and public trust waters shall allow the placement of riprap immediately adjacent to and waterward of wetlands. This permit shall only be applicable where a shoreline is experiencing erosion in public trust areas and estuarine waters according to authority provided in 15A NCAC 07J .1100 and according to the rules in this Section. This permit shall not apply to oceanfront

shorelines or to waters and shorelines adjacent to the Ocean Hazard AEC with the exception of those portions of shoreline that feature characteristics of Estuarine Shorelines. Such features include the presence of wetland vegetation, lower wave energy, and lower erosion rates than in the adjoining Ocean Erodeable Area.

*History Note: Authority G.S. 113A-107; 113A-118.1;  
Eff. August 1, 2000;  
Amended Eff. April 1, 2003.*

## **TITLE 21 – OCCUPATIONAL LICENSING BOARDS**

### **21 NCAC 36 .0211 LICENSE BY EXAMINATION**

(a) An applicant shall meet the educational qualifications to take the examination for licensure to practice as a registered nurse by:

- (1) graduating from a Board approved nursing program (21 NCAC 36 .0300) designed to prepare a person for registered nurse licensure;
- (2) graduating from a nursing program outside the United States that is designed to provide graduates with comparable preparation for licensure as a registered nurse, and submitting a certificate issued by the Commission on Graduates of Foreign Nursing Schools (CGFNS) or evidence of education as required in 21 NCAC 36 .0321(b) through (d) for an applicant educated in Canada as evidence of the required educational qualifications.

(b) An applicant shall meet the educational qualifications to take the examination for licensure to practice as a licensed practical nurse by:

- (1) graduating from a Board approved nursing program (21 NCAC 36 .0300) designed to prepare a person for practical nurse licensure;
- (2) graduating from a nursing program outside the United States that is designed to provide graduates with comparable preparation for licensure as a licensed practical nurse, and submitting evidence from an evaluation agency of the required educational qualifications and evidence of English proficiency. The evaluation agency(s) for educational qualifications shall be selected from a list of evaluation agencies published by the National Council of State Boards of Nursing, Inc., which is hereby incorporated by Reference, including subsequent amendments of the referenced materials. The list of such agencies is available, at no cost, from the North Carolina Board of Nursing. The evidence of English proficiency shall be passing the Test of English as a Foreign Language with a score of at least 213 or a test determined by the Board to be equivalent to the Test of English as a Foreign Language;
- (3) graduating from a Board approved nursing program designed to prepare graduates for registered nurse licensure, and failing to pass

the examination for registered nurse licensure; or

- (4) graduating from a nursing program outside the United States that is designed to prepare graduates with comparable preparation for licensure as a registered nurse, and submitting the certificate issued by the Commission on Graduates of Foreign Nursing Schools as evidence of the required educational qualifications, and failing to pass the examination for registered nurse licensure in any jurisdiction.

(c) An application shall be submitted to the Board of Nursing and a registration form to the testing service. The applicant shall meet all requirements of the National Council of State Boards of Nursing, Inc.

(d) The initial application shall be held active until the applicant passes the examination or one year, whichever occurs first. The time begins on the date the applicant is determined to be eligible for the licensure examination.

(e) The examinations for licensure developed by the National Council of State Boards of Nursing, Inc. shall be the examinations for licensure as a registered nurse or as a licensed practical nurse in North Carolina.

- (1) These examinations shall be administered in accordance with the contract between the Board of Nursing and the National Council of State Boards of Nursing, Inc.

- (2) The examinations for licensure shall be administered at least twice a year.

- (3) Results for the examination shall be reported to the individual applicant and to the director of the program from which the applicant was graduated. Aggregate results from the examination(s) may be published by the Board.

- (4) The passing standard score for each of the five tests comprising the examination for registered nurse licensure, up to and including the February 1982 examination was 350. For the examination offered in July 1982 and through July 1988, the passing score was 1600. Beginning February 1989, the results for registered nurse licensure is reported as "PASS" or "FAIL".

- (5) The passing score for the examination for practical nurse licensure, up to and including the April 1988 was 350. Beginning October 1988, the results for practical nurse licensure is reported as "PASS" or "FAIL".

(f) Applicants who meet the qualifications for licensure by examination shall be issued a certificate of registration and a license to practice nursing for the remainder of the biennial period. The qualifications include:

- (1) a "PASS" result on the licensure examination;
- (2) evidence of unencumbered license in all jurisdictions in which a license is or has ever been held;
- (3) evidence of completion of all court conditions resulting from any misdemeanor or felony convictions; and



- (4) a written explanation and all related documents if the nurse has ever been listed as a Nurse Aide and if there have ever been any substantiated findings pursuant to G.S. 131E-255. The Board may take these findings into consideration when determining if a license should be denied pursuant to G.S. 90-171.37. In the event findings are pending, the Board may withhold taking any action until the investigation is completed.

(g) Applicants for a North Carolina license may take the examination for licensure developed by the National Council of State Boards of Nursing, Inc. in any National Council approved testing site.

*History Note: Authority G.S. 90-171.23(15); 90-171.29; 90-171.30; 90-171.37(1); 90-171.48; Eff. February 1, 1976; Amended Eff. April 1, 2003; January 1, 1996; July 1, 1994; February 1, 1994; August 3, 1992.*

**21 NCAC 36 .0218 LICENSURE WITHOUT EXAMINATION (BY ENDORSEMENT)**

(a) The Board shall provide an application form which the applicant who wishes to apply for licensure without examination (by endorsement) shall complete in its entirety.

(b) The applicant for licensure by endorsement as a registered nurse shall show evidence of:

- (1) completion of a program of nursing education for registered nurse licensure which was approved by the jurisdiction of original licensure;
- (2) attainment of the standard score on the examination which was required by the jurisdiction issuing the original certificate of registration;
- (3) self-certification that the applicant is of mental and physical health necessary to competently practice nursing;
- (4) unencumbered license in all jurisdictions in which a license is or has ever been held. A license that has had all encumbrances resolved in the jurisdictions in which the reasons for the encumbrances occurred shall be considered an unencumbered license for purposes of this provision;
- (5) current license in a jurisdiction; if the license has been inactive or lapsed for five or more years, the applicant shall be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and G.S. 90-171.36;
- (6) completion of all court conditions resulting from any misdemeanor or felony convictions; and
- (7) a written explanation and all related documents if the nurse has been listed as a Nurse Aide and there has been a substantiated finding(s) pursuant to G.S. 131E-255. The Board may take the finding(s) into consideration when determining if a license

should be denied pursuant to G.S. 90-171.37. In the event a finding(s) is pending, the Board may withhold taking any action until the investigation is completed.

(c) The applicant for licensure by endorsement as a licensed practical nurse shall show evidence of:

- (1) completion of:
  - (A) a program in practical nursing approved by the jurisdiction of original licensure; or
  - (B) course(s) of study within a program(s) which shall be comparable to that required of practical nurse graduates in North Carolina; or
  - (C) course of study for military hospital corpsman which shall be comparable to that required of practical nurse graduates in North Carolina.

The applicant who was graduated prior to July 1956 shall be considered on an individual basis in light of licensure requirements in North Carolina at the time of original licensure;

- (2) attainment of the standard score on the examination which was required by the jurisdiction issuing the original certificate of registration;
- (3) self-certification that the applicant is of mental and physical health necessary to competently practice nursing;
- (4) unencumbered license in all jurisdictions in which a license is or has ever been held. A license that has had all encumbrances resolved in the jurisdictions in which the reasons for the encumbrances occurred shall be considered an unencumbered license for purposes of this provision;
- (5) current license in a jurisdiction; if the license has been inactive or lapsed for five or more years, the applicant shall be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and G.S. 90-171.36;
- (6) completion of all court conditions resulting from any misdemeanor or felony convictions; and
- (7) a written explanation and all related documents if the nurse has been listed as a Nurse Aide and there has been a substantiated finding(s) pursuant to G.S. 131E-255. The Board may take the finding(s) into consideration when determining if a license should be denied pursuant to G.S. 90-171.37. In the event a finding(s) is pending, the Board may withhold taking any action until the investigation is completed.)

(d) A nurse educated in a foreign country (including Canada) shall be eligible for North Carolina licensure by endorsement if the nurse has:

- (1) proof of education as required by the jurisdiction issuing the original certificate;
- (2) prior to January 1, 2004 proof of passing either the:
  - (A) Canadian Nurses Association Test Service Examination (CNATS) in the English language; or
  - (B) Canadian Registered Nurse Examination (CRNE) in the English language; or
  - (C) the licensing examination developed by the National Council of State Board of Nursing (NCLEX).
- (3) beginning January 1, 2004, the applicant educated in Canada shall show evidence of Subparagraph (d)(1) and Part (2)(C) of this Paragraph; Parts (d)(2)(A) and (B) shall no longer apply;
- (4) self-certification that the applicant is of mental and physical health necessary to competently practice nursing;
- (5) unencumbered license in all jurisdictions which a license is or has ever been held. A license that has had all encumbrances resolved in the jurisdictions in which the reasons for the encumbrances occurred shall be considered an unencumbered license for purposes of this provision;
- (6) current license in another jurisdiction or foreign country. If the license has been inactive or lapsed for five or more years, the applicant shall be subject to requirements for a refresher course as indicated in G.S. 90-171.35 and G.S. 90-171.36;
- (7) completed all court conditions resulting from any misdemeanor or felony conviction(s); and
- (8) a written explanation and all related documents if the nurse has been listed as a Nurse Aide and if there has been a substantiated finding(s) pursuant to G.S. 131E-255. The Board may take the finding(s) into consideration when determining if a license should be denied pursuant to G.S. 90-171.37. In the event a finding(s) is pending, the Board may withhold taking any action until the investigation is completed.

(e) When an applicant is eligible for licensure consistent with Part (d)(2)(A) or (d)(2)(B) of this Rule the license issued by the Board will not permit the individual to practice in other states party to the Nurse Licensure Compact.

(f) Facts provided by the applicant and the Board of Nursing of original licensure shall be compared to confirm the identity and validity of the applicant's credentials. Status in other states of current licensure may be verified. When eligibility is determined, a certificate of registration and a current license for the remainder of the biennial period shall be issued.

*History Note: Authority G.S. 90-171.23(b); 90-171.32; 90-171.33; 90-171.37; 90-171.48; Eff. May 1, 1982; Amended Eff. April 1, 2003; January 1, 1996; July 1, 1994; February 1, 1994; August 3, 1992.*

## TITLE 25 – DEPARTMENT OF STATE PERSONNEL

### 25 NCAC 01E .0804 PERIODS OF ENTITLEMENT FOR ALL RESERVE COMPONENTS

(a) Military leave with pay for training shall be granted to members of the Uniformed Services who are full-time or part-time employees with a permanent, trainee, time-limited or probationary appointment for up to 120 working hours (prorated for part-time employees) during the Federal fiscal year beginning October 1 and ending on September 30, for any type of active military duty for members not on extended active duty, including:

- (1) active duty for training; and
- (2) inactive duty training. If the drill is not scheduled on the employee's off-days, the employee has the option of requesting that the work schedule be rearranged, or the employee may use any unused portion of the 120 hours leave with pay, vacation leave, or leave without pay.

(b) Military leave with pay shall be granted to members of the Civil Air Patrol as defined in Rule .0806 of this Section.

(c) An employee shall be granted necessary time off when the employee must undergo a required physical examination relating to membership in a reserve component without charge to leave.

(d) Military leave with pay shall be granted to members of the State Defense Militia as defined in Rule .0820 of this Section.

(e) Extended active duty means that period of time for which an employee serves in the uniformed services which is not considered as active duty for training (annual training or special schools) or inactive duty training (drills). The total active and inactive duty shall not exceed five years plus any additional service imposed by law. Extended active duty includes:

- (1) Initial active duty for training (initial enlistment);
- (2) Service performed during time of war or national emergency or for other critical missions/contingencies/military requirements; and
- (3) Full-time National Guard duty (usually a three-year contract).

*History Note: Authority G.S. 126-4(5); Eff. February 1, 1976; Amended Eff. April 1, 2003; August 1, 1995; October 1, 1992; June 1, 1983; June 1, 1981.*

*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

**Commission Review/Administrative Rules**

*Log of Filings (Log #190)*

*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

# RULES REVIEW COMMISSION

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
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

# ***RULES REVIEW COMMISSION***

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
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

**RULES REVIEW COMMISSION**

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
<b>DHHS</b>		
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
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
<b>DHHS/DIVISION OF MEDICAL ASSISTANCE</b>		
Exceptions to DRG Reimbursement	10 NCAC 26H .0212	Amend
Disproportionate Share Hospitals	10 NCAC 26H .0213	Amend
<b>DHHS/SOCIAL SERVICES COMMISSION</b>		
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
<b>DENR/ENVIRONMENTAL MANAGEMENT COMMISSION</b>		
Little Tennessee River Basin and Savannah River	15A NCAC 02B .0303	Amend
Schedule of Fees	15A NCAC 02R .0402	Amend
<b>DENR</b>		
Definitions	15A NCAC 18A .1001	Amend
Definitions	15A NCAC 18A .1501	Amend
Definitions	15 NCAC 18A .1601	Amend
Water Sanitation and Quality	15A NCAC 18A .2117	Amend
Definitions	15A NCAC 18A .2201	Amend
Definitions	15A NCAC 18A .2401	Amend
Definitions	15A NCAC 18A .2701	Amend
Definitions	15A NCAC 18A .3001	Amend
Definitions	15A NCAC 18A .3201	Amend
<b>SECRETARY OF STATE</b>		
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

# ***RULES REVIEW COMMISSION***

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
<b>TRANSPORTATION, DEPARTMENT OF/DIVISION OF HIGHWAYS</b>		
Toll Operations	19A NCAC 02D .0532	Amend
Escort Vehicle Driver	19A NCAC 02D .0643	Adopt
Oversize -Overweight Load Escort	19A NCAC 02D .0644	Adopt
Purpose	19A NCAC 20F .0101	Adopt
Minimum Criteria	19A NCAC 02F .0102	Adopt
Exceptions to Minimum Criteria	19A NCAC 02F .0103	Adopt
<b>STATE BOARDS/NC AUCTIONEERS COMMISSION</b>		
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
<b>STATE BOARDS/N C MEDICAL BOARD</b>		
Definitions	21 NCAC 32H .0102	Repeal
Advanced Life Support Program Criteria	21 NCAC 32H .0201	Repeal
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

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***RULES REVIEW COMMISSION***

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Training Programs	21 NCAC 32I .0102	Repeal
Approval	21 NCAC 32I .0103	Repeal
Forms	21 NCAC 32I .0104	Repeal
<b>STATE BOARDS/N C BOARD OF PHYSICAL THERAPY EXAMINERS</b>		
Permitted Practice	21 NCAC 48C .0101	Amend

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**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



## CONTESTED CASE DECISIONS

*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.*

### OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge*

*JULIAN MANN, III*

*Senior Administrative Law Judge*

*FRED G. MORRISON JR.*

### ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.*

*Beecher R. Gray*

*Melissa Owens Lassiter*

*James L. Conner, II*

*Beryl E. Wade*

*A. B. Elkins II*

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<b><u>ALCOHOL BEVERAGE CONTROL COMMISSION</u></b>				
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	
Edward L. Mumford v. NC Alcoholic Control Commission	02 ABC 0264	Conner	08/29/02	
NC ABC Commission v. WDB, Inc. T/A Twin Peaks	02 ABC 0517	Conner	07/15/02	
<b><u>APPRAISAL BOARD</u></b>				
NC Appraisal Board v. Thomas G. Hildebrandt, Jr.	02 APB 0130	Chess	08/20/02	17:06 NCR 563
<b><u>CEMETARY COMMISSION</u></b>				
Lee Memory Gardens, Inc. v. NC Cemetary Commission	02 COM 0126	Gray	09/19/02	
<b><u>UTILITIES COMMISSION</u></b>				
Tracy Woody v. State of NC Utilities Commission	02 COM 1004	Morrison	08/26/02	
<b><u>CRIME CONTROL AND PUBLIC SAFETY</u></b>				
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	
<b><u>HEALTH AND HUMAN SERVICES</u></b>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: <a href="http://www.ncoah.com/decisions">www.ncoah.com/decisions</a> .				
Thelma Street v. NC DHHS	01 DHR 0303	Reilly	09/17/02	
Emilia E Edgar v. DHHS, Div. of Facility Services	01 DHR 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	
Ramiro Ramos v. NC DHHS and Chris Hoke, State Registrar	01 DHR 2366	Conner	09/11/02	
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	
Albemarle 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	

## CONTESTED CASE DECISIONS

Debra A. Browner v. NC DHHS, Broughton Hospital	02 DHR 0405	Conner	08/28/02
Mooresville 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
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
Robert A. Thomas v. DHHS, Div. of Facility Services	02 DHR 1254	Lassiter	09/13/02

### ADMINISTRATION

San Antoni Equipment Co. v. NC Department of Administration	02 DOA 0430	Chess	06/26/02
James J. Lewis v. DOA, Gov. Advocacy Council for Persons w/Disabilities	02 DOA 0545	Chess	08/26/02

### 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
Clarence Raymond Adcock v. Criminal Justice Ed. & Trng. Stds. Comm.	02 DOJ 0104	Chess	09/09/02
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
Sharon L. Joyner v. Sheriffs' Educ. & Training Stds. Commission	02 DOJ 0604	Morrison	09/05/02
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
Ronald E. Petty v. Office of Administrative Hearings	02 EHR 1183	Gray	09/20/02

### 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 <sup>th</sup> Jud. Dist.	00 OSP 0722	Wade	06/28/02

# **CONTESTED CASE DECISIONS**

Andre Foster v. Winston-Salem State University	00 OSP 1216 <sup>1</sup>	Mann	06/03/02	17:01 NCR	93
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 <sup>1</sup>	Mann	06/03/02	17:01 NCR	93
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		
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 Aaron Yonish v. UNC at Greensboro	01 OSP 2274	Conner	06/25/02		
Theressa 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 <sup>2</sup>	Elkins	08/07/02		
James Donoghue v. NC Department of Correction	02 OSP 0011	Mann	08/26/02		
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	02 OSP 0110 <sup>2</sup>	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		
Pamela C. Williams v. Secretary of State	02 OSP 0348	Chess	08/26/02		
Michael Forreest 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		
James J. Lewis v. Department of Commerce/Industrial Commission	02 OSP 1179	Mann	09/19/02		
<b><u>SUBSTANCE ABUSE PROFESSIONAL BOARD</u></b>					
NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden	00 SAP 1573	Chess	05/10/02		
<b><u>UNIVERSITY OF NORTH CAROLINA</u></b>					
Patsy R. Hill v. UNC Hospitals	02 UNC 0458	Conner	08/21/02	17:06 NCR	571

1 Combined Cases  
2 Combined Cases