



REGISTER

**Volume 17, Issue 15
Pages 1225 - 1442**

February 3, 2003

This issue contains documents officially filed through January 10, 2003.

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Athletic Trainer Examiners	3
4	Commerce	Auctioneers	4
5	Correction	Barber Examiners	6
6	Council of State	Certified Public Accountant Examiners	8
7	Cultural Resources	Chiropractic Examiners	10
8	Elections	Employee Assistance Professionals	11
9	Governor	General Contractors	12
10	Health and Human Services	Cosmetic Art Examiners	14
11	Insurance	Dental Examiners	16
12	Justice	Dietetics/Nutrition	17
13	Labor	Electrical Contractors	18
14A	Crime Control & Public Safety	Electrolysis	19
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16	Public Education	Geologists	21
17	Revenue	Hearing Aid Dealers and Fitters	22
18	Secretary of State	Landscape Architects	26
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Note: Title 21 contains the chapters of the various occupational licensing boards.

NORTH CAROLINA REGISTER
 Publication Schedule for January 2003 – December 2003

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF RULE-MAKING PROCEEDINGS

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

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

NOTICE OF TEXT

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

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

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

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

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

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

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

Barber & Ross Company

Pursuant to N.C.G.S. § 130A-310.34, Barber & Ross Company has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Mebane, Orange County, North Carolina. The Property consists of approximately 19.4 acres (if Barber & Ross Company purchases, prior to finalization of a Brownfields Agreement, 9.5 acres it does not yet own), and is located at 200 Redman Crossing Road. Environmental contamination exists on the Property in soil and groundwater. Barber & Ross Company has committed itself to redevelopment of the Property as a door and window manufacturing facility. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Barber & Ross Company, 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 offices of the City of Mebane located at 106 E. Washington Street, Mebane, NC 27302 by contacting Elaine J. Hicks, City Clerk, at that address or at (919) 563-5901, or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests, and/or requests to view the full Notice of Intent, should be addressed as follows:

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

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

Joal Realty, LLC

Pursuant to N.C.G.S. § 130A-310.34, Joal Realty 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 Charlotte, Mecklenburg County, North Carolina. The Property consists of 0.60 acres and is located at 1530 & 1534 Elizabeth Avenue near Presbyterian Hospital and Central Piedmont Community College. Environmental contamination exists on the Property in groundwater. Joal Realty, LLC has made a binding commitment that it will make no use of the Property other than for residences, offices, recreational facilities, open space, entertainment venues, retail businesses, a hotel and parking. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Joal Realty, 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 City of Charlotte, Neighborhood Development Key Business, Employment & Business Service, located at 600 East Trade Street, by contacting Carolyn Minnich at that address, at cminnich@ci.charlotte.nc.us, or at (704)336-3499; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919)733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests 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

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

Mr. David B. Kossove

Pursuant to G.S. 130A-310.34, Mr. David B. Kossove has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property consists of 0.70 acres and is located at 1515, 1521, & 1525 East Fourth Street, near Presbyterian Hospital and Central Piedmont Community College. Environmental contamination exists on the Property in groundwater. Mr. Kossove has made a binding commitment to make no use of the Property other than for residences, offices, recreational facilities, open space, entertainment venues, retail businesses, a hotel and parking. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Mr. Kossove, 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 City of Charlotte, Neighborhood Development Key Business, Employment & Business Service, located at 600 East Trade Street, by contacting Carolyn Minnich at that address, at cminnich@ci.charlotte.nc.us, or at (704) 336-3499; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days of the date of this Notice. Written requests for a public meeting may be submitted to DENR within 30 days of the date of this Notice. All such comments and requests should be addressed as follows:

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

U.S. Department of Justice

Civil Rights Division

JDR:RPL:ALF:par
DJ 166-012-3
2002-5286
2002-5541
2002-5655

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

December 20, 2002

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

Dear Mr. Holec:

This refers to nine annexations (Ordinance Nos. 02-74 through 02-77, 02-87, 02-95, and 02-104 through 02-106), and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submissions on October 29, November 26, and December 6, 2002.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. In addition, as authorized by Section 5, we reserve the right to reexamine these submissions if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Chief, Voting Section

HOUSING FINANCE AGENCY

**The 2003 Low-Income Housing Tax Credit Qualified Allocation Plan
For the State of North Carolina**

Pursuant to Session Law 2001-299, this is a revised publication of page 22 of the 2003 Low-Income Housing Tax Credit Qualified Allocation Plan for the State of North Carolina from the NC Housing Finance Agency. This Notice was published in the North Carolina Register Volume 17, Issue 9, Pages 864 and 865.

B. STATE TAX CREDITS

As the administrative agent for state credit refunds issued under G.S. 105-129.42, the Agency has a responsibility to ensure that ownership entities do not receive resources ahead of corresponding value being created in the project. Therefore the following restrictions will apply to the state tax credit refund program.

1. Loan Option: Loans made by the Agency pursuant to G.S. 105-129.42(d) will be under terms designed to have an effect similar to the equity generated under the previous state tax credit statute. Such loans will not be closed until the outstanding balance on the first-tier construction financing exceeds the total state credit amount. In other words, the entire loan must be used to pay down a portion of the then existing construction debt.
2. Direct Refund Option: The Agency and ownership entity will enter into an escrow agreement with regard to the refund dollars. The agreement will state, among other reasonable limitations, that issuance of the funds under G.S. 105-129.42(g)(1) will not occur until all of the following requirements have been met:
 - (a) at least fifty percent (50%) of the activities included in the project's eligible basis have been completed;
 - (b) the Agency and local government inspector have conducted their framing inspections and approved all buildings (including community facilities); and
 - (c) the outstanding balance on the first-tier construction financing exceeds the total state credit amount (the entire refund must be used to pay down a portion of the then existing construction debt).

Applicants must indicate which of the two options will apply to the project as part of the full application process; such decision may not be changed for the carryover allocation. Ownership entities will have to fully comply with Section VII(A)(2) of the Plan to be eligible for participation in the state tax credit program. The Agency may adopt other policies regarding the state tax credit after adoption of the Plan. Owners, partners, members, developers or other Principals (and their affiliated entities) that are involved in a violation of any state tax credit requirement or fail to place a project in service after taking a loan or refund may, in the Agency's discretion, be assessed up to forty (-40) negative points or disqualified from participation in Agency programs.

C. COMPLIANCE MONITORING

Applicants will be required to utilize the TCR Online Internet reporting system (or other system as designated by the Agency) to update the Agency database on project and building information and unit activity. The database should be updated within 30 days of any change in information. Applicants will also be required to submit to the Agency a copy of the IRS form 8609 and Schedule A filed with the IRS for the first year credits are claimed.

The Agency will conduct on-site inspections and desk audits of at least one third of the projects under its jurisdiction. If projects are determined to be in noncompliance, monitoring may occur more often. The desk audit and inspection will include a project review of twenty percent (20%) of the units for the following:

- Tenant eligibility certifications
- Supporting eligibility documentation
- Leases
- Rent record (including utility documentation)
- Compliance with supportive services commitments
- Compliance with special populations targeting requirements (if applicable)
- Compliance with other commitments made in the application
- Inspection for compliance with HUD Uniform Physical Condition Standards

IN ADDITION

All projects, at a minimum, are expected to meet HUD's Section 8 Uniform Physical Condition Standards and comply with local and state health and building codes throughout the compliance period. A Memorandum of Understanding (MOU) has been executed with RD to accept their physical inspections in

**North Carolina Department of Labor
Division of Occupational Safety and Health
4 West Edenton Street
Raleigh, NC 27601**

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150-B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the North Carolina Administrative Code at 13 NCAC 07F .0501 to incorporate by reference the occupational safety and health related provisions of Title 29 of the Code of Federal Regulations Part 1915 promulgated as of January 3, 2003, except as specifically described, and
- the North Carolina Administrative Code at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the Code of Federal Regulations, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions concerning:

- Occupational Safety and Health Standards for Shipyard Employment
(67 FR 44533, July 3, 2002)

The Federal Register (FR), as cited above, contains both technical and economic discussions that explain the basis for each change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
4 West Edenton Street
Raleigh, North Carolina 27601

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

Barbara A. Jackson, General Counsel
North Carolina Department of Labor
Legal Affairs Division
4 West Edenton Street
Raleigh, NC 27601

Notice of Applications for Innovative Approval of a Wastewater System for On-Site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or devise for on-site subsurface use. The following applications have been submitted to DENR:

1. Application by: Carl Thompson
Infiltrator Systems, Inc.
PO Box 768
Old Saybrook, CT 06475
1.800.221.4436
Fax 860.577.7001
www.infiltratorsystem.net

For: Modifications to "Infiltrator" chambered sewage effluent disposal system innovative approval

2. Application by: Steve Branz
Bord Na Mona
Environmental Products U. S., Inc.
PO Box 77457
Greensboro, NC 27417
1.800.787.2356
Fax 336.547.8559
www.bnmus.com

For: Modifications to "Puraflo" peat biofilter system innovative approval.

3. Application by: Marie-Christen Belanger
Premier Tech
1, avenue Premier
Riviere -du-Loup (Quebec)
G5R6C1 Canada
418.867.8883
Fax 418.862.6642

For: Modifications to "Ecoflo" peat biofilter system innovative approval

4. Application by: Dick Bachelder
PSA, Inc.
PO Box 3000
Hilliard, OH 43026
1.800.735.7473
Fax 614.658.0204
www.ads-pipe.com

For: Modifications to "BioDiffuser" chambered sewage effluent subsurface disposal system innovative approval

The application(s) may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, 26604, On-Site Wastewater Section, Division of Environmental Health. Draft proposed approvals by the applicant and proposed final action on the applications by DENR can be viewed on the On-Site Wastewater Section web site: www.deh.enr.state.nc.us/oww/.

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Steve J. Steinbeck, Head, Enforcement and Special Projects, On-Site Wastewater Section, 1642 Mail Service Center, Raleigh, NC 27699-1642 or steve.steinbeck@ncmail.net, or fax no. 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration prior to final agency decision of the Innovative Subsurface Wastewater System application.

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

TITLE 12 – DEPARTMENT OF JUSTICE

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

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

Citation to Existing Rule Affected by this Rule-making: 12 NCAC 09B .0201, .0215, .0301, .0305; 09E .0107; 09G .0307, .0310, .0315, .0401, .0405-.0407, .0412-.0413, .0416. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 17C-6 and 17C-10

Statement of the Subject Matter: Amendment to change lighting standard for classrooms. Amendment to remove reference to inapplicable code. Technical word change. Amendment to require instructional competence when renewing instructor certification. Technical hours change. Amendment to instructor requirements. Course title change. New rule governing Commission authority over Department of Correction School Directors. Course title change and amendment to change course requirements. Other rules may be proposed.

Reason for Proposed Action: Agency initiated. The NC Criminal Justice Education & Training Standards Commission has authorized rule-making authority to amend numerous administrative rules in order to better define the training standards that regulate the criminal justice officer profession in the State.

Comment Procedures: Comments should be submitted to Teresa Marrella, Criminal Justice Standards Division, PO Box 429, Raleigh, NC 27602.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 02B .0311. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-214.1; 143.215.1; 143.215.3(a)(1)

Statement of the Subject Matter: The Environmental Management Commission (EMC) is proposing to reclassify two sections of Rocky River (Chatham County) in the Cape Fear River Basin from Class Water Supply-III (WS-III) and Class C to Class WS-III Critical Area (CA).

Reason for Proposed Action: Dr. J.H. Carter III and Associates and the Town of Siler City have requested that two Rocky River segments in Chatham County (Cape Fear River Basin) be reclassified to WS-III Critical Area (CA). The reason for the reclassification is to allow a new dam structure to be placed below the existing dam. The existing dam does not impound enough water to result in a true reservoir according to DWQ and DEH staff. However, the new dam will cause the nature of this water supply source to change from run-of-river to an approximately 160-acre reservoir. The Town wishes to have the new dam constructed and the resulting reservoir created in order to meet water demands through 2030. The proposed CA would extend along the current river from the proposed dam, which is to be placed approximately 65 feet downstream of the existing dam, to a point approximately 3.6 miles upstream of the proposed dam. This proposal also includes several tributaries to the above-mentioned main stem portion of Rocky River; some of these tributaries, which are presently classified WS-III, are proposed to be reclassified to WS-III CA. The new WS-III will be the area measured 0.5 miles from the proposed reservoir normal pool elevation of approximately 540 feet. The new dam will raise the normal water level above the spillway of the existing dam, and as a result, approximately 140 acres of land will be impounded in the new CA. The waters to be reclassified above the current CA meet water supply water standards because these waters are currently classified as WS-III. The waters to be reclassified below the current CA meet water supply water standards according to DWQ staff.

Comment Procedures: Written comments should be submitted to Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617. Phone: (919) 733-5083 extension 369, Fax: (919) 715-5637, Email: Elizabeth.kountis@ncmail.net.

CHAPTER 03 - MARINE FISHERIES

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

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

RULE-MAKING PROCEEDINGS

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 03. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113-134; 113-182; 113-182.1; 113-221; 143B-289.52

Statement of the Subject Matter: Post, blue crab fishery management plan, and southern flounder fishery management plan.

Reason for Proposed Action: Prohibit the use of leads on pots; implementation of the Blue Crab Fishery Management Plan, and implementation of the Southern Flounder Fishery Management Plan.

Comment Procedures: Written comments should be submitted to Belinda Loftin, NC Marine Fisheries Commission, PO Box 769, Morehead City, NC 28557. Phone: (252) 726-7021, Fax: (252) 726-0254, Email: belinda.loftin@ncmail.net (accepted only with name, address, and telephone number of commenter)

CHAPTER 12 - PARKS AND RECREATION AREA RULES

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 12. Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 113-35, 113-35(b), 113-8, 113-34, 113-34(b)(2), 113-264, 143-21, 14-190.9, 14-410, 14-415

Statement of the Subject Matter: The subject matter of the affected rules reflects an effort to amend the existing rules to meet the resource protection, public safety and operation demands on Division managed areas.

Reason for Proposed Action: The Division last carried out a significant study and revision of it's rules in 1983. The current rules are no longer able to address the new demands placed on Division managed areas with an annual attendance approaching 12 million visitors. The proposed rules amendments were developed to reflect the Divisions responsibilities in the areas of natural resource protection, public safety and operation of Division managed areas.

Comment Procedures: Written comments should be submitted to Lewis R. Ledford, NC Division of Parks and Recreation, 12700 Bayleaf Church Road, Raleigh, NC 27614. Phone (919) 846-9991, Fax: (919) 870-6843.

This Section includes temporary rules reviewed by the Codifier of Rules and entered in the North Carolina Administrative Code and includes, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements. Pursuant to G.S. 150B-21.1(e), publication of a temporary rule in the North Carolina Register serves as a notice of rule-making proceedings unless this notice has been previously published by the agency.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *NC Marine Fisheries Commission*

Rule Citation: *15A NCAC 03J .0107*

Effective Date: *February 10, 2003*

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

Authority for the rulemaking: *G.S. 113-134; 113-182; 113-182.1; 113-221; 143B-289.52*

Reason for Proposed Action: *The Fisheries Reform Act of 1997 and its amendments required a complete review of the Marine Fisheries Laws. Section 6.10 authorizes the Marine Fisheries Commission to adopt temporary rules until all rules necessary to implement the provisions of this Act have become effective. Closure of areas to flounder fishing with large mesh gill nets in Pamlico Sound resulted in a marked increase in pound net set permit applications in 2001 and 2002. The Division and MFC Southern Flounder Fishery Management Plan will include measures to reduce effort in the fishery due to concerns about overfishing of the stock. However, to ensure viability of the species while the plan is being developed, the proliferation of pound nets should be limited until methods are chosen for effort reduction. Due to this new increase in fishing effort directed toward southern flounder, an overfished species, the Marine Fisheries Commission has adopted this temporary rule to limit new pound nets until Southern Flounder Fishery Management Plan is completed to ensure viability of species while the plan is being developed.*

Comment Procedures: *Written comments should be submitted to Belinda Loftin, PO Box 769, Morehead City, NC 28557. Phone: (252) 706-7021, Fax: (252) 726-0254, Email: Belinda.loftin@ncmail.net.*

CHAPTER 03 - MARINE FISHERIES

SUBCHAPTER 03J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0107 POUND NET SETS

(a) All initial, renewal or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the general rules governing all permits in 15A NCAC 03O .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 03O .0500.

(b) It is unlawful to use pound net sets in coastal fishing waters without the permittee's identification being clearly printed on a sign no less than six inches square, securely attached to the

outermost stake of each end of each set. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set must be identified with a yellow buoy, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be clearly printed on the buoy. Such identification on signs or buoys must include the pound net set permit number and the permittee's last name and initials.

(c) It is unlawful to use pound net sets, or any part thereof, except for one location identification stake or identification buoy for pound nets used in the Atlantic Ocean at each end of proposed new locations, without first obtaining a Pound Net Set Permit from the Fisheries Director. The applicant must indicate on a base map provided by the Division the proposed set including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification and location. The applicant must specify the type(s) of pound net set(s) requested and possess proper valid licenses and permits necessary to fish those type (s) of net. A pound net set shall be deemed a flounder pound net set when the catch consists of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs. The type "other finfish pound net set" is for sciaenid (Atlantic croaker, red drum, weakfish, spotted seatrout, spot, for example) and other finfish, except flounder and herring or shad, taken for human consumption. Following are the type(s) of pound net fisheries that may be specified:

- (1) Flounder pound net set;
- (2) Herring/shad pound net set;
- (3) Bait pound net set;
- (4) Shrimp pound net set;
- (5) Blue crab pound net set; or
- (6) Other finfish pound net set.

(d) For proposed new locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comments for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application shall be deemed denied. The applicant shall be notified of such denial in writing. For new locations, transfers and renewals, the Fisheries Director may deny the permit application if it is determined that granting the permit will be inconsistent with one or more of the following permitting criteria, as determined by the Fisheries Director:

- (1) The application must be in the name of an individual and shall not be granted to a corporation, partnership, organization or other entity;
- (2) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not interfere with public navigation or with existing, traditional uses of the area other than

- navigation, and will not violate 15A NCAC 03J.0101 and .0102;
- (3) The proposed pound net set will not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;
 - (4) The proposed pound net set will not, by its proximate location, interfere with existing pound net sets in the area. Except in Chowan River as referenced in 15A NCAC 03J .0203, proposed new pound net set locations are a minimum of 1,000 yards as measured in a perpendicular direction from any point on a line following the permitted location of existing pound net sets. This criteria shall not apply to pound net sets in effect prior to January 1, 2003.
 - (5) The applicant has in the past complied with fisheries rules and laws and does not currently have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by eight or more convictions in ten years shall be grounds for denial of a pound net set permit;
 - (6) The proposed pound net set is in the public interest; or
 - (7) The applicant has in the past complied with all permit conditions, rules and laws related to pound nets.

Approval shall be conditional based upon the applicant's continuing compliance with specific conditions contained on the Pound Net Set Permit and the conditions set out in Subparagraphs (1) through (8) of this Paragraph. The final decision to approve or deny the Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings.

(e) An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set Permit, and may decline to renew the permit accordingly. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

(f) A Pound Net Set Permit, whether a new or renewal permit, shall expire one year from the date of issuance. The expiration date shall be stated on the permit.

(g) Pound net sets, except herring/shad pound net sets in the Chowan River, shall be operational for a minimum period of 30 consecutive days during the permit period unless a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met. For purposes of this Rule, operational means with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish. The permittee, including permittees of operational herring/shad pound net sets in the Chowan River, shall notify the Marine Patrol Communications Center by phone

within 72 hours after the pound net set is operational. Notification shall include name of permittee, pound net set permit number, county where located, a specific location site, and how many pounds are in the set. It is unlawful to fail to notify the Marine Patrol Communications Center within 72 hours after the pound net set is operational or to make false notification when said pound net set is not operational. Failure to comply with this Paragraph shall be grounds for the Fisheries Director to revoke this and any other pound net set permits held by the permittee and for denial of any future pound net set permits.

(h) It is unlawful to transfer a pound net set permit without a completed application for transfer being submitted to the Division of Marine Fisheries not less than 45 days before the date of the transfer. Such application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a pound net set permit in the new permittee's name. The Fisheries Director may hold a public meeting and may conduct such investigations necessary to determine if the permit should be transferred. The transferred permit shall expire on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification under G.S. 28A. The Administrator/Executor must provide a copy of the deceased permittee's death certificate, a copy of the certificate of administration and a list of eligible immediate family members as defined in G.S. 113-168 to the Morehead City Office of the Division of Marine Fisheries. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the permit(s) to eligible family members of the deceased permittee. No transfer is effective until approved and processed by the Division.

(i) Every pound net set in coastal fishing waters shall have yellow light reflective tape or yellow light reflective devices on each pound. The light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. In addition, every pound net set shall have a marked navigational opening of at least 25 feet in width at the end of every third pound. Such opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(j) In Core Sound, it is unlawful to use pound net sets in the following areas except that only those pound net set permits valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule:

- (1) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point to Green Flasher #13; to Green Flasher #11; to a point on shore north of Great Ditch 34° 58.9000' N - 76° 15.1000' W; thence following

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the shoreline to Hog Island Point 34° 58.5083' N - 76° 15.7882' W; thence back to Green Day Marker #3.

(2) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point to Cedar Island Point 34° 57.5001' N - 76° 16.5664' W; to Red Flasher #18; to Red Flasher #2; back to Green Marker #3.

(3) That area bounded by a line beginning on Long Point 34° 56.4809' N - 76° 16.7344' W; to Red Marker #18; to Green Marker #19; thence following the six foot contour past the Wreck Beacon to a point at 34° 53.7500' N - 76° 18.1833' W; to Green Marker #25; to Green Marker #27; to Red Flasher #28; to Green Flasher #29; to Green Flasher #31; to Green Flasher #35; to Green Flasher #37; to Bells Point 34° 56.9673' N - 76° 29.9990' W; thence north following the shoreline of Core Sound across the mouth of Jarrett Bay, Oyster Creek, Fulcher Creek, Willis Creek, Nelson Bay, Styron Bay, East Thorofare Bay and Rumley Bay, back to Long Point.

(k) Escape Panels:

(1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any or all of the following requirements or restrictions on the use of escape panels:

- (A) Specify size, number, and location.
- (B) Specify mesh length, but not more than six inches.
- (C) Specify time or season.
- (D) Specify areas.

(2) It is unlawful to use flounder pound net sets without four unobstructed escape panels in each pound south and east of a line beginning at a point on Long Shoal Point at 35° 57.3950' N -76° 00.8166' W; to Green Marker No. 5 east of the Intracoastal Waterway in the Alligator River at 35° 56.7316' N - 75° 59.3000' W; thence following Route #1 of the Intracoastal Waterway in Albemarle Sound to Green Marker No. 171 at 36° 09.3033' N - 75° 53.4916' W; to a point on Camden Point at 36° 09.9093' N - 75° 54.6601' W. The escape panels must be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels must be a minimum mesh size of five and one-half inches, hung on the diamond, and must be at least six meshes high and eight meshes long.

- (l) Pound net sets are subject to inspection at all times.
- (m) Daily reporting may be a condition of the permit for pound net sets for fisheries under a quota.
- (n) It is unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing pound net set permit has been revoked or denied.

(o) It is unlawful to abandon an existing pound net set without completely removing from the coastal waters all stakes and associated gear within 30 days.

History Note: Authority G.S. 113-134; 113-182; 113-182.1; 113-221; 143B-289.52
Eff. January 1, 1991;
Amended Eff. April 1, 1999; March 1, 1996; March 1, 1994; September 1, 1991; January 1, 1991;
Temporary Amendment Eff. September 1, 2000; August 1, 2000;
Amended Eff. August 1, 2002; April 1, 2001;
Temporary Amendment Eff. February 10, 2003.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

Rule-making Agency: *NC State Board of Chiropractic Examiners*

Rule Citation: *21 NCAC 10 .0202, .0206*

Effective Date: *January 1, 2003*

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

Authority for the rulemaking: *G.S. 90-143.2; 90-149*

Reason for Proposed Action:

21 NCAC 10 .0202 - The purpose of the amended rule is to increase revenues in order to cover the cost of administering the Board's licensure examination. Any delay in the implementation of the amended rule will impair the ability of the Board to examine applicants for licensure.

21 NCAC 10 .0206 - The purpose of the rule as amended is to make certain that all chiropractic assistants who take Xrays obtain the required six-hour continuing education bloc in radiology each year. Inadequately trained Xray technicians pose a danger to the public, and this danger would be prolonged by a delay in implementing the amended rule.

Comment Procedures: *Written comments should be submitted to Carol Hall, Executive Secretary of the Board of Examiners, 174 Church Street, Concord, NC 28026. Phone: (704) 793-1342, Fax: (704) 793-1385, Email: www.ncchiroboard.org.*

SECTION .0200 - PRACTICE OF CHIROPRACTIC

21 NCAC 10 .0202 APPLICATION FOR LICENSURE

(a) General. Application for licensure shall be made in writing upon forms prescribed by the Board. The secretary shall furnish the necessary forms to prospective applicants upon request.

(b) Description of Forms. The written application shall consist of two forms, the Application Form and the Character Reference Form. The following information shall be required to complete each form:

- (1) Application Form: personal background of the applicant; his educational history; a recent

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photograph; and a statement confirming that he has read, understands and will abide by the General Statutes and administrative rules governing chiropractic.

- (2) Character Reference Form: the statements of three persons not related to the applicant attesting to his good moral character. Two of the three persons providing references must be licensed chiropractors.

(c) Deadlines for Filing Applications. Applications for the June examination must be received at the office of the Board on or before the third Tuesday in April. Applications for the November examination must be received at the office of the Board on or before the third Tuesday in September. These deadlines will not be waived except for compelling reasons, and any waiver shall be within the discretion of the Board.

(d) Application Fee. An application fee of ~~one~~three hundred dollars (~~\$100.00~~\$300.00) must accompany each application. This fee shall be paid in cash, or by certified check, cashier's check or money order made payable to the North Carolina Board of Chiropractic Examiners. Personal checks will not be accepted.

History Note: Authority G.S. 90-142; 90-143; 90-143.1; 90-145; 90-146; Eff. February 1, 1976; Readopted Eff. January 27, 1978; Amended Eff. October 17, 1980; Legislative Objection Lodged Eff. December 17, 1982; Curative Amendment Eff. December 30, 1982; Amended Eff. January 1, 1983; Legislative Objection Lodged Eff. January 31, 1983; Curative Amendment Eff. February 28, 1983; Amended Eff. January 1, 1989; Temporary Amendment Eff. January 1, 2003.

21 NCAC 10 .0206 CERTIFICATION OF RADIOLOGIC TECHNOLOGISTS

(a) In order to be certified pursuant to G.S. 90-143.2, a person employed in a chiropractic office whose duties include the production of x-rays or other diagnostic images must:

- (1) Complete a Board-approved course in radiologic technology at least 50 hours in length and taught by an instructor who is a member of the radiology faculty at a college accredited by the Council on Chiropractic Education; and
- (2) Pass a proficiency examination administered by or under the authority of the Board of Examiners.

(b) Any person registered as "active" with the American Chiropractic Registry of Radiologic Technologists shall be deemed to have satisfied the educational requirements of Paragraph (a) of this Rule.

(c) A certificate of competency issued pursuant to G.S. 90-143.2 shall expire at the end of the calendar year in which it was issued but may be renewed upon a showing that the certificate holder completed six hours of Board-approved continuing education in radiologic technology during the year. Any person whose initial certificate expires less than 12 months after issuance shall not be

required to obtain continuing education until entering the second year of certification.

(d) Any person seeking to renew a certificate of competency shall complete and submit the renewal application form provided by the Board of Examiners and pay to the Board a renewal fee in the amount of twenty Dollars (\$20.00).

(e) The holder of a certificate issued pursuant to this Rule must display the certificate in the x-ray room of the chiropractic clinic in which the holder is employed in a location where the certificate may be easily viewed by patients.

(f) Other than licensed doctors of chiropractic, only those persons maintaining current certifications of competency in conformity with this Rule may produce x-rays or other diagnostic images in chiropractic offices. A chiropractor who permits the production of x-rays or other diagnostic images by a non-certified employee or an employee whose certification has expired shall be deemed in violation of G.S. 90-154.3.

History Note: Authority G.S. 90-143.2; 90-154.3; Eff. February 1, 1993; Temporary Amendment Eff. January 1, 2003.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

Rule-making Agency: North Carolina State Board of Dental Examiners

Rule Citation: 21 NCAC 16A .0101; 16B .0304, .0401, .0501, .0601; 16C .0304, .0401; 16D .0104; 16E .0103; 16M .0101-.0102; 16Y.0102

Effective Date : January 1, 2003

Findings Reviewed and Approved by: Beecher R. Gray

Authority for the rulemaking: G.S. 90-29.5; 90-30; 90-36; 90-37.1; 90-39; 90-224; 90-224.1; 90-232

Reason for Proposed Action:

21 NCAC 16A .0101; 16B .0401, .0501, .0601; 16C .0401; 16M .0101-.0102 - The legislative purpose of Senate Bill 861 is to increase the number of qualified dental practitioners in North Carolina and to encourage the recruitment of qualified dental personnel to work in dental health professional shortage areas and thereby allow for greater access to dental care by the public. If the notice and hearing requirements are adhered to, these Rules would not become effective until 2004 which would significantly delay the public access to dental care.

21 NCAC 16B .0304; 16C .0304; 16D .0104; 16E .0103; 16Y .0102 - The legislative purpose of House Bill 1638 is to protect the public by allowing the Board to conduct a national criminal history check for each applicant for licensure to ensure that only qualified individuals are granted a license by the Board. If the notice and hearing requirement are adhered to, these Rules would not become effective until 2004 which would significantly impair the Board's ability to conduct a thorough background check of applicants.

Comment Procedures: Comments from the public shall be directed to Lisa Thompson, NC State Board of Dental Examiners, 15100 Weston Pkwy, Suite 101, Cary, NC 27513.

SECTION .0400 – LICENSURE BY CREDENTIALS

SUBCHAPTER 16A – ORGANIZATION

21 NCAC 16A .0101 DEFINITIONS

As used in this Chapter:

- (1) "Applicant" means a person applying for a dental license, a dental hygiene ~~license or a dental intern permit;~~ license, dental licensure by credentials, dental hygiene licensure by credentials, a limited volunteer dental license, an instructor's license, a provisional license, or an intern permit;
- (2) "Board" means the North Carolina State Board of Dental Examiners; ~~and~~
- (3) "Candidate" means a person who has applied and been accepted for examination to practice dentistry or dental hygiene in North ~~Carolina.~~ Carolina; and
- (4) "Unrestricted license" means a license which is not under suspension or inactivation, or subject to the terms of a consent order or other disciplinary action imposed by the jurisdiction that issued the license, or limited by supervision, or location requirements.

History Note: Authority G.S. 90-26; 90-28; 90-29(a); 90-29.3; 90-29.4; 90-29.5; 90-30; 90-37.1; 90-43; 90-48; 90-224; 90-224.1; 90-226;
 Eff. September 3, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. May 1, 1991; May 1, 1989; September 1, 1988; October 1, 1986;
Temporary Amendment Eff. January 1, 2003.

SUBCHAPTER 16B – LICENSURE: DENTISTS

SECTION .0300 - APPLICATION

21 NCAC 16B .0304 OTHER REQUIREMENTS

(a) Applicants who are licensed in other states shall furnish verification of licensure from the secretary of the dental board of each state in which they are licensed. Letters of recommendation must be received in the Board's office before the application is considered complete. A photograph, taken within six months prior to the date of the application, must be affixed to the application. A second photograph, not over two inches in height, must be paper-clipped to the application to be used as part of the identification badge.

(b) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

History Note: Authority G.S. 90-28; 90-30; 90-48; 90-41;
 Eff. September 3, 1976;
 Readopted Eff. September 26, 1977;
 Amended Eff. January 1, 1994; May 1, 1989;
Temporary Amendment Eff. January 1, 2003.

21 NCAC 16B .0401 DENTAL LICENSURE BY CREDENTIALS

(a) An applicant for a dental license by credentials shall submit to the Board:

- (1) a completed, notarized application, on a form provided by the Board;
- (2) the licensure by credentials fee;
- (3) verification that the applicant has successfully completed with a passing score the Dental National Board Part I and Part II written examination administered by the Joint Commission on National Dental Examinations;
- (4) verification that the applicant has successfully completed with a passing score, the licensure examination in general dentistry conducted by a regional testing agency or independent state licensure examination substantially equivalent to the clinical licensure examination required in North Carolina;
- (5) verification that the applicant holds a valid, current and unrestricted general dental or dental specialty license issued by a state, U.S. territory or the District of Columbia;
- (6) verification that the applicant has been subject to a state, U.S. territory, or federal dental regulatory authority during the five years immediately preceding the application;
- (7) verification of all dental or professional licenses held;
- (8) an affidavit from the applicant stating for the five years immediately preceding application:
 - (A) the dates that and locations where the applicant has practiced dentistry; and
 - (B) that the applicant has been in continuous active clinical practice averaging at least 1000 hours per year in clinical direct patient care dentistry, during the five years immediately preceding application, not including post graduate training, residency programs or an internship;
- (9) a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, patient complaints or state or federal agency complaints, judgments, settlements, or criminal charges;
- (10) if applicable, a statement disclosing and explaining periods within the last 10 years of observation, assessment or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dentists or other impaired professionals program; and
- (11) verification that the applicant holds a current certification in cardiopulmonary resuscitation.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental license by credentials shall arrange for and ensure the submission to the Board office, the following documents as a package, with each document in an unopened officially sealed envelope from the entity involved:

- (1) official transcripts and a certificate from the dean verifying that the applicant has graduated from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association from the dental school;
- (2) if the applicant is or has ever been employed as a dentist by or under contract with a federal agency, verification of the applicant's current status and disciplinary history from each federal agency where the applicant is or has been employed or under contract;
- (3) if the applicant is or has ever been a member of a state dental society, verification of the applicant's current status and disciplinary history from each state dental society in which the applicant is or has been a member;
- (4) verification of the applicant's registration with the federal Drug Enforcement Administration (DEA), from the DEA, even if the applicant is not currently registered with DEA;
- (5) verification of the applicant's licensure status and complete information regarding any disciplinary action taken or investigation pending, from all licensing jurisdictions where the applicant holds or has ever held a dental license or other professional license;
- (6) a report from the National Practitioner Databank;
- (7) a report of any pending or final malpractice actions against the applicant and verified by the applicant's malpractice insurance carrier along with all documents and records. The applicant must request a verification of coverage history from his/her current and all previous malpractice insurance carriers; and
- (8) Verification from a dental professional regulatory board of a passing score on a clinical licensure examination substantially equivalent to the licensure clinical examination administered by the dental professional regulatory board or its designated agent other than an educational institution. Such verification shall state that the examination included procedures performed on human subjects as part of the assessment of restorative clinical competencies and shall have included evaluations in at least four of the eight following subject areas:
 - (A) periodontics; clinical abilities testing;
 - (B) endodontics; clinical abilities testing;
 - (C) amalgam preparation and restoration;
 - (D) anterior composite preparation and restoration;
 - (E) posterior ceramic or composite preparation and restoration;

- (F) cast gold; clinical abilities testing;
- (G) prosthetics; written or clinical abilities testing;
- (H) oral diagnosis; written or clinical abilities testing; and
- (I) oral surgery, written or clinical abilities testing.

- (9) In addition to the requirements of Subparagraph (b)(8), after January 1, 1998, to be eligible for consideration for equivalency, the licensure examination shall include:
- (A) anonymity between candidates and examination raters;
 - (B) standardization and calibration of raters; and
 - (C) a mechanism for post exam analysis.

(c) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

(d) An applicant for dental licensure by credentials must successfully complete written examinations and, if deemed necessary by the Board based on the applicant's history, a clinical simulation examination administered by the Board. If the applicant fails any of the examinations, the applicant may retake the examination failed two additional times during a one year period.

(e) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. If all of the information is not received as a complete package, the application shall be returned to the applicant. Should the applicant reapply for licensure by credentials, an additional licensure by credentials fee shall be required.

(f) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

History Note: Authority G.S. 90-28; 90-36; Temporary Adoption Eff. January 1, 2003.

SECTION .0500 – LIMITED VOLUNTEER DENTAL LICENSE

21 NCAC 16B .0501 LIMITED VOLUNTEER DENTAL LICENSE

(a) An applicant for a limited volunteer dental license shall submit to the Board:

- (1) a completed, notarized application, on a form provided by the Board;
- (2) the limited volunteer dental licensure fee;
- (3) verification that the applicant has successfully completed with a passing score the Dental National Board Part I and Part II written examination administered by the Joint Commission on National Dental Examinations;
- (4) verification that the applicant has successfully completed with a passing score, the licensure examination in general dentistry conducted by a Board recognized regional testing agency or independent state licensure examination

- substantially equivalent to the clinical licensure examination required in North Carolina;
- (5) verification that the applicant:
- (A) has a valid, current and unrestricted general dental or dental specialty license in any state, U.S. territory or the District of Columbia; or
- (B) has an expired dental license in this or another state; or
- (C) is authorized to treat veterans or personnel enlisted in the United States armed services;
- (6) an affidavit from the applicant stating:
- (A) for the five years immediately preceding application, the dates that and locations where the applicant has practiced dentistry;
- (B) that the applicant has:
- (i) been in active clinical practice averaging at least 1000 hours per year in clinical direct patient care dentistry, for a minimum of five years, not including post graduate training, residency programs or an internship; and
- (ii) been in active clinical practice averaging at least 500 hours in clinical direct patient care dentistry over the last five years, not including post graduate training, residency programs or an internship;
- (7) if applicable, a statement disclosing and explaining periods within the last 10 years of observation, assessment or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dentists or other impaired professionals program; and
- (8) verification that the applicant holds a current certification in cardiopulmonary resuscitation.
- (b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a limited volunteer dental license shall arrange for and ensure the submission to the Board office, the following documents as a package, with each document in an unopened, officially sealed envelope from the entity involved:
- (1) documentation of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;
- (2) verification of the applicant's licensure status and complete information regarding any disciplinary action taken or investigation pending, from all licensing jurisdictions where

- the applicant holds or has ever held a dental license or other professional license;
- (3) a report from the National Practitioner Databank; and
- (4) a report of any pending or final malpractice actions against the applicant and verified by the applicant's malpractice insurance carrier along with all documents and records. The applicant must request a verification of coverage history from his/her current and all previous malpractice insurance carriers.
- (c) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.
- (d) An applicant for limited volunteer dental license must successfully complete written examinations and, if deemed necessary by the Board based on the applicant's history, a clinical simulation examination administered by the Board. If the applicant fails any of the examinations, the applicant may retake the examination failed two additional times during a one year period.
- (e) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. If all of the information is not received as a complete package, the application shall be returned to the applicant. Should the applicant reapply for a limited volunteer dental license, an additional limited volunteer dental license fee shall be required.
- (f) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.
- (g) The license may be renewed on an annual basis provided that the licensee provides documentation that he/she has practiced a minimum of 100 hours, completed continuing education requirements and current CPR certification as adopted by the Board.

History Note: Authority G.S. 90-28; 90-37.1; Temporary Adoption Eff. January 1, 2003.

SECTION .0600 – INSTRUCTOR’S LICENSE

21 NCAC 16B .0601 INSTRUCTOR'S LICENSE

- (a) An applicant for an instructor's license shall submit to the Board:
- (1) a completed, notarized application, on a form provided by the Board;
- (2) the instructor's licensure fee;
- (3) verification that the applicant holds a valid, current and unrestricted general dental or dental specialty license in any state, territory, country or other jurisdiction where he or she is licensed and verification of all dental or professional licenses held;
- (4) verification from the dean or director that the applicant has met or been approved under the credentialing standards of a dental school or an academic medical center with which the person is to be affiliated, and verification that such school or medical center is accredited by the American Dental Association's

SUBCHAPTER 16C – LICENSURE: DENTAL HYGIENISTS

SECTION .0300 – APPLICATION

21 NCAC 16C .0304 OTHER REQUIREMENTS

(a) Applicants who are licensed in other states shall furnish verification of licensure from the appropriate regulatory agency of each state in which they are licensed, together with two letters of recommendation, preferably written by dentists. A photograph, taken within six months prior to the date of application, must be affixed to the application. A second photograph, not over two inches in height, must be paper-clipped to the application, to be used as part of the identification badge.

(b) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

History Note: Authority G.S. 90-223; 90-224; 90-229; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. January 1, 1994; May 1, 1989; October 1, 1986; Temporary Amendment Eff. January 1, 2003.

SECTION .0400 – LICENSURE BY CREDENTIALS

21 NCAC 16C .0401 DENTAL HYGIENE LICENSURE BY CREDENTIALS

(a) An applicant for a dental hygiene license by credentials shall submit to the Board:

- (1) a completed, notarized application, on a form provided by the Board;
- (2) the limited volunteer dental licensure fee;
- (3) verification that the applicant has successfully completed with a passing score the National Board Dental Hygiene Examination administered by the Joint Commission on National Dental Examinations;
- (4) verification that the applicant has successfully completed with a passing score, the licensure examination conducted by a regional testing agency or independent state licensure examination that is substantially equivalent to the clinical licensure examination required in North Carolina;
- (5) verification that the applicant holds a valid, current and unrestricted dental hygiene license issued by a state, U.S. territory or the District of Columbia;
- (6) verification that the applicant has been subject to a state, U.S. territory, or federal dental regulatory authority during the two years immediately preceding the application;
- (7) verification of all dental hygiene or professional licenses held;
- (8) an affidavit from the applicant stating for the two years immediately preceding application:

Commission on Accreditation or the Joint Commission on Accreditation of Health Care Organizations;

(5) a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, patient complaints or state or federal agency complaints, judgments, settlements, or criminal charges; and

(6) if applicable, a statement disclosing and explaining periods within the last 10 years of observation, assessment or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dentists or other impaired professionals program.

(b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for an instructor's license shall arrange for and ensure the submission to the Board office, the following documents as a package, with each document in an unopened officially sealed envelope from the entity involved:

(1) if the applicant is or has ever been employed as a dentist by or under contract with an agency or organization, verification of the applicant's current status and disciplinary history from each agency or organization where the applicant is or has been employed or under contract;

(2) verification of the applicant's licensure status and complete information regarding any disciplinary action taken or investigation pending, from all licensing jurisdictions where the applicant holds or has ever held a dental license or other professional license;

(3) a report from the National Practitioner Databank or its international equivalent, if applicable; and

(4) a report of any pending or final malpractice actions against the applicant, verified by the applicant's malpractice insurance carrier along with all documents and records. The applicant must request a verification of coverage history from his/her current and all previous malpractice insurance carriers.

(c) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

(d) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. If all of the information is not received as a complete package, the application shall be returned to the applicant. Should the applicant reapply for an instructor's license, an additional instructor's license fee shall be required.

(e) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

(f) The license shall be renewed on an annual basis.

History Note: Authority G.S. 90-28; 90-29.5; Temporary Adoption Eff. January 1, 2003.

- (A) the dates that and locations where the applicant has practiced dental hygiene; and
- (B) that the applicant has been in continuous active clinical practice averaging at least 1000 hours per year in clinical direct patient care, during the two years immediately preceding application;
- (9) a statement disclosing and explaining any disciplinary actions, investigations, malpractice claims, patient complaints or state or federal agency complaints, judgments, settlements, or criminal charges;
- (10) if applicable, a statement disclosing and explaining periods within the last 10 years of observation, assessment or treatment for substance abuse, with verification demonstrating that the applicant has complied with all provisions and terms of any county or state drug treatment program, or impaired dental hygiene or other impaired professionals program; and
- (11) verification that the applicant holds a current certification in cardiopulmonary resuscitation.
- (b) In addition to the requirements of Paragraph (a) of this Rule, an applicant for a dental hygiene license by credentials shall arrange for and ensure the submission to the Board office, the following documents as a package, with each document in an unopened officially sealed envelope from the entity involved:
- (1) official transcripts and a certificate from the dean verifying that the applicant has graduated from a dental hygiene program accredited by the Commission on Dental Accreditation of the American Dental Association;
 - (2) if the applicant is or has ever been employed as a dentist or dental hygienist by or under contract with a federal agency, verification of the applicant's current status and disciplinary history from each federal agency where the applicant is or has been employed or under contract;
 - (3) if the applicant is or has ever been a member of a state dental society or dental hygiene association, verification of the applicant's current status and disciplinary history from each state dental society or dental hygiene association in which the applicant is or has been a member;
 - (4) verification of the applicant's licensure status and complete information regarding any disciplinary action taken or investigation pending, from all licensing jurisdictions where the applicant holds or has ever held a dental hygiene license or other professional license;
 - (5) a report from the National Practitioner Databank, if applicable; and
 - (6) a report of any pending or final malpractice actions against the applicant and verified by the applicant's malpractice insurance carrier along with all documents and records. The

applicant must request a verification of coverage history from his or her current and all previous malpractice insurance carriers.

(c) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

(d) An applicant for dental hygiene licensure by credentials must successfully complete written examinations and, if deemed necessary by the Board based on the applicant's history, a clinical simulation examination administered by the Board. If the applicant fails any of the examinations, the applicant may retake the examination failed two additional times during a one year period.

(e) All information required must be completed and received by the Board office as a complete package with the initial application and application fee. If all of the information is not received as a complete package, the application shall be returned to the applicant. Should the applicant reapply for licensure by credentials, an additional licensure by credentials fee shall be required.

(f) Any license obtained through fraud or by any false representation shall be void ab initio and of no effect.

History Note: Authority G.S. 90-223; 90-224.1; Temporary Adoption Eff. January 1, 2003.

**SUBCHAPTER 16D - PROVISIONAL LICENSURE:
DENTISTS**

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 16D .0104 APPLICATION

(a) All applications for provisional licensure shall be submitted upon forms provided by the ~~North Carolina State Board of Dental Examiners, Board~~, and all information thereon requested shall be provided in detail.

(b) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

History Note: Authority G.S. 90-29.3; 90-41(a); Eff. September 3, 1976; Readopted Eff. September 26, 1977; Temporary Amendment Eff. January 1, 2003.

**SUBCHAPTER 16E - PROVISIONAL LICENSURE:
DENTAL HYGIENIST**

21 NCAC 16E .0103 APPLICATION

(a) All applications for provisional licensure shall be submitted upon forms provided by the Board and all information thereon requested shall be provided in detail.

(b) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application.

History Note: Authority G.S. 90-226; 90-229(a); Eff. September 3, 1976;

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Readopted Eff. September 26, 1977;

Amended Eff. May 1, 1989;

Temporary Amendment Eff. January 1, 2003.

SECTION .0100 – FEES PAYABLE

SUBCHAPTER 16M - FEES PAYABLE

21 NCAC 16M .0101 DENTISTS

(a) The following fees shall be payable to the Board:

(1)	Application for general dentistry examination	\$ 500.00
(2)	Application for instructor's license or renewal thereof	\$ 140.00
(3)	Application for provisional license	\$ 100.00
(4)	Application for intern permit or renewal thereof	\$ 100.00
(5)	Certificate of license to a resident dentist desiring to change to another state or territory	\$ 25.00
(6)	Duplicate license	\$ 25.00
(7)	Reinstatement of license after retirement from practice in this State	\$ 225.00
(8)	Penalty fee Fee for late renewal of any license or permit	\$ 50.00
(9)	<u>Application for license by credentials</u>	<u>\$2000.00</u>
(10)	<u>Application for limited volunteer dental license</u>	<u>\$ 100.00</u>
(11)	<u>Renewal of limited volunteer dental license</u>	<u>\$ 25.00</u>

(b) Each dentist renewing his license to practice dentistry in North Carolina shall be assessed a fee of twenty-five dollars (\$25.00), in addition to the annual renewal fee, to be contributed to the operation of the ~~Caring Dentist Program - North Carolina~~ Caring Dental Professionals.

History Note: Authority G.S. 90-28; 90-39; 90-48; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. August 1, 1998; December 1, 1994; May 1, 1989; March 1, 1988; May 1, 1987; Temporary Amendment Eff. October 28, 1998; Amended Eff. August 1, 2000; Temporary Amendment Eff. January 1, 2003.

21 NCAC 16M .0102 DENTAL HYGIENISTS

(a) The following fees shall be payable to the Board:

(1)	Application for examination	\$125.00
(2)	Reinstatement of license after retirement from practice in this State	\$ 60.00
(3)	Application for provisional licensure	\$ 60.00
(3)	Certificate to a resident dental hygienist desiring to change to another state or territory	\$ 25.00
(4)	<u>Application for license by credentials</u>	<u>\$750.00</u>

(b) Each dental hygienist renewing his or her license to practice dental hygiene in North Carolina shall be assessed a fee of fifteen dollars (\$15.00), in addition to the annual renewal fee, to be contributed to the operation of the North Carolina Caring Dental Professionals.

History Note: Authority G.S. 90-232; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. May 1, 1989; March 1, 1988; May 1, 1987; Temporary Amendment Eff. August 20, 1999; Amended Eff. April 1, 2001; Temporary Amendment Eff. January 1, 2003.

SUBCHAPTER 16Y - INTERN PERMITTING: DENTISTS

21 NCAC 16Y .0102 APPLICATION

(a) Applicants for intern permit who are graduates of dental schools or programs as set out in Rule .0101(1) above must:

- (1) complete the Application for Intern Permit as furnished by the Board;
- (2) submit an official copy of dental school transcripts;
- (3) forward a letter from a prospective employer;
- (4) submit a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application;
- ~~(4)~~(5) successfully complete written examination(s) administered by the Board; and
- ~~(5)~~(6) pay the one hundred fifty dollar (\$150.00) permit fee.

(b) Applicants for intern permit who are graduates of a dental program as set out in Rule .0101(2) of this Subchapter must:

- (1) submit written confirmation that the applicant has qualified for and is currently enrolled in a graduate, intern, fellowship, or residency program in the North Carolina Dental School or teaching hospital offering programs in dentistry;
- (2) submit written confirmation that an ad hoc committee (consisting of three associate or full professors, only one of whom represents the department in question) has evaluated the applicant's didactic and clinical performance with the point of observation being not less than three months from the applicant's start of the program, and has verified that the applicant is functioning at a professional standard consistent with a dental graduate from an ADA-accredited dental school;
- (3) successfully complete a simulated clinical examination;
- (4) submit written confirmation that the applicant has successfully completed a program of study at the training facility in:
 - (A) clinical pharmacology;
 - (B) prescription writing in compliance with Federal and State laws; and
 - (C) relevant laws and administrative procedures pertaining to the DEA;
- (5) submit a written statement of the total time required to complete the graduate, intern, fellowship, or residency program, and the date

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that the applicant is scheduled to complete said program;

~~(6)~~ submit a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of the application;

~~(6)(7)~~ successfully complete written examination(s) administered by the Board; and

~~(7)(8)~~ pay the one hundred fifty dollar (\$150.00) permit fee.

(c) In making application, the applicant shall authorize the Board to verify the information contained in the application or

documents submitted or to seek such further information pertinent to the applicant's qualifications or character as the Board may deem necessary pursuant to G.S. 90-41.

(d) The application for renewal of intern permit shall include all information in the original application as set out in this Rule.

History Note: Authority G.S. 90-28; 90-29.4;

Eff. December 4, 2002;

Temporary Amendment Eff. January 1, 2003.

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting November 21, 2002, pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 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
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2	NCAC 48F	.0305*	16:14 NCR
5	NCAC 06	.0101-.0102*	17:06 NCR
5	NCAC 06	.0301*	17:06 NCR
5	NCAC 06	.0401*	17:06 NCR
9	NCAC 05B	.0101	17:03 NCR
9	NCAC 05B	.0103	17:03 NCR
9	NCAC 05B	.0201-.0204	17:03 NCR
9	NCAC 05B	.0301-.0306	17:03 NCR
9	NCAC 05B	.0401-.0402	17:03 NCR
9	NCAC 05B	.0501-.0519	17:03 NCR
9	NCAC 05B	.0601-.0602	17:03 NCR
9	NCAC 05C	.0102	17:03 NCR
9	NCAC 05C	.0201-.0203	17:03 NCR
9	NCAC 05C	.0301-.0303	17:03 NCR
9	NCAC 05C	.0401-.0406	17:03 NCR
9	NCAC 05C	.0501-.0503	17:03 NCR
9	NCAC 05C	.0601	17:03 NCR
9	NCAC 05C	.0701-.0712	17:03 NCR
9	NCAC 05C	.0801-.0805	17:03 NCR
9	NCAC 05C	.0901-.0902	17:03 NCR
9	NCAC 05C	.1001-.1004	17:03 NCR
9	NCAC 05C	.1006	17:03 NCR
9	NCAC 05C	.1101-.1107	17:03 NCR
9	NCAC 05C	.1201-.1204	17:03 NCR
9	NCAC 05C	.1301-.1302	17:03 NCR
9	NCAC 05C	.1305-.1306	17:03 NCR
9	NCAC 05C	.1401-.1411	17:03 NCR
9	NCAC 05C	.1501-.1505	17:03 NCR
9	NCAC 05C	.1601-1604	17:03 NCR
9	NCAC 05D	.0101-.0108	17:03 NCR
9	NCAC 05D	.0201-.0207	17:03 NCR
9	NCAC 05E	.0101-.0110	17:03 NCR
9	NCAC 05F	.0201-.0204	17:03 NCR
9	NCAC 05F	.0301-.0303	17:03 NCR
9	NCAC 05F	.0401-.0403	17:03 NCR
9	NCAC 05F	.0501-.0504	17:03 NCR
9	NCAC 05F	.0601-.0609	17:03 NCR
9	NCAC 05F	.0701-.0703	17:03 NCR
9	NCAC 05F	.0801-.0803	17:03 NCR
9	NCAC 05F	.0901-.0902	17:03 NCR
9	NCAC 05F	.1001-.1009	17:03 NCR
9	NCAC 05F	.1101-.1104	17:03 NCR

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9	NCAC	05F	.1201-.1208	17:03 NCR
9	NCAC	05F	.1301-.1308	17:03 NCR
9	NCAC	05F	.1401-.1403	17:03 NCR
9	NCAC	05F	.1501-.1509	17:03 NCR
9	NCAC	05F	.1601-.1604	17:03 NCR
9	NCAC	05F	.1701-.1707	17:03 NCR
10	NCAC	03C	.3101*	17:05 NCR
10	NCAC	03C	.3111*	17:05 NCR
10	NCAC	03D	.2501-.2507*	16:21 NCR
10	NCAC	03D	.2509-.2520*	16:21 NCR
10	NCAC	03D	.2523-.2524*	16:21 NCR
10	NCAC	03D	.2603-.2615*	16:21 NCR
10	NCAC	03D	.2616	16:21 NCR
10	NCAC	03D	.2702	16:21 NCR
10	NCAC	03D	.2703-.2704*	16:21 NCR
10	NCAC	03D	.2801-.2802*	16:21 NCR
10	NCAC	03D	.2803	16:21 NCR
10	NCAC	03D	.2804-.2809*	16:21 NCR
10	NCAC	03D	.2904*	16:21 NCR
10	NCAC	03D	.2906-.2907	16:21 NCR
10	NCAC	03D	.2910*	16:21 NCR
10	NCAC	03D	.3004*	16:21 NCR
10	NCAC	03D	.3102	16:21 NCR
10	NCAC	03D	.3201*	16:21 NCR
10	NCAC	03D	.3301-.3305*	16:21 NCR
10	NCAC	03D	.3401*	16:21 NCR
10	NCAC	03D	.3402	16:21 NCR
10	NCAC	03D	.3403*	16:21 NCR
10	NCAC	03D	.3501	16:21 NCR
10	NCAC	03D	.3502-.3503*	16:21 NCR
10	NCAC	03Q	.0103*	17:05 NCR
10	NCAC	03Q	.0202*	17:05 NCR
10	NCAC	03Q	.0402*	17:05 NCR
10	NCAC	03Q	.1202-.1203	17:05 NCR
10	NCAC	03Q	.1403*	17:05 NCR
10	NCAC	03Q	.1405-.1407*	17:05 NCR
10	NCAC	03Q	.1409-.1411*	17:05 NCR
10	NCAC	03R	.0214	17:05 NCR
10	NCAC	03R	.1126*	17:04 NCR
10	NCAC	03R	.1615-.1616	17:04 NCR
10	NCAC	03R	.1715	17:04 NCR
10	NCAC	03R	.1912*	17:04 NCR
10	NCAC	03R	.1914*	17:04 NCR
10	NCAC	03R	.2013	17:04 NCR
10	NCAC	03R	.2113*	17:04 NCR
10	NCAC	03R	.2114-.2115	17:04 NCR
10	NCAC	03R	.2116*	17:04 NCR
10	NCAC	03R	.2118-.2119	17:04 NCR
10	NCAC	03R	.2217	17:04 NCR
10	NCAC	03R	.2511	17:04 NCR
10	NCAC	03R	.2713	17:04 NCR
10	NCAC	03R	.2715	17:04 NCR
10	NCAC	03R	.2717*	17:04 NCR
10	NCAC	03R	.3701-.3703	17:04 NCR
10	NCAC	03R	.3705*	17:04 NCR
10	NCAC	03R	.6351	17:04 NCR
10	NCAC	03R	.6352*	17:04 NCR
10	NCAC	03R	.6353-.6375	17:04 NCR
10	NCAC	03R	.6376*	17:04 NCR
10	NCAC	03R	.6377-.6384	17:04 NCR
10	NCAC	03R	.6389*	17:04 NCR

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10	NCAC	03R	.6391-.6392	17:04 NCR
10	NCAC	03R	.6393*	17:04 NCR
10	NCAC	03R	.6394-.6395	17:04 NCR
10	NCAC	03U	.0102*	17:03 NCR
10	NCAC	03U	.0302*	17:03 NCR
10	NCAC	03U	.1701-.1702*	17:03 NCR
10	NCAC	03U	.1720*	17:03 NCR
10	NCAC	03U	.2401*	17:03 NCR
10	NCAC	03U	.2404*	17:03 NCR
10	NCAC	03U	.2409*	17:03 NCR
10	NCAC	03U	.2702*	17:03 NCR
10	NCAC	03U	.2808*	17:03 NCR
10	NCAC	26H	.0212-.0213*	17:01 NCR
15A	NCAC	01C	.0101*	17:04 NCR
15A	NCAC	01C	.0102	17:04 NCR
15A	NCAC	01C	.0103-.0104*	17:04 NCR
15A	NCAC	01C	.0105	17:04 NCR
15A	NCAC	01C	.0107-.0108*	17:04 NCR
15A	NCAC	01C	.0109	17:04 NCR
15A	NCAC	01C	.0201-.0204	17:04 NCR
15A	NCAC	01C	.0205-.0208*	17:04 NCR
15A	NCAC	01C	.0301-.0303	17:04 NCR
15A	NCAC	01C	.0304-.0305*	17:04 NCR
15A	NCAC	01C	.0401-.0404	17:04 NCR
15A	NCAC	01C	.0405*	17:04 NCR
15A	NCAC	01C	.0407	17:04 NCR
15A	NCAC	01C	.0408-.0411*	17:04 NCR
15A	NCAC	01C	.0501-.0504	17:04 NCR
15A	NCAC	02B	.0208*	17:01 NCR
15A	NCAC	02B	.0211	17:01 NCR
15A	NCAC	02B	.0212*	17:01 NCR
15A	NCAC	02B	.0214-.0216*	17:01 NCR
15A	NCAC	02B	.0218*	17:01 NCR
15A	NCAC	02D	.0105	17:03 NCR
15A	NCAC	02D	.0507	17:03 NCR
15A	NCAC	02D	.0509	17:03 NCR
15A	NCAC	02D	.0515-.0516	17:03 NCR
15A	NCAC	02D	.0521*	17:03 NCR
15A	NCAC	02D	.0606	17:03 NCR
15A	NCAC	02D	.0608*	17:03 NCR
15A	NCAC	02D	.0927*	17:03 NCR
15A	NCAC	02D	.0932	17:03 NCR
15A	NCAC	02D	.0954	17:03 NCR
15A	NCAC	09C	.1201	16:24 NCR
15A	NCAC	09C	.1202*	16:24 NCR
15A	NCAC	09C	.1203-.1204	16:24 NCR
15A	NCAC	09C	.1205-.1208*	16:24 NCR
15A	NCAC	09C	.1209-.1211	16:24 NCR
15A	NCAC	09C	.1212-.1213*	16:24 NCR
15A	NCAC	09C	.1214	16:24 NCR
15A	NCAC	09C	.1215-.1218*	16:24 NCR
15A	NCAC	09C	.1220-.1221	16:24 NCR
15A	NCAC	09C	.1222-.1223*	16:24 NCR
15A	NCAC	09C	.1224	16:24 NCR
15A	NCAC	09C	.1225*	16:24 NCR
15A	NCAC	09C	.1226	16:24 NCR
15A	NCAC	10F	.0327*	17:01 NCR
15A	NCAC	10F	.0368	17:01 NCR
15A	NCAC	10I	.0102*	17:05 NCR
15A	NCAC	10K	.0102-.0103*	17:06 NCR
15A	NCAC	18C	.1510	17:02 NCR

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15A	NCAC	19A	.0101	16:11 NCR
15A	NCAC	19A	.0102*	16:11 NCR
15A	NCAC	19A	.0201-.0202*	16:11 & 16:23 NCR
15A	NCAC	19A	.0204*	16:23 NCR
15A	NCAC	19A	.0205*	16:22 NCR
15A	NCAC	19A	.0207*	16:22 NCR
15A	NCAC	19A	.0209*	16:22 NCR
15A	NCAC	19A	.0401*	16:23 NCR
15A	NCAC	19A	.0801-.0803	16:22 NCR
15A	NCAC	19A	.0901-.0907	16:23 NCR
15A	NCAC	19C	.0801	16:22 NCR
15A	NCAC	21A	.0815*	16:23 NCR
15A	NCAC	21A	.0816-.0818	16:23 NCR
15A	NCAC	21A	.0821	16:23 NCR
17	NCAC	12A	.0101	not required G.S. 150B-1(d)(4)
17	NCAC	12A	.0201	not required G.S. 150B-1(d)(4)
17	NCAC	12A	.0301	not required G.S. 150B-1(d)(4)
17	NCAC	12B	.0102	not required G.S. 150B-1(d)(4)
17	NCAC	12B	.0106	not required G.S. 150B-1(d)(4)
17	NCAC	12B	.0201	not required G.S. 150B-1(d)(4)
17	NCAC	12B	.0301	not required G.S. 150B-1(d)(4)
17	NCAC	12B	.0401-.0402	not required G.S. 150B-1(d)(4)
17	NCAC	12B	.0404-.0406	not required G.S. 150B-1(d)(4)
17	NCAC	12B	.0411	not required G.S. 150B-1(d)(4)
17	NCAC	12B	.0413-.0414	not required G.S. 150B-1(d)(4)
17	NCAC	12B	.0503	not required G.S. 150B-1(d)(4)
17	NCAC	12D	.0102-.0103	not required G.S. 150B-1(d)(4)
18	NCAC	06	.1104*	17:05 NCR
18	NCAC	06	.1205-.1206*	17:05 NCR
18	NCAC	06	.1208*	17:05 NCR
18	NCAC	06	.1213*	17:05 NCR
18	NCAC	06	.1319	17:05 NCR
18	NCAC	06	.1320*	17:05 NCR
18	NCAC	06	.1501*	16:22 & 17:05 NCR
19A	NCAC	02D	.0643-.0644*	16:19 NCR
19A	NCAC	03G	.0205*	17:05 NCR
21	NCAC	04B	.0603*	16:22 NCR
21	NCAC	08A	.0201	17:06 NCR
21	NCAC	08A	.0301*	17:06 NCR
21	NCAC	08A	.0315	17:06 NCR
21	NCAC	08F	.0101*	17:06 NCR
21	NCAC	08F	.0110-.0111*	17:06 NCR
21	NCAC	08F	.0113*	17:06 NCR
21	NCAC	08F	.0504	17:06 NCR
21	NCAC	08G	.0401*	17:06 NCR
21	NCAC	08G	.0403-.0404*	17:06 NCR
21	NCAC	08G	.0406*	17:06 NCR
21	NCAC	08G	.0409*	17:06 NCR
21	NCAC	08H	.0101*	17:06 NCR
21	NCAC	08H	.0106*	17:06 NCR
21	NCAC	08J	.0108*	17:06 NCR
21	NCAC	08J	.0110-.0111	17:06 NCR
21	NCAC	08M	.0101-.0104	17:06 NCR
21	NCAC	08M	.0106*	17:06 NCR
21	NCAC	08M	.0201-.0202	17:06 NCR
21	NCAC	08M	.0204	17:06 NCR
21	NCAC	08M	.0206-.0207	17:06 NCR
21	NCAC	08M	.0301-.0306	17:06 NCR
21	NCAC	08M	.0401-.0403	17:06 NCR
21	NCAC	08N	.0202-.0203*	17:06 NCR
21	NCAC	08N	.0205*	17:06 NCR

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21	NCAC	08N	.0208*	17:06 NCR
21	NCAC	08N	.0211*	17:06 NCR
21	NCAC	08N	.0302*	17:06 NCR
21	NCAC	08N	.0305*	17:06 NCR
21	NCAC	12	.0202*	17:06 NCR
21	NCAC	12	.0503*	17:06 NCR
21	NCAC	12	.0701*	17:06 NCR
21	NCAC	12	.0703*	17:06 NCR
21	NCAC	16B	.0304	17:06 NCR
21	NCAC	16B	.0305*	17:06 NCR
21	NCAC	16B	.0315*	17:06 NCR
21	NCAC	16C	.0203*	17:06 NCR
21	NCAC	16C	.0305*	17:06 NCR
21	NCAC	16I	.0101*	17:06 NCR
21	NCAC	16I	.0106-.0107*	17:06 NCR
21	NCAC	16L	.0104*	17:06 NCR
21	NCAC	16M	.0101*	17:06 NCR
21	NCAC	16M	.0102	17:06 NCR
21	NCAC	16P	.0105	17:06 NCR
21	NCAC	16R	.0101-.0102*	17:06 NCR
21	NCAC	16R	.0104*	17:06 NCR
21	NCAC	16R	.0105	17:06 NCR
21	NCAC	16R	.0107*	17:06 NCR
21	NCAC	21	.0104*	16:24 NCR
21	NCAC	21	.0301-.0302*	16:24 NCR
21	NCAC	21	.0501-.0502*	16:24 NCR
21	NCAC	21	.0503-.0504	16:24 NCR
21	NCAC	21	.0603*	16:24 NCR
21	NCAC	21	.0605-.0606*	16:24 NCR
21	NCAC	21	.0802*	16:24 NCR
21	NCAC	21	.0804	16:24 NCR
21	NCAC	21	.0902*	16:24 NCR
21	NCAC	21	.1001*	16:24 NCR
21	NCAC	21	.1002	16:24 NCR
21	NCAC	36	.0120*	16:22 NCR
21	NCAC	36	.0228*	16:22 NCR
21	NCAC	36	.0405*	16:23 NCR
21	NCAC	46	.1601-.1602*	17:06 NCR
21	NCAC	46	.1606	17:06 NCR
21	NCAC	46	.2107*	17:06 NCR
21	NCAC	46	.2109*	17:06 NCR
21	NCAC	46	.2507*	17:06 NCR
21	NCAC	46	.2801	17:06 NCR
21	NCAC	46	.2803*	17:06 NCR
21	NCAC	46	.2804	17:06 NCR
21	NCAC	46	.2805*	17:06 NCR
21	NCAC	46	.2808	17:06 NCR
21	NCAC	46	.3301*	17:06 NCR
21	NCAC	54	.2801*	16:23 NCR
21	NCAC	54	.2802	16:23 NCR
21	NCAC	54	.2806*	16:23 NCR
21	NCAC	57A	.0204*	17:06 NCR
21	NCAC	57A	.0210*	17:06 NCR
21	NCAC	57A	.0401*	17:06 NCR
21	NCAC	57A	.0403*	17:06 NCR
21	NCAC	57A	.0405	17:06 NCR
21	NCAC	57B	.0101*	17:06 NCR
21	NCAC	57B	.0210	17:06 NCR
21	NCAC	57B	.0306*	17:06 NCR
21	NCAC	57B	.0603*	17:06 NCR
21	NCAC	57B	.0607	17:06 NCR

APPROVED RULES

21	NCAC	57C	.0101*	17:06 NCR
21	NCAC	57C	.0102	17:06 NCR
21	NCAC	58A	.0107*	17:06 NCR
21	NCAC	58A	.0113*	17:06 NCR
21	NCAC	58A	.0302*	17:06 NCR
21	NCAC	58A	.0501	17:06 NCR
21	NCAC	58A	.0502*	17:06 NCR
21	NCAC	58E	.0203	17:06 NCR
21	NCAC	68	.0101*	17:06 NCR
21	NCAC	68	.0202*	17:06 NCR
21	NCAC	68	.0208*	17:06 NCR
21	NCAC	68	.0406*	17:06 NCR
21	NCAC	68	.0512*	17:06 NCR
21	NCAC	68	.0606*	17:06 NCR
23	NCAC	02C	.0305*	16:12 NCR
23	NCAC	02D	.0319*	16:19 NCR
23	NCAC	02E	.0402-.0403*	16:12 NCR
26	NCAC	02C	.0109	not required G.S. 150B-21.5(a)(4)
26	NCAC	02C	.0401	not required G.S. 150B-21.5(a)(4)
28	NCAC	01A	.0101	17:03 NCR
28	NCAC	01A	.0201	17:03 NCR
28	NCAC	01A	.0202-.0204*	17:03 NCR
28	NCAC	01A	.0301*	17:03 NCR
28	NCAC	01A	.0302	17:03 NCR
28	NCAC	02A	.0101	17:03 NCR
28	NCAC	02A	.0102-.0110*	17:03 NCR
28	NCAC	02A	.0202-.0204*	17:03 NCR
28	NCAC	03A	.0101	17:03 NCR
28	NCAC	03A	.0102*	17:03 NCR
28	NCAC	03A	.0201	17:03 NCR
28	NCAC	03A	.0301-.0302	17:03 NCR
28	NCAC	03A	.0303*	17:03 NCR
28	NCAC	03A	.0304	17:03 NCR
28	NCAC	03A	.0305*	17:03 NCR
28	NCAC	03A	.0306-.0307	17:03 NCR
28	NCAC	03A	.0308-.0309*	17:03 NCR
28	NCAC	03A	.0401	17:03 NCR
28	NCAC	03A	.0402*	17:03 NCR
28	NCAC	03A	.0403-.0406	17:03 NCR
28	NCAC	03A	.0501-.0502*	17:03 NCR
28	NCAC	04A	.0101-.0102*	17:03 NCR
28	NCAC	04A	.0103	17:03 NCR
28	NCAC	04A	.0104*	17:03 NCR
28	NCAC	04A	.0105	17:03 NCR
28	NCAC	04A	.0106*	17:03 NCR

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

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

(a) Definitions:

- (1) Department. The North Carolina Department of Agriculture and Consumer Services.
- (2) Ginseng. Any plant of the species *Panax quinquefolius* including cuttings, roots, fruits, seeds, propagules or any other plant part.
- (3) Ginseng Dealer. Any person who purchases or otherwise obtains ginseng roots which have been collected or cultivated in North Carolina

(4)

(5)

in any quantity for commercial use. This definition does not include those persons who directly collect or cultivate ginseng roots, or who obtain ginseng roots for their own personal use.

Export Certificate. A document issued to allow the export or shipment of ginseng out of the state by certifying that the ginseng covered by the document was legally collected or grown in North Carolina.

Five Year Old Wild Ginseng Plant. Any wild ginseng plant having at least three prongs (five-leaflet leaves) or, in the absence of leaves, having at least four discernible bud scars plus a bud on the neck (rhizome).

APPROVED RULES

- (6) Inspector. An employee of the Department or any other person authorized by the Commissioner to enforce the Plant Protection and Conservation Act and the rules adopted thereunder.
- (7) Person. Individual, corporation, partnership, firm, or association.
- (8) Record of Ginseng Purchases. A document completed by a ginseng dealer on a form provided by the Department to record ginseng purchases.
- (9) Record of Harvest Season Collection. A document completed and signed by a collector of wild ginseng and by an Inspector, certifying that the ginseng covered by the document was legally collected during the harvest season.
- (10) Statement Indicating Legal Collection of Ginseng from One's Own Land. A document completed and signed by a person verifying that the wild collected ginseng being sold was collected from that person's own land.
- (b) Purpose. The purpose of this Rule is to regulate trade in ginseng in North Carolina to obtain federal approval for the export of ginseng from the state, to support the ginseng trade within the state and to protect the species from over-collection and extinction.
- (c) Collection of Ginseng:
- (1) Harvest Season for the Collection of Ginseng. The ginseng harvest season shall be from September 1 through April 1. Harvesting ginseng outside of this period is prohibited except when the plants are dug from one's own land.
- (2) Collectors Harvesting or Selling Outside of the Harvest Season. Any person collecting wild ginseng outside of the harvest season must complete a Statement Indicating Legal Collection of Ginseng from One's Own Land before selling the ginseng. This form shall be available from ginseng dealers. Any person collecting ginseng within the harvest season but wishing to sell the ginseng outside of the season must complete a Record of Harvest Season Collection and have it signed by an Inspector before the end of the harvest season; the form is available from Inspectors.
- (3) Size of Collected Plants. Collection of any wild ginseng plant not meeting the definition of a five year old wild ginseng plant is prohibited except for the purpose of replanting.
- (4) The Replanting of Ginseng. All persons collecting ginseng from the wild shall plant the seeds of collected plants within 100 feet of where the plants are located. Ginseng seeds may be collected from the wild for replanting to a different location only if the plant bearing the seeds is not also collected in the same harvest season.
- (5) Any person collecting wild ginseng on the lands of another for any purpose shall, at time of collection, have on his or her person written permission from the landowner, as required under G.S. 106-202.19(1).
- (6) Possession of freshly dug ginseng on the lands of another shall constitute prima facie evidence that the ginseng was taken from the same land on which the collector was found.
- (d) Purchase and Sale of Ginseng:
- (1) Ginseng Dealer Permits. All ginseng dealers shall obtain a permit from the Plant Industry Division of the Department prior to purchasing ginseng. Permits shall be valid from July 1 or the date of issue, whichever is later, to the following June 30. No ginseng shall be purchased by a ginseng dealer without a current permit.
- (2) Buying Season for Ginseng. The buying season for wild collected ginseng shall be from September 1 through the following April 1 for green ginseng and from September 15 through the following April 1 for dried ginseng. To buy wild collected ginseng outside of this buying season a ginseng dealer must obtain from the collector either:
- (A) a completed Statement Indicating Legal Collection of Ginseng from One's Own Land; or
- (B) a Record of Harvest Season Collection completed by the collector and signed by an Inspector.
- (3) Purchase Records. Every ginseng dealer shall keep a record of each purchase of ginseng collected or grown in North Carolina on the applicable Record of Ginseng Purchases provided by the Department. Forms from previous years, copies, or any forms other than those provided by the Department for the current permit period shall not be used. Records of Ginseng Purchases shall be made available for inspection by an Inspector and applicable records shall be surrendered to an Inspector upon issuance of an Export Certificate or upon request. The applicable Statement Indicating Legal Collection of Ginseng from One's Own Land or Record of Harvest Season Collection shall be attached to any Record of Ginseng Purchases recording a purchase of wild collected ginseng collected outside of the harvest season or bought outside of the buying season.
- (4) Purchase of Ginseng from Other Ginseng Dealers. All ginseng dealers who purchase ginseng from other ginseng dealers located in North Carolina shall purchase only from those ginseng dealers that have valid dealer permits. Such purchases shall be recorded in a Record of Dealer-Dealer Transactions. Ginseng purchased from ginseng dealers who lack valid permits shall not be certified for export or shipment out of the state.
- (5) Exportation and Shipment of Ginseng. All

persons who have ginseng in any quantity and wish to export or ship any amount out of the state shall obtain an export certificate from an Inspector. To obtain an export certificate a person must have accurate records of his purchases, present and surrender the original Record of Ginseng Purchases upon issuance of an export certificate and possess a valid ginseng dealer's permit.

History Note: Authority G.S. 106-202.15; 106-202.21; Eff. June 30, 1981; Amended Eff. April 1, 2003; July 1, 1998; August 1, 1990; May 1, 1984.

title and effective date of employment, the checklist shall verify that all training standards contained within the approved curriculum have been completed. The verification of training form shall contain an authorizing signature line and a space to record the date.

(d) Upon receipt of the Verification of Training Standards checklist by the Department of Correction, departmental staff shall review the checklist and respond in a memorandum to the private correctional service provider as to whether the individual applicant meets or does not meet the training standards.

(e) Once approved, future changes to the training curriculum that could affect its approval shall be submitted to the Department of Correction for additional review.

History Note: Authority S.L. 2001-378; Temporary Adoption Eff. March 6, 2002; Eff. April 1, 2003.

TITLE 5 – DEPARTMENT OF CORRECTION

05 NCAC 06 .0101 APPLICATION

The Rules in this Chapter apply to the hiring and training of private correctional service providers.

History Note: Authority S.L. 2001-378; Temporary Adoption Eff. March 6, 2002; Eff. April 1, 2003.

05 NCAC 06 .0102 PURPOSE

The purpose of these Rules is to establish the training standards, methods to verify compliance with the training and hiring standards and the method of monitoring the standards by the Department of Correction for officers and security supervisors employed by private correctional service providers operating within the State.

History Note: Authority S.L. 2001-378; Temporary Adoption Eff. March 6, 2002; Eff. April 1, 2003.

05 NCAC 06 .0301 TRAINING STANDARDS

(a) In order to show that those correctional officers and security supervisors required to comply with S.L. 2001-378 s .1.(2) are in compliance, the private correctional service provider shall submit its training curriculum and all relevant documents related to training to the North Carolina Department of Correction.

(b) The North Carolina Department of Correction shall review the training curriculum and related information and shall certify in writing to the private correctional service provider that it meets or does not meet the standards of the Criminal Justice Education and Training Standards Commission. Should the Department determine that the curriculum fails to meet the standards, it shall provide direction related to the problem areas and allow the private provider to resubmit only those portions in question.

(c) The Department of Correction shall verify that correctional officers and security supervisors working for private correctional service providers have met the training standards. To accomplish this all private correctional service providers shall submit a "Verification of Training Standards" checklist for each correctional officer and security supervisor to the department. In addition to the applicant's name, social security number, position

05 NCAC 06 .0401 REVIEW OF COMPLIANCE

The Department of Correction may monitor and audit private correctional service provider's records related to the hiring and training standards. To facilitate this function the private correctional service provider shall maintain individual personnel files and training records for each correctional officer and security supervisor. These files and records shall:

- (1) contain all necessary documentation required to verify that an individual correctional officer or security supervisor meets the minimum hiring standards;
- (2) contain all necessary documentation required to verify that an individual correctional officer or security supervisor has completed the approved training standards; and
- (3) be accessible upon request to Department of Correction personnel for review and audit. Should the Department of Correction have concerns or require additional information related to the hiring and training standards of any individual correctional officer or security supervisor, they may request additional information be provided.

History Note: Authority S.L. 2001-378; Temporary Adoption Eff. March 6, 2002; Eff. April 1, 2003.

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10 NCAC 03C .3101 GENERAL REQUIREMENTS

(a) An application for licensure shall be submitted to the Division prior to a license being issued or patients admitted.

(b) An existing facility shall not sell, lease or subdivide a portion of its bed capacity without the approval of the Division.

(c) Application forms may be obtained by contacting the Division.

(d) The Division shall be notified in writing prior to the occurrence of any of the following:

- (1) addition or deletion of a licensable service;
- (2) increase or decrease in bed capacity;

- (3) change of chief executive officer;
 - (4) change of mailing address;
 - (5) ownership change; or
 - (6) name change.
- (e) Each application shall contain the following information:
- (1) legal identity of applicant;
 - (2) name or names under which the hospital or services are presented to the public;
 - (3) name of the chief executive officer;
 - (4) ownership disclosure;
 - (5) bed complement;
 - (6) bed utilization data;
 - (7) accreditation data;
 - (8) physical plant inspection data; and
 - (9) service data
- (f) A license shall include only facilities or pre mises within a single county.

History Note: Authority G.S. 131E-79; Eff. January 1, 1996; Amended Eff. April 1, 2003.

10 NCAC 03C .3111 TEMPORARY CHANGE IN BED CAPACITY

(a) A hospital may temporarily increase its bed capacity by up to 10 percent over its licensed bed capacity, as determined by the administrator, by utilizing observational beds for inpatients for a period of no more than 60 consecutive days following approval by the Division of Facility Services.

(b) To qualify for a temporary change in licensed capacity, the hospital census shall be at least 90 percent of its licensed bed capacity, excluding beds that are under renovation or construction, and the hospital must demonstrate conditions requiring the temporary increase that may include but are not limited to the following:

- (1) natural disaster;
- (2) catastrophic event; or
- (3) disease epidemic.

(c) The Division may approve a temporary increase in licensed beds only if:

- (1) It is determined that the request has met the requirements of Paragraphs (a) and (b) of this Rule; and
- (2) The hospital administrator certifies that the physical facilities to be used are adequate to safeguard the health and safety of patients. However this approval shall be revoked if the Division determines, as a result of a physical site visit, that these safeguards are not adequate to safeguard the health and safety of patients.

History Note: Authority G.S. 131E-79; Eff. April 1, 2003.

10 NCAC 03D .2501 ABBREVIATIONS

As used in this Subchapter, the following abbreviations mean:

- (1) AHA: American Heart Association;
- (2) CPR: Cardiopulmonary Resuscitation.
- (3) EMD: Emergency Medical Dispatcher;

- (4) EMDPRS: Emergency Medical Dispatch Priority Reference System;
- (5) EMS: Emergency Medical Services;
- (6) EMS-NP: EMS Nurse Practitioner;
- (7) EMS-PA: EMS Physician Assistant;
- (8) EMT: Emergency Medical Technician;
- (9) EMT-D: EMT-Defibrillation;
- (10) EMT-I: EMT-Intermediate;
- (11) EMT-P: EMT-Paramedic;
- (12) MICN: Mobile Intensive Care Nurse;
- (13) MR: Medical Responder; and
- (14) OEMS: Office of Emergency Medical Services;

History Note: Authority G.S. 143-508(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2502 AIR MEDICAL AMBULANCE

As used in this Subchapter, "Air Medical Ambulance" means an aircraft specifically designed and equipped to transport patients by air. The patient care compartment of air medical ambulances shall be staffed by medical crew members approved for the mission by the medical director.

History Note: Authority G.S. 143-508(b); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2503 AIR MEDICAL PROGRAM

As used in this Subchapter, "Air Medical Program" means a Specialty Care Transport Program designed and operated for transportation of patients by either fixed or rotary wing aircraft.

History Note: Authority G.S. 143-508(b); 143-508(d)(1); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2504 ASSISTANT MEDICAL DIRECTOR

As used in this Subchapter, "Assistant Medical Director" means a physician, EMS-PA, or EMS-NP who assists the medical director with the medical aspects of the management of an EMS System or EMS Specialty Care Transport Program.

History Note: Authority G.S. 143-508(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2505 CONVALESCENT AMBULANCE

As used in this Subchapter, "Convalescent Ambulance" means an ambulance used on a scheduled basis solely to transport patients having a known non-emergency medical condition. Convalescent ambulances shall not be used in place of any other category of ambulance defined in this Subchapter.

History Note: Authority G.S. 143-508(b); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2506 EDUCATIONAL MEDICAL

ADVISOR

As used in this Subchapter, "Educational Medical Advisor" means the physician responsible for overseeing the medical components of approved EMS educational programs in continuing education, basic, and advanced EMS educational institutions.

History Note: Authority G.S. 143-508(b); 143-508(d)(3); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2507 EMS EDUCATIONAL INSTITUTION

As used in this Subchapter, "EMS Educational Institution" means any agency credentialed by the OEMS to offer EMS educational programs.

History Note: Authority G.S. 143-508(b); 143-508(d)(4); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2509 EMS NONTRANSPORTING VEHICLE

As used in this Subchapter, "EMS Nontransporting Vehicle" means a motor vehicle dedicated and equipped to move medical equipment and EMS personnel functioning within the scope of practice of EMT-I or EMT-P to the scene of a request for assistance. EMS nontransporting vehicles shall not be used for the transportation of patients on the streets, highways, waterways, or airways of the state.

History Note: Authority G.S. 143-508(b); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2510 EMS SYSTEM

As used in this Subchapter, "EMS System" means a coordinated arrangement of resources (including personnel, equipment, and facilities) organized to respond to medical emergencies and integrated with other health care providers and networks including, but not limited to, public health, community health monitoring activities, and special needs populations.

History Note: Authority G.S. 143-508(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2511 GROUND AMBULANCE

As used in this Subchapter, "Ground Ambulance" means an ambulance used to transport patients with traumatic or medical conditions or patients for whom the need for emergency or non-emergency medical care is anticipated either at the patient location or during transport.

History Note: Authority G.S. 143-508(b); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2512 MEDICAL CREW MEMBERS

As used in this Subchapter, "Medical Crew Member" means EMS personnel or other health care professionals who are

licensed or registered in North Carolina and are affiliated with a Specialty Care Transport Program.

History Note: Authority G.S. 143-508(b); 143-508(d)(3); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2513 MEDICAL DIRECTOR

As used in this Subchapter, "Medical Director" means the physician responsible for the medical aspects of the management of an EMS System or EMS Specialty Care Transport Program.

History Note: Authority G.S. 143-508(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2514 MEDICAL OVERSIGHT

As used in this Subchapter, "Medical Oversight" means the responsibility for the management and accountability of the medical care aspects of an EMS System. Medical Oversight includes physician direction of the initial education and continuing education of EMS personnel; development and monitoring of both operational and treatment protocols; evaluation of the medical care rendered by EMS personnel; participation in system evaluation; and directing, by two-way voice communications, the medical care rendered by the EMS personnel.

History Note: Authority G.S. 143-508(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2515 MODEL EMS SYSTEM

As used in this Subchapter, "Model EMS System" means an approved EMS System that chooses to meet the criteria for and receives this designation by the OEMS.

History Note: Authority G.S. 143-508(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2516 OFFICE OF EMERGENCY MEDICAL SERVICES

As used in this Subchapter, "Office of Emergency Medical Services (OEMS)" means a section of the Division of Facility Services of the North Carolina Department of Health and Human Services located at 701 Barbour Drive, Raleigh, North Carolina 27603.

History Note: Authority G.S. 143-508(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2517 OPERATIONAL PROTOCOLS

As used in this Subchapter, "Operational Protocols" means the written administrative policies and procedures of an EMS System that provide guidance for the day-to-day operation of the system.

History Note: Authority G.S. 143-508(b); Temporary Adoption Eff. January 1, 2002;

Eff. April 1, 2003.

10 NCAC 03D .2518 PHYSICIAN

As used in this Subchapter, "Physician" means a medical or osteopathic doctor licensed by the North Carolina Medical Board to practice medicine in the state of North Carolina.

*History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03D .2519 QUALITY MANAGEMENT COMMITTEE

As used in this Subchapter, "Quality Management Committee" means a committee within an EMS System or Specialty Care Transport Program that is affiliated with a medical review committee as referenced in G.S. 143-518(a)(5) and is responsible for the continued monitoring and evaluation of medical and operational issues within the system and for improvement of the system.

*History Note: Authority G.S. 143-508(b); 143-518(a)(5);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03D .2520 SPECIALTY CARE TRANSPORT PROGRAM

As used in this Subchapter, "Specialty Care Transport Program" means a program designed and operated for the provision of specialized medical care and transportation of critically ill or injured patients.

*History Note: Authority G.S. 143-508(b); 143-508(d)(1);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03D .2523 TREATMENT PROTOCOLS

As used in this Subchapter, "Treatment Protocols" means a written document approved by the medical directors of both the local EMS System or Specialty Care Transport Program and the OEMS specifying the diagnostic procedures, treatment procedures, medication administration, and patient-care-related policies that shall be completed by EMS personnel or medical crew members based upon the assessment of a patient.

*History Note: Authority G.S. 143-508(b); 143-508(d)(6);
143-508(d)(7);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03D .2524 WATER AMBULANCE

As used in this Subchapter, "Water Ambulance" means a watercraft specifically designed and equipped to transport patients.

*History Note: Authority G.S. 143-508(b); 143-508(d)(8);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03D .2603 SPECIAL SITUATIONS

Upon application of citizens in North Carolina, the North Carolina Medical Care Commission shall approve the furnishing and providing of programs within the scope of practice of EMD, EMT, EMT-D, EMT-I, or EMT-P in North Carolina by persons who have been approved to provide these services by an agency of a state adjoining North Carolina or federal jurisdiction. This approval shall be granted where the North Carolina Medical Care Commission concludes that the requirements enumerated in Rule .2601 of this Subchapter cannot be reasonably obtained by reason of lack of geographical access.

*History Note: Authority G.S. 143-508(b)
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03D .2604 EMS PROVIDER LICENSE REQUIREMENTS

(a) Any firm, corporation, agency, organization or association that provides emergency medical services as its primary responsibility shall be licensed as an EMS provider by meeting the following criteria:

- (1) Be affiliated with an EMS System. Providers that apply for an initial EMS Provider License shall have until July 1, 2003, to comply with this requirement in the absence of an approved county system plan. Providers that apply for an initial EMS Provider License after July 1, 2003, shall comply with all requirements of this Rule;
- (2) Present an application for a permit for any ambulance that will be in service as required by G.S. 131E-156;
- (3) Submit a written plan detailing how the provider will furnish credentialed personnel;
- (4) Where there is a franchise ordinance in effect which covers the proposed service area, be granted a current franchise to operate or present written documentation of impending receipt of a franchise from the county; and
- (5) Present a written plan and method for recording systematic, periodic inspection repair, cleaning, and routine maintenance of all EMS responding vehicles.

(b) An EMS provider may renew its license by presenting documentation to the OEMS that the provider meets the criteria found in Paragraph (a) of this Rule.

*History Note: Authority G.S. 131E-155.1(c);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03D .2605 EMS PROVIDER LICENSE CONDITIONS

(a) Applications for an EMS Provider License must be received by the OEMS at least 30 days prior to the date that the provider proposes to initiate service. Applications for renewal of an EMS Provider License must be received by the OEMS at least 30 days prior to the expiration date of the current license.

(b) Only one license shall be issued to each EMS provider. The Department shall issue a license to the EMS provider following verification of compliance with applicable laws and rules.

- (c) EMS Provider Licenses shall not be transferred.
- (d) The license shall be posted in a prominent location accessible to public view at the primary business location of the EMS provider.
- (e) In order to provide a transition time for implementation of this Rule, EMS Provider Licenses obtained prior to the approval of the EMS System Plan for the county or counties served by the provider shall remain current until such time as the EMS System Plan is approved.

*History Note: Authority G.S. 131E-155.1(c);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03D .2606 TERM OF EMS PROVIDER LICENSE

- (a) EMS Provider Licenses shall remain in effect unless any of the following occurs:
 - (1) the Department imposes an administrative sanction which specifies license expiration;
 - (2) the EMS provider closes or goes out of business;
 - (3) the EMS provider changes name or ownership; or
 - (4) substantial failure to continue to comply with Rule .2604 of this Section.
- (b) When the name or ownership of the EMS provider changes, an EMS Provider License application shall be submitted to the OEMS at least 30 days prior to the effective date of the change.
- (c) For EMS providers maintaining affiliation with a Model EMS System, licenses may be renewed without requirement for submission of an application.

*History Note: Authority G.S. 131E-155.1(c);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03D .2607 GROUND AMBULANCE: VEHICLE AND EQUIPMENT REQUIREMENTS

- (a) To be permitted as a Ground Ambulance, a vehicle shall have:
 - (1) a patient compartment that meets the following minimum interior dimensions:
 - (A) the length, measured on the floor from the back of the driver's compartment, driver's seat or partition to the inside edge of the rear loading doors, shall be at least 102 inches; and
 - (B) the height shall be at least 48 inches over the patient area, measured from the approximate center of the floor, exclusive of cabinets or equipment;
 - (2) patient care equipment and supplies as defined in the treatment protocols for the system. Vehicles used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by

reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The equipment and supplies shall be clean, in working order, and secured in the vehicle;

- (3) other equipment to include:
 - (A) one fire extinguisher mounted in a quick release bracket that shall either be a dry chemical or all-purpose type and have a pressure gauge; and
 - (B) the availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the ambulance;
- (4) the name of the ambulance provider permanently displayed on each side of the vehicle;
- (5) reflective tape affixed to the vehicle such that there is reflectivity on all sides of the vehicle;
- (6) emergency warning lights and audible warning devices mounted on the vehicle as required by G.S. 20-125 in addition to those required by Federal Motor Vehicle Safety Standards. All warning devices shall function properly;
- (7) no structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the vehicle;
- (8) an operational two-way radio that shall:
 - (A) be mounted to the ambulance and installed for safe operation and controlled by the ambulance driver;
 - (B) have sufficient range, radio frequencies, and capabilities to establish and maintain two-way voice radio communication from within the defined service area of the EMS System to the emergency communications center or public safety answering point (PSAP) designated to direct or dispatch the deployment of the ambulance;
 - (C) be capable of establishing two-way voice radio communication from within the defined service area to the emergency department of the hospital(s) where patients are routinely transported and to facilities that provide on-line medical direction to EMS personnel;
 - (D) be equipped with a radio control device mounted in the patient compartment capable of operation by the patient attendant to receive on-line medical direction; and
 - (E) be licensed or authorized by the Federal Communications Commission (FCC).

- (b) Ground ambulances shall not use a radiotelephone device such as a cellular telephone as the only source of two-way radio voice communication.
- (c) Other communication instruments or devices such as data radio, facsimile, computer, or telemetry radio shall be in addition to the mission dedicated dispatch radio and shall function independently from the mission dedicated radio.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2608 CONVALESCENT AMBULANCE: VEHICLE AND EQUIPMENT REQUIREMENTS

- (a) To be permitted as a Convalescent Ambulance, a vehicle shall have:
- (1) a patient compartment that meets the following minimum interior dimensions:
 - (A) the length, measured on the floor from the back of the driver's compartment, driver's seat or partition to the inside edge of the rear loading doors, shall be at least 102 inches; and
 - (B) the height shall be at least 48 inches over the patient area, measured from the approximate center of the floor, exclusive of cabinets or equipment;
 - (2) patient care equipment and supplies as defined in the treatment protocols for the system. Vehicles used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The equipment and supplies shall be clean, in working order, and secured in the vehicle;
 - (3) other equipment to include:
 - (A) one fire extinguisher mounted in a quick release bracket that shall either be a dry chemical or all-purpose type and have a pressure gauge; and
 - (B) the availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the ambulance.
- (b) Convalescent Ambulances shall:
- (1) not be equipped, permanently or temporarily, with any emergency warning devices, audible or visual, other than those required by Federal Motor Vehicle Safety Standards;

- (2) have the name of the ambulance provider permanently displayed on each side of the vehicle;
- (3) not have emergency medical symbols, such as the Star of Life, Hock design cross, or any other medical markings, symbols, or emblems, including the word "EMERGENCY," on the vehicle;
- (4) have the words "CONVALESCENT AMBULANCE" lettered on both sides and on the rear of the vehicle body; and
- (5) have reflective tape affixed to the vehicle such that there is reflectivity on all sides of the vehicle.

- (c) A two-way radio or radiotelephone device such as a cellular telephone shall be available to summon emergency assistance for a vehicle permitted as a convalescent ambulance.
- (d) The convalescent ambulance shall not have structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the vehicle.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2609 AIR MEDICAL AMBULANCE: VEHICLE AND EQUIPMENT REQUIREMENTS

To be permitted as an Air Medical Ambulance, an aircraft shall meet the following requirements:

- (1) Configuration of the aircraft interior shall not compromise the ability to provide appropriate care or prevent providers from performing emergency procedures if necessary.
- (2) The aircraft shall have on board patient care equipment and supplies as defined in the treatment protocols for the program. Air Medical Ambulances used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The equipment and supplies shall be clean, in working order, and secured in the vehicle.
- (3) There shall be installed in the aircraft an internal voice communication system to allow for communication between the medical crew and flight crew.
- (4) Due to the different configurations and space limitations of air medical ambulances, the medical director shall designate the combination of medical equipment specified in Item (2) of this Rule that is carried on a

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- mission based on anticipated patient care needs.
- (5) Air Medical Ambulances shall have the name of the organization permanently displayed on each side of the aircraft.
 - (6) Air Medical Ambulances shall be equipped with a two-way voice radio licensed by the Federal Communications Commission capable of operation on any frequency required to allow communications with public safety agencies such as fire departments, police departments, ambulance and rescue units, hospitals, and local government agencies within the defined service area.
 - (7) All rotary wing aircraft permitted as an air medical ambulance shall have the following flight equipment operational in the aircraft:
 - (a) Two 360-channel VHF aircraft frequency transceivers;
 - (b) One VHF omnidirectional ranging (VOR) receiver;
 - (c) Attitude indicators;
 - (d) One transponder with 4097 code, Mode C with altitude encoding;
 - (e) Turn and slip indicator in the absence of three attitude indicators;
 - (f) Current FAA approved navigational aids and charts for the area of operations;
 - (g) Radar altimeter;
 - (h) Satellite Global Navigational System;
 - (i) Emergency Locator Transmitter (ELT);
 - (j) A remote control external search light;
 - (k) A light which illuminates the tail rotor;
 - (l) A fire extinguisher; and
 - (m) Survival gear appropriate for the service area and the number of occupants.
 - (8) Any fixed wing aircraft issued a permit to operate as an air medical ambulance shall have a current "Instrument Flight Rules" certification.
 - (9) The availability of one pediatric restraint device to safely transport pediatric patients under 20 pounds in the patient compartment of the air medical ambulance.
 - (10) The Air Medical Ambulance shall not have structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the aircraft.

To be permitted as a Water Ambulance, a watercraft shall meet the following requirements:

- (1) The watercraft shall have a patient care area that:
 - (a) provides access to the head, torso, and lower extremities of the patient while providing sufficient working space to render patient care;
 - (b) is covered to protect the patient and EMS personnel from the elements; and
 - (c) has an opening of sufficient size to permit the safe loading and unloading of a person occupying a litter.
- (2) The watercraft shall have on board patient care equipment and supplies as defined in the treatment protocols for the system. Water ambulances used by EMS providers that are not required to have treatment protocols shall have patient care equipment and supplies as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The equipment and supplies shall be clean, in working order, and secured in the vehicle.
- (3) Water ambulances shall have the name of the ambulance provider permanently displayed on each side of the watercraft.
- (4) Water ambulances shall have a 360-degree beacon warning light in addition to warning devices required in Chapter 75A, Article 1, of the North Carolina General Statutes.
- (5) Water ambulances shall be equipped with:
 - (a) two floatable rigid long backboards with proper accessories for securing infant, pediatric, and adult patients and stabilization of the head and neck;
 - (b) one floatable litter with patient restraining straps and capable of being secured to the watercraft;
 - (c) one fire extinguisher mounted in a quick release bracket that shall either be a dry chemical or all-purpose type and have a pressure gauge;
 - (d) lighted compass;
 - (e) radio navigational aids such as ADF (automatic directional finder), Satellite Global Navigational System, navigational radar, or other comparable radio equipment suited for water navigation;
 - (f) marine radio; and
 - (g) the availability of one pediatric restraint device to safely transport

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

**10 NCAC 03D .2610 WATER AMBULANCE:
WATERCRAFT AND EQUIPMENT REQUIREMENTS**

pediatric patients under 20 pounds in the patient compartment of the ambulance;

- (6) The water ambulance shall not have structural or functional defects that may adversely affect the patient, the EMS personnel, or the safe operation of the watercraft.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2611 AMBULANCE PERMIT CONDITIONS

- (a) An EMS provider shall apply to the OEMS for the appropriate Ambulance Permit prior to placing an ambulance in service.
- (b) The Department shall issue a permit for an ambulance following verification of compliance with applicable laws and rules.
- (c) Only one Ambulance Permit shall be issued for each ambulance.
- (d) An ambulance shall be permitted in only one category.
- (e) Ambulance Permits shall not be transferred except in the case of Air Medical Ambulance replacement aircraft when the primary aircraft is out of service.
- (f) The Ambulance Permit shall be posted as designated by the OEMS inspector.
- (g) In order to provide a transition time for implementation of this Rule, Ambulance Permits obtained prior to the approval of the EMS System Plan for the county or counties served by the provider shall remain current until such time as the EMS System Plan is approved.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2612 TERM OF AMBULANCE PERMIT

- (a) Ambulance Permits shall remain in effect unless any of the following occurs:
 - (1) The Department imposes an administrative sanction which specifies permit expiration;
 - (2) The EMS provider closes or goes out of business;
 - (3) The EMS provider changes name or ownership; or
 - (4) Substantial failure to comply with the applicable Paragraphs of Rules .2607, .2608, .2609, or .2610 of this Section.
- (b) Ambulance Permits shall be renewed without OEMS inspection for those ambulances currently operated within a Model EMS System.

History Note: Authority G.S. 131E-157(a); 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2613 EMS NONTRANSPORTING VEHICLE REQUIREMENTS

(a) To be permitted as an EMS Nontransporting Vehicle, a vehicle shall:

- (1) have patient care equipment and supplies as defined in the treatment protocols for the system. The equipment and supplies shall be clean, in working order, and secured in the vehicle.
- (2) have the name of the organization permanently displayed on each side of the vehicle.
- (3) have reflective tape affixed to the vehicle such that there is reflectivity on all sides of the vehicle.
- (4) have emergency warning lights and audible warning devices mounted on the vehicle as required by G.S. 20-125 in addition to those required by Federal Motor Vehicle Safety Standards. All warning devices shall function properly.
- (5) not have structural or functional defects that may adversely affect the EMS personnel or the safe operation of the vehicle.
- (6) have one fire extinguisher that shall be a dry chemical or all-purpose type with a pressure gauge, mounted in a quick-release bracket.
- (7) have an operational two-way radio that shall:
 - (A) be mounted to the EMS Nontransporting Vehicle and installed for safe operation and controlled by the driver;
 - (B) have sufficient range, radio frequencies, and capabilities to establish and maintain two-way voice radio communication from within the defined service area of the EMS System to the emergency communications center or public safety answering point (PSAP) designated to direct or dispatch the deployment of the ambulance;
 - (C) be capable of establishing two-way voice radio communication from within the defined service area to facilities that provide on-line medical direction to EMS personnel; and
 - (D) be licensed or authorized by the Federal Communications Commission (FCC).
- (8) not use a radiotelephone device such as a cellular telephone as the only source of two-way radio voice communication.

(b) Other communication instruments or devices such as data radio, facsimile, computer, or telemetry radio shall be in addition to the mission dedicated dispatch radio and shall function independently from the mission-dedicated radio.

History Note: Authority G.S. 143-508(d)(8); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2614 EMS NONTRANSPORTING VEHICLE PERMIT CONDITIONS

- (a) An EMS provider shall apply to the OEMS for an EMS Nontransporting Vehicle Permit prior to placing such a vehicle in service.
- (b) The Department shall issue a permit for a vehicle following verification of compliance with applicable laws and rules.
- (c) Only one EMS Nontransporting Vehicle Permit shall be issued for each vehicle.
- (d) EMS Nontransporting Vehicle Permits shall not be transferred.
- (e) The EMS Nontransporting Vehicle Permit shall be posted as designated by the OEMS inspector.
- (f) In order to provide a transition time for implementation of this Rule, EMS Nontransporting Vehicle Permits obtained prior to the approval of the EMS System Plan for the county or counties served by the provider shall remain current until such time as the EMS System Plan is approved.

*History Note: Authority G.S. 143-508(d)(8);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

**10 NCAC 03D .2615 TERM OF EMS
NONTRANSPORTING VEHICLE PERMIT**

- (a) EMS Nontransporting Vehicle Permits shall remain in effect for two years in an EMS System or four years in a Model EMS System, unless any of the following occurs:
 - (1) The Department imposes an administrative sanction that specifies permit expiration;
 - (2) The EMS provider closes or goes out of business;
 - (3) The EMS provider changes name or ownership; or
 - (4) Substantial failure to comply with Rule .2613 of this Section.
- (b) EMS Nontransporting Vehicle Permits shall be renewed without OEMS inspection for those vehicles currently operated within a Model EMS System.

*History Note: Authority G.S. 143-508(d)(8);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

**10 NCAC 03D .2703 GROUND SPECIALTY CARE
TRANSPORT PROGRAMS**

- (a) When transporting patients that have a medical need for one or more of the skills or procedures as defined for specialty care transport programs in .2701(a)(4) of this Section, staffing for the vehicle used in the ground specialty care transport program shall be at a level to ensure the capability to provide in the patient compartment, when the patient condition requires, two of the following personnel approved by the medical director as medical crew members:
 - (1) EMT-Paramedic;
 - (2) Nurse practitioner;
 - (3) Physician;
 - (4) Physician assistant;
 - (5) Registered nurse; and
 - (6) Respiratory therapist.
- (b) When transporting patients that do not require specialty care transport skills or procedures, staffing for the vehicles used in

the ground specialty care transport program shall be at a level to ensure compliance with G.S. 131E-158(a).

(c) In addition to the general requirements of specialty care transport programs in Rule .2701 of this Section, ground programs providing specialty care transports shall document that the program has:

- (1) a communication system that will provide, at a minimum, two-way voice communications to medical crewmembers anywhere in the service area of the program. The medical director shall verify that the communications system is satisfactory for on-line medical direction;
- (2) medical crewmembers that have all completed training regarding:
 - (A) operation of the EMS communications system used in the program; and
 - (B) the medical and safety equipment specific to the vehicles used in the program. This training shall be conducted every six months;
- (3) Operational protocols for the management of equipment, supplies and medications. These protocols shall include:
 - (A) A standard equipment and supply listing for all ambulance vehicles used in the program. This listing shall meet or exceed the requirements for each category of ambulance used in the program as found in Rules .2607, .2608, .2609, and .2610 of this Subchapter;
 - (B) A standard listing of medications for all ambulance and EMS nontransporting vehicles used in the system. This listing shall be based on the local treatment protocols and be approved by the medical director;
 - (C) A methodology to assure that each vehicle contains the required equipment and supplies on each response;
 - (D) A methodology for cleaning and maintaining the equipment and vehicles; and
 - (E) A methodology for assuring that supplies and medications are not used beyond the expiration date and stored in a temperature controlled atmosphere according to manufacturer's specifications;
- (4) A written plan for providing emergency vehicle operation education for program personnel who operate emergency vehicles; and
- (5) A written plan specifying how EMS Systems will request ambulances operated by the program.

(d) Ground Specialty Care Transport programs based outside of North Carolina may be granted approval by the OEMS to operate in North Carolina by submitting an application for

program approval. The application shall document that the program meets all criteria specified in Rules .2604 and .2701 of this Subchapter and Paragraphs (a) and (b) of this Rule.

History Note: Authority G.S. 143-508(d)(1), (d)(8), (d)(9); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2704 HOSPITAL-AFFILIATED GROUND SPECIALTY CARE TRANSPORT PROGRAMS USED FOR INPATIENT TRANSPORTS

(a) Patients transported by Hospital-affiliated Ground Specialty Care Transport Program shall:

- (1) Have a medical need for one or more of the skills or procedures as defined for Specialty Care Transport Programs as defined in .2701(a)(4); or
- (2) Be a patient of the hospital administering the program, or be scheduled for admission to or discharged from the hospital administering the program;

(b) In addition to the general requirements of Specialty Care Transport Programs in Rule .2701 of this section, hospital-affiliated ground programs providing specialty care transports shall document that the program has:

- (1) A communication system that will provide, at a minimum, two-way voice communications to medical crew members anywhere in the service area of the program. The medical director shall verify that the communications system is satisfactory for on-line medical direction.
- (2) Medical crew members that have all completed training regarding:
 - (A) Operation of the EMS communications system used in the program; and
 - (B) The medical and safety equipment specific to the vehicles used in the program. This training shall be conducted every six months.
- (3) Staffing at a level to ensure the capability to provide in the patient compartment, when the patient's condition requires, two of the following personnel approved by the medical director as medical crew members:
 - (A) EMT-Paramedic;
 - (B) Nurse practitioner;
 - (C) Physician;
 - (D) Physician assistant;
 - (E) Registered nurse; or
 - (F) Respiratory therapist.
- (4) Operational protocols for the management of equipment, supplies, and medications. These protocols shall include:
 - (A) A standard equipment and supply listing for all ambulance vehicles used in the program. This listing shall meet or exceed the requirements for each category of ambulance used in the program as found in Rules

.2607, .2608, .2609, and .2610 of this Subchapter;

- (B) A standard listing of medications for all ambulance and EMS nontransporting vehicles used in the program. This listing shall be based on the local treatment protocols and be approved by the medical director;
 - (C) A methodology to assure that each vehicle contains the required equipment and supplies on each response
 - (D) A methodology for cleaning and maintaining the equipment and vehicles; and
 - (E) A methodology for assuring that supplies and medications are not used beyond the expiration date and stored in a temperature-controlled atmosphere according to manufacturer's specifications.
- (5) A written plan for providing emergency vehicle operation education for program personnel who operate emergency vehicles.
 - (6) A written plan specifying how EMS systems will request ambulances operated by the program.

(c) Hospital-Affiliated Ground Specialty Care Transport Programs based outside of North Carolina may be granted approval by the OEMS to operate in North Carolina by submitting an application for program approval. The application shall document that the program meets all criteria specified in Rules .2604 and .2701 of this Subchapter and Paragraphs (a) and (b) of this Rule.

History Note: Authority G.S. 143-508(d)(1); (d)(8); (d)(9); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2801 COMPONENTS OF MEDICAL OVERSIGHT FOR EMS SYSTEMS

Each EMS System operating within the scope of practice for EMD, EMT-D, EMT-I, or EMT-P or seeking designation as a Model EMS System shall have the following components in place to assure medical oversight of the system:

- (1) A medical director appointed, either directly or by documented delegation, by the county responsible for establishing the EMS System. Systems may elect to appoint one or more assistant medical directors.
 - (a) For EMS Systems, the medical director and assistant medical directors shall meet the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office

of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and

- (b) For Model EMS Systems, the medical director and assistant medical directors shall also meet the additional criteria for medical directors of Model EMS Systems as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost;
- (2) Written treatment protocols for use by EMS personnel;
- (3) For systems providing EMD service, an EMDPRS approved by the medical director;
- (4) A quality management committee; and
- (5) Written procedures for use by EMS personnel to obtain on-line medical direction. On-line medical direction shall:
 - (a) Be restricted to medical orders that fall within the scope of practice of the EMS personnel and within the scope of approved system treatment protocols;
 - (b) Be provided only by physicians, EMS-physician assistants, EMS-nurse practitioners, or mobile intensive care nurses. Only physicians may deviate from written treatment protocols; and
 - (c) Be provided by a system of two-way voice communication that can be maintained throughout the treatment and disposition of the patient.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2802 COMPONENTS OF MEDICAL OVERSIGHT FOR SPECIALTY CARE TRANSPORT PROGRAMS

Each Specialty Care Transport Program shall have the following components in place to assure Medical Oversight of the system:

- (1) A medical director. The administration of the Specialty Care Transport Program shall appoint a medical director following the criteria for medical directors of Specialty Care Transport Programs as defined by the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data

Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. The program administration may elect to appoint one or more assistant medical directors;

- (2) Treatment protocols for use by medical crew members;
- (3) A quality management committee; and
- (4) A written protocol for use by medical crew members to obtain on-line medical direction. On-line medical direction shall:
 - (a) Be restricted to medical orders that fall within the scope of practice of the medical crew members and within the scope of approved program treatment protocols;
 - (b) Be provided only by physicians, EMS-physician assistants, EMS-nurse practitioners, or mobile intensive care nurses. Only physicians may deviate from written treatment protocols; and
 - (c) Be obtained via a system of two-way voice communication that can be maintained throughout the treatment and disposition of the patient.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2804 RESPONSIBILITIES OF THE MEDICAL DIRECTOR FOR SPECIALTY CARE TRANSPORT PROGRAMS

(a) The medical director for a Specialty Care Transport Program shall be responsible for the following:

- (1) The establishment, approval, and periodic updating of treatment protocols;
- (2) Medical supervision of the selection, program orientation, continuing education, and performance of medical crew members;
- (3) Medical supervision of a scope of practice performance evaluation for all medical crew members in the program based on the treatment protocols for the program;
- (4) The medical review of the care provided to patients;
- (5) Keeping the care provided up to date with current medical practice; and
- (6) In air medical programs, determination and specification of the medical equipment required in Item (2) of Rule .2609 of this Subchapter that is carried on a mission based on anticipated patient care needs.

(b) Any tasks related to Paragraph (a) of this Rule may be completed, through clearly established written delegation, by

assisting physicians, physician assistants, nurse practitioners, registered nurses, or medical crew members.

(c) The medical director shall have the authority to suspend temporarily, pending due process review, any medical crew members from further participation in the Specialty Care Transport Program when it is determined the activities or medical care rendered by such personnel may be detrimental to the care of the patient, constitute unprofessional behavior, or result in non-compliance with credentialing requirements.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2805 REQUIREMENTS FOR TREATMENT PROTOCOLS FOR EMS SYSTEMS

(a) Written Treatment Protocols:

- (1) Used in EMS Systems shall meet the minimum standard treatment protocols as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost;
- (2) Used in Model EMS Systems shall also meet the minimum standard treatment protocols for Model EMS Systems as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and
- (3) Shall not contain medical procedures, medications, or intravenous fluids that exceed the scope of practice defined by the North Carolina Medical Board pursuant to G.S. 143-514 for the level of care offered in the EMS System or any other applicable health care licensing board.

(b) Treatment protocols developed locally shall, at a minimum, meet the requirements of Paragraph (a) of this Rule, shall be reviewed annually and any change in the treatment protocols shall be submitted to the OEMS Medical Director for review and approval at least 30 days prior to the implementation of the change.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2806 REQUIREMENTS FOR TREATMENT PROTOCOLS FOR SPECIALTY CARE TRANSPORT PROGRAMS

(a) Treatment protocols used by medical crew members within a Specialty Care Transport Program shall:

- (1) be approved by the OEMS Medical Director and incorporate all skills, medications, equipment, and supplies for Specialty Care Transport Programs as defined by the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and
- (2) not contain medical procedures, medications, or intravenous fluids that exceed the scope of practice of the medical crew members.

(b) Treatment protocols shall be reviewed annually, and any change in the treatment protocols shall be submitted to the OEMS Medical Director for review and approval at least 30 days prior to the implementation of the change.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2807 REQUIREMENTS FOR EMERGENCY MEDICAL DISPATCH PRIORITY REFERENCE SYSTEM (EMDPRS)

(a) EMDPRS used by EMD's within an approved EMD program shall:

- (1) be approved by the OEMS Medical Director and meet or exceed the statewide standard for EMDPRS as defined by the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and
- (2) not exceed the EMD scope of practice defined by the North Carolina Medical Board pursuant to G.S. 143-514.

(b) An EMDPRS developed locally shall be reviewed and updated annually and submitted to the OEMS medical director for approval. Any change in the EMDPRS shall be submitted to the OEMS medical director for review and approval at least 30 days prior to the implementation of the change.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2808 QUALITY MANAGEMENT COMMITTEE FOR EMS SYSTEMS

(a) The quality management committee for an EMS System shall:

- (1) Be composed of at least one voting representative from each of the following components of the system:
 - (A) Physicians;
 - (B) Nurses;
 - (C) Medical facility personnel such as pharmacists or respiratory therapists;
 - (D) EMS educators;
 - (E) County government officials; and
 - (F) EMS providers.
- (2) Appoint a physician as chairperson;
- (3) Meet, at a minimum, on a quarterly basis;
- (4) Ensure that a medical review committee as referenced in G.S. 143-518(a)(5), or subcommittee thereof, analyzes system data to evaluate the ongoing quality of patient care and medical direction within the system;
- (5) Use information gained from system data analysis to make recommendations regarding the content of educational programs for EMS personnel;
- (6) Review treatment protocols of the EMS System and make recommendations to the medical director for changes;
- (7) Establish a written procedure to guarantee reviews for EMS personnel temporarily suspended by the medical director; and
- (8) Maintain minutes of committee meetings throughout the approval period of the EMS System.

(b) The quality management committee shall adopt written guidelines that address at a minimum:

- (1) Structure of committee membership;
- (2) Appointment of committee officers;
- (3) Appointment of committee members;
- (4) Length of terms of committee members;
- (5) Frequency of attendance of committee members;
- (6) Establishment of a quorum for conducting business; and
- (7) Confidentiality of medical records and personnel issues.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2809 QUALITY MANAGEMENT COMMITTEE FOR SPECIALTY CARE TRANSPORT PROGRAMS

(a) The quality management committee for a Specialty Care Transport Program shall:

- (1) Be composed of at least one voting representative from each of the following components of the program:
 - (A) Physicians;
 - (B) Nurses;
 - (C) Medical facility personnel such as pharmacists or respiratory therapists;
 - (D) Educators; and
 - (E) Medical crew members;

- (2) Appoint a physician as chairperson;
- (3) Meet, at a minimum, on a quarterly basis;
- (4) Ensure that a medical review committee as referenced in G.S. 143-518(a)(5), or subcommittee thereof, analyzes system data to evaluate the ongoing quality of patient care and medical direction within the program;
- (5) Use information gained from program data analysis to make recommendations regarding the content of educational programs for medical crew members;
- (6) Review treatment protocols of the Specialty Care Transport Programs and make recommendations to the medical director for changes;
- (7) Establish a written procedure to guarantee reviews for medical crew members temporarily suspended by the medical director; and
- (8) Maintain minutes of committee meetings throughout the approval period of the Specialty Care Transport Program.

(b) Each quality management committee shall adopt written guidelines that address at a minimum:

- (1) Structure of committee membership;
- (2) Appointment of committee officers;
- (3) Appointment of committee members;
- (4) Length of terms of committee members;
- (5) Frequency of attendance of committee members;
- (6) Establishment of a quorum for conducting business; and
- (7) Confidentiality of medical records and personnel issues.

History Note: Authority G.S. 143-508(b); 143-509(12); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2904 TERM OF CREDENTIALS FOR EMS PERSONNEL

Credentials for EMS Personnel shall be valid for a period of four years.

History Note: Authority G.S. 131E-159 (a); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .2910 CREDENTIALING OF INDIVIDUALS TO ADMINISTER LIFESAVING TREATMENT TO PERSONS SUFFERING AN ADVERSE REACTION TO AGENTS THAT MIGHT CAUSE ANAPHYLAXIS

(a) To become credentialed by the North Carolina Medical Care Commission to administer epinephrine to persons who suffer adverse reactions to agents that might cause anaphylaxis, a person shall meet the following:

- (1) Be 18 years of age or older; and
- (2) Successfully complete an educational program taught by a physician licensed to practice medicine in North Carolina or designee of the

physician. The educational program shall instruct individuals in the appropriate use of procedures for the administration of epinephrine to pediatric and adult victims who suffer adverse reactions to agents that might cause anaphylaxis and shall include at a minimum the following:

- (A) Definition of anaphylaxis;
- (B) Agents that might cause anaphylaxis and the distinction between them, including drugs, insects, foods, and inhalants;
- (C) Recognition of symptoms of anaphylaxis for both pediatric and adult victims;
- (D) Appropriate emergency treatment of anaphylaxis as a result of agents that might cause anaphylaxis;
- (E) Availability and design of packages containing equipment for administering epinephrine to victims suffering from anaphylaxis as a result of agents that might cause anaphylaxis;
- (F) Pharmacology of epinephrine including indications, contraindications, and side effects;
- (G) Discussion of legal implications of rendering aid; and
- (H) Instruction that treatment is to be utilized only in the absence of the availability of physicians or other practitioners who are authorized to administer the treatment.

(b) A credential to administer epinephrine to persons who suffer adverse reactions to agents that might cause anaphylaxis may be issued by the North Carolina Medical Care Commission upon receipt of a completed application signed by the applicant and the physician who taught or was responsible for the educational program. All credentials shall be valid for the period stated on the credential issued to applicant.

*History Note: Authority G.S. 143-508(d)(11);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03D .3004 TRANSITION FOR APPROVED TEACHING INSTITUTIONS

Approved Teaching Institutions under contract with the OEMS as of April 30, 2002, shall be credentialed as an EMS Educational Institution consistent with the existing level of approval through December 31, 2003. These institutions may continue to offer courses currently allowed under the contract while preparing for credentialing under Rules .3001, .3002, and .3003.

*History Note: Authority G.S. 143-508(b);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03D .3201 TRAUMA SYSTEM

DEFINITIONS

The following definitions apply throughout this Subchapter:

- (1) "ACS" stands for the American College of Surgeons.
- (2) "Advanced Trauma Life Support (ATLS)" refers to the course sponsored by the American College of Surgeons.
- (3) "Affiliated Hospital" means a non-trauma center hospital that is owned by the trauma center such that a contract or other agreement exists between these facilities to allow for the diversion or transfer of the trauma center's patient population to this non-trauma center hospital.
- (4) "Attending" is a physician who has completed medical or surgical residency and is either eligible to take boards in a specialty area or is boarded in a specialty.
- (5) "Board Certified, Board Certification, Board Eligible, Board Prepared, or Boarded" means approval by the American Board of Medical Specialties, the Advisory Board for Osteopathic Specialties, or the Royal College of Physicians and Surgeons of Canada unless a further sub-specialty such as the American Board of Surgery or Emergency Medicine is specified.
- (6) "Bypass" means the transport of an emergency medical services patient past an emergency medical services receiving facility for the purposes of accessing a designated trauma center or a higher-level trauma center.
- (7) "Contingencies" are conditions placed on a trauma center's designation that, if unmet, can result in the loss or amendment of a hospital's designation.
- (8) "Deficiency" is the failure to meet essential criteria for a trauma center's designation as specified in Section .3300 of this Subchapter, that can serve as the basis for a focused review or denial of a trauma center designation.
- (9) "Department" means the North Carolina Department of Health and Human Services.
- (10) "Diversion" means that a hospital of its own volition reroutes a trauma patient to a trauma center from the scene or referring hospital.
- (11) "E-Code" is a numeric identifier that defines the cause of injury, taken from the International Classification of Diseases (ICD).
- (12) "Essential Criteria" means those items listed in Rules .3301, .3302, and .3303 of this Section that are the minimum requirements in staffing, equipment, services, etc., for the respective level of trauma center designation (I, II, or III).
- (13) "Focused Review" is an evaluation of the trauma center's corrective actions to remove contingencies (as the result of deficiencies) placed upon it following a renewal site visit.
- (14) "Hospital" means a licensed facility as defined in G.S. 131E-176.

APPROVED RULES

- (15) "Immediately Available" means the physical presence of the health professional in a location in the trauma center as defined by the needs of the trauma patient.
- (16) "Lead RAC Agency" is the agency (comprised of one or more Level I or II trauma centers) that provides staff support and serves as the coordinating entity for trauma planning in a region.
- (17) "Level I Trauma Center" is a regional resource trauma center that has the capability of providing leadership, research, and total care for every aspect of injury from prevention to rehabilitation.
- (18) "Level II Trauma Center" is a hospital that provides definitive trauma care regardless of the severity of the injury but may not be able to provide the same comprehensive care as a Level I trauma center and does not have trauma research as a primary objective.
- (19) "Level III Trauma Center" is a hospital that provides prompt assessment, resuscitation, emergency operations, and stabilization, and arranges for hospital transfer as needed to a Level I or II trauma center.
- (20) "Mid-level Practitioner means a physician assistant or nurse practitioner who routinely cares for trauma patients."
- (21) "OEMS" means the Office of Emergency Medical Services.
- (22) "Post Graduate Year Four (PGY4)" means any surgery resident having completed three clinical years of general surgical training. A pure laboratory year shall not constitute a clinical year.
- (23) "Promptly Available" means the physical presence of health professionals in a location in the trauma center within a short period of time, that is defined by the trauma system (director) and continuously monitored by the performance improvement program.
- (24) "RAC" stands for "Regional Advisory Committee" which is comprised of a lead RAC agency and a group representing trauma care providers and the community, for the purpose of regional trauma planning, establishing, and maintaining a coordinated trauma system.
- (25) "Revocation" means the removal of a trauma center designation for concerns related to patient morbidity or mortality or failure to meet essential criteria or recurrent contingencies.
- (26) "RFP" stands for "Request for Proposal" and is a standardized state document that must be completed by each hospital seeking initial or renewal trauma center designation.
- (27) "Transfer Agreement" means a formal written agreement between two agencies specifying the appropriate transfer of patient populations delineating the conditions and methods of transfer.
- (28) "Trauma Center" is a hospital facility designated by the State of North Carolina and distinguished by its ability to immediately manage, on a 24-hour basis, the severely injured patient or those at risk for severe injury.
- (29) "Trauma Center Criteria" means essential criteria to define Level I, II, or III trauma centers.
- (30) "Trauma Center Designation" means a formalized process of approval in which a hospital voluntarily seeks to have its trauma care capabilities and performance evaluated by experienced on-site reviewers.
- (31) "Trauma Guidelines" are suggested standards for practice in a variety of situations within the trauma system.
- (32) "Trauma Minimum Data Set" means the basic data required of all hospitals for submission to the trauma statewide database.
- (33) "Trauma Patient" is any patient with an ICD-9-CM discharge diagnosis 800.00-959.9 excluding 905-909 (late effects of injury), 910.0-924 (blisters, contusions, abrasions, and insect bites), and 930-939 (foreign bodies).
- (34) "Trauma Performance Improvement Program (TPIP)" means a system in which outcome data is used to modify the process of patient care and prevent repetition of adverse events.
- (35) "Trauma Program" means an administrative entity that includes the trauma service and coordinates other trauma related activities. It must also include, at a minimum, the trauma medical director, trauma program manager/trauma coordinator, and trauma registrar. This program's reporting structure shall give it the ability to interact with at least equal authority with other departments providing patient care.
- (36) "Trauma Protocols" are standards for practice in a variety of situations within the trauma system.
- (37) "Trauma Registry" is an OEMS-maintained database to provide information for analysis and evaluation of the quality of patient care, including epidemiological and demographic characteristics of trauma patients.
- (38) "Trauma Service" means a clinical service established by the medical staff that has oversight of and responsibility for the care of the trauma patient.
- (39) "Trauma System" means an integrated network that ensures that acutely injured patients are expeditiously taken to hospitals appropriate for their level of injury.
- (40) "Trauma Team" means a group of health care professionals organized to provide coordinated and timely care to the trauma patient.
- (41) "Triage" is a predetermined schematic for patient distribution based upon established medical needs.

*History Note: Authority G.S. 131E-162;
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

**10 NCAC 03D .3301 LEVEL I TRAUMA CENTER
CRITERIA**

To receive designation as a Level I Trauma Center, a hospital shall have the following:

- (1) A trauma program and a trauma service that have been operational for at least six months prior to application for designation;
- (2) Membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal;
- (3) Trauma medical director who is a board-certified general surgeon. The trauma medical director must:
 - (a) Have a minimum of three years clinical experience on a trauma service or trauma fellowship training;
 - (b) Serve on the center's trauma service;
 - (c) Participate in providing care to patients with life-threatening or urgent injuries;
 - (d) Participate in the North Carolina Chapter of the ACS Committee on Trauma as well as other regional and national trauma organizations;
 - (e) Remain a current provider in the ACS' Advanced Trauma Life Support Course and in the provision of trauma-related instruction to other health care personnel; and
 - (f) Be involved with trauma research and the publication of results and presentations.
- (4) A full-time trauma nurse coordinator (TNC)/program manager (TPM) who is a registered nurse, licensed by the North Carolina Board of Nursing;
- (5) A full-time trauma registrar (TR) who has a working knowledge of medical terminology, is able to operate a personal computer, and has demonstrated the ability to extract data from the medical record;
- (6) A hospital department/division/section for general surgery, neurological surgery, emergency medicine, anesthesiology, and orthopaedic surgery, with designated chair or physician liaison to the trauma program for each;
- (7) Clinical capabilities in general surgery with two separate posted call schedules. One shall be for trauma, one for general surgery. In those instances where a physician may simultaneously be listed on both schedules, there must be a defined back-up surgeon listed on the schedule to allow the trauma surgeon to provide care for the trauma patient. The

trauma service director shall specify, in writing, the specific credentials that each back-up surgeon must have. These, at a minimum, must state that the back-up surgeon has surgical privileges at the trauma center and is boarded or eligible in general surgery (with board certification in general surgery within five years of completing residency). If a trauma surgeon is simultaneously on call at more than one hospital, there shall be a defined, posted trauma surgery back-up call schedule composed of surgeons credentialed to serve on the trauma panel.

- (8) Response of a trauma team to provide evaluation and treatment of a trauma patient 24 hours per day that includes:
 - (a) An in-house Post Graduate Year 4 (PGY4) or senior general surgical resident, at a minimum, who is a member of that hospital's surgical residency program and responds within 20 minutes of notification;
 - (b) A trauma attending whose presence at the patient's bedside within 20 minutes of notification is documented and who participates in therapeutic decisions and is present at all operative procedures;
 - (c) An emergency physician who is present in the Emergency Department 24 hours per day who is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine). Emergency physicians caring only for pediatric patients may, as an alternative, be boarded or prepared in pediatric emergency medicine. Emergency physicians must be board-certified within five years after successful completion of a residency in emergency medicine and serve as a designated member of the trauma team until the arrival of the trauma surgeon;
 - (d) Neurosurgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, unless there is either an in-house attending neurosurgeon, a Post Graduate Year 2 (PGY2) or higher in-house neurosurgery resident or an in-house trauma surgeon or emergency physician as long as the institution can document management guidelines and annual continuing medical education for neurosurgical

- emergencies. There must be a specified written back-up on the call schedule whenever the neurosurgeon is simultaneously on-call at a hospital other than the trauma center;
- (e) Orthopaedic surgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, unless there is either an in-house attending orthopaedic surgeon, a Post Graduate Year 2 (PGY2) or higher in-house orthopaedic surgery resident or an in-house trauma surgeon or emergency physician as long as the institution can document management guidelines and annual continuing medical education for orthopaedic emergencies. There must be a specified written back-up on the call schedule whenever the orthopaedist is simultaneously on-call at a hospital other than the trauma center;
- (f) An in-house anesthesiologist or a Clinical Anesthesiology Year 3 (CA3) resident as long as an anesthesiologist on-call is advised and promptly available if requested by the trauma team leader, and
- (g) Registered nursing personnel trained in the care of trauma patients.
- (9) A written credentialing process established by the Department of Surgery to approve mid-level practitioners and attending general surgeons covering the trauma service. The surgeons must have a minimum of board certification in general surgery within five years of completing residency;
- (10) Neurosurgeons and orthopaedists serving the trauma service who are currently board certified or eligible. Those who are eligible must be board certified within five years after successful completion of the residency;
- (11) Standard written protocols relating to trauma management formulated and routinely updated;
- (12) Criteria to ensure team activation prior to arrival of trauma/burn patients to include the following:
- (a) Shock;
- (b) Respiratory distress;
- (c) Airway compromise;
- (d) Unresponsiveness (Glasgow Coma Scale less than 8) with potential for multiple injuries; and
- (e) Gunshot wound to head, neck, or torso.
- (13) Surgical evaluation, based upon the following criteria, by the health professional who is promptly available:
- (a) Proximal amputations;
- (b) Burns meeting institutional transfer criteria;
- (c) Vascular compromise;
- (d) Crush to chest or pelvis;
- (e) Two or more proximal long bone fractures; and
- (f) Spinal cord injury.
- (14) Surgical consults, based upon the following criteria, by the health professional who is promptly available:
- (a) Falls greater than 20 feet;
- (b) Pedestrian struck by motor vehicle;
- (c) Motor vehicle crash with:
- (i) Ejection (includes motorcycle);
- (ii) Rollover;
- (iii) Speed greater than 40 mph; or
- (iv) Death of another individual at the scene;
- (d) Extremes of age, less than five or greater than 70 years;
- (15) Clinical capabilities (promptly available if requested by the trauma team leader, with a posted on-call schedule), to include individuals credentialed in the following:
- (a) Cardiac surgery;
- (b) Critical care;
- (c) Hand surgery;
- (d) Microvascular/replant surgery;
- (e) Neurosurgery (The neurosurgeon must be dedicated to one hospital or a back-up call schedule must be available. If fewer than 25 emergency neurosurgical trauma operations are done in a year, and the neurosurgeon is dedicated only to that hospital, then a published back-up call list is not necessary.)
- (f) Obstetrics/gynecologic surgery;
- (g) Ophthalmic surgery;
- (h) Oral/maxillofacial surgery;
- (i) Orthopaedics (dedicated to one hospital or a back-up call schedule must be available);
- (j) Pediatric surgery;
- (k) Plastic surgery;
- (l) Radiology;
- (m) Thoracic surgery; and
- (n) Urologic surgery.
- (16) An Emergency Department that has:
- (a) A designated physician director who is board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);

APPROVED RULES

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| <p>(b) 24-hour-per-day staffing by physicians physically present in the Emergency Department such that:</p> <p>(i) At least one physician on every shift in the Emergency Department is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) to serve as the designated member of the trauma team at least until the arrival of the trauma surgeon. Emergency physicians caring only for pediatric patients may, as an alternative, be boarded in pediatric emergency medicine. All emergency physicians must be board-certified within five years after successful completion of the residency;</p> <p>(ii) All remaining emergency physicians, if not board-certified or prepared in emergency medicine as outlined in Item (16)(b)(i) of this Rule, are board-certified, or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine, with each being board-certified within five years after successful completion of a residency; and</p> <p>(iii) All emergency physicians practice emergency medicine as their primary specialty.</p> <p>(c) Nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;</p> <p>(d) Equipment for patients of all ages to include:</p> <p>(i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);</p> <p>(ii) Pulse oximetry;</p> | <p>(iii) End-tidal carbon dioxide determination equipment;</p> <p>(iv) Suction devices;</p> <p>(v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;</p> <p>(vi) Apparatus to establish central venous pressure monitoring;</p> <p>(vii) Intravenous fluids and administration devices to include large bore catheters and intraosseous infusion devices;</p> <p>(viii) Sterile surgical sets for airway control/cricothyrotomy, thoracotomy, vascular access, thoracostomy, peritoneal lavage, and central line insertion;</p> <p>(ix) Apparatus for gastric decompression;</p> <p>(x) 24-hour-per-day x-ray capability;</p> <p>(xi) Two-way communication equipment for communication with the emergency transport system;</p> <p>(xii) Skeletal traction devices, including capability for cervical traction;</p> <p>(xiii) Arterial catheters;</p> <p>(xiv) Thermal control equipment for patients;</p> <p>(xv) Thermal control equipment for blood and fluids;</p> <p>(xvi) Rapid infuser system;</p> <p>(xvii) Broselow tape;</p> <p>(xviii) Sonography; and</p> <p>(xix) Doppler.</p> <p>(17) An operating suite that is immediately available 24 hours per day and has:</p> <p>(a) 24-hour-per-day immediate availability of in-house staffing;</p> <p>(b) Equipment for patients of all ages to include:</p> <p>(i) Cardiopulmonary bypass capability;</p> <p>(ii) Operating microscope;</p> <p>(iii) Thermal control equipment for patients</p> <p>(iv) Thermal control equipment for blood and fluids;</p> <p>(v) 24-hour-per-day x-ray capability including c-arm image intensifier;</p> <p>(vi) Endoscopes and bronchoscopes;</p> <p>(vii) Craniotomy instruments;</p> |
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- (viii) Capability of fixation of long-bone and pelvic fractures; and
 - (ix) Rapid infuser system.
- (18) A postanesthetic recovery room or surgical intensive care unit that has:
- (a) 24-hour-per-day in-house staffing by registered nurses;
 - (b) Equipment for patients of all ages to include:
 - (i) Capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;
 - (ii) Capability for continuous monitoring of intracranial pressure;
 - (iii) Pulse oximetry;
 - (iv) End-tidal carbon dioxide determination capability;
 - (v) Thermal control equipment for patients; and
 - (vi) Thermal control equipment for blood and fluids.
- (19) An intensive care unit for trauma patients that has:
- (a) A designated surgical director for trauma patients;
 - (b) A physician on duty in the intensive care unit 24 hours per day or immediately available from within the hospital as long as this physician is not the sole physician on-call for the Emergency Department;
 - (c) Ratio of one nurse per two patients on each shift;
 - (d) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, and pocket masks);
 - (ii) Oxygen source with concentration controls;
 - (iii) Cardiac emergency cart;
 - (iv) Temporary, transvenous pacemaker;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Cardiac output monitoring capability;
 - (vii) Electronic pressure monitoring capability;
 - (viii) Mechanical ventilator;
 - (ix) Patient weighing devices;
 - (x) Pulmonary function measuring devices;
- (xi) Temperature control devices; and
 - (xii) Intracranial pressure monitoring devices.
- (e) Within 30 minutes of request, the ability to perform blood gas measurements, hematocrit level, and chest x-ray studies;
- (20) Acute hemodialysis capability;
- (21) Physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;
- (22) Acute spinal cord management capability or written transfer agreement with a hospital capable of caring for a spinal cord injured patient;
- (23) Radiological capabilities that have at a minimum:
- (a) 24-hour-per-day in-house radiology technologist;
 - (b) 24-hour-per-day in-house computerized tomography technologist;
 - (c) Sonography;
 - (d) Computed tomography;
 - (e) Angiography;
 - (f) Magnetic resonance imaging; and
 - (g) Resuscitation equipment to include: airway management and IV therapy.
- (24) Respiratory therapy services available in-house 24 hours per day;
- (25) 24-hour-per-day clinical laboratory service that must include:
- (a) Standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate;
 - (b) Blood-typing and cross-matching;
 - (c) Coagulation studies;
 - (d) Comprehensive blood bank or access to community central blood bank with storage facilities;
 - (e) Blood gases and pH determination; and
 - (f) Microbiology.
- (26) A rehabilitation service that provides:
- (a) A staff trained in rehabilitation care of critically injured patients;
 - (b) For major trauma patients, functional assessment and recommendations regarding short- and long-term rehabilitation needs within one week of the patient's admission to the hospital or as soon as hemodynamically stable;
 - (c) Full in-house rehabilitation service or a written transfer agreement with a rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities;
 - (d) Physical, occupational, speech therapies, and social services; and

- (e) Substance abuse evaluation and counseling capability.
- (27) A performance improvement program, as outlined in the North Carolina Chapter of the American College of Surgeons Committee on Trauma document "Performance Improvement Guidelines for North Carolina Trauma Centers," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. This performance improvement program must include:
- (a) The trauma registry agreed to by the North Carolina Trauma Registry Task Force and OEMS, whose data is submitted to the OEMS at least quarterly and includes all the center's trauma patients as defined in Rule .3201(33) who are either diverted to an affiliated hospital, admitted to the trauma center for greater than 23:59 hours (24 hours or more) from an ED or hospital, die in the ED, are DOA or are transferred from the ED to the OR, ICU, or another hospital (including transfer to any affiliated hospital);
- (b) Morbidity and mortality reviews to include all trauma deaths;
- (c) Trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other healthcare providers, and reviews policies, procedures, and system issues and whose members or designee attends at least 50% of the regular meetings;
- (d) Multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, neurosurgery, orthopaedics, emergency medicine, anesthesiology, and other specialty physicians, as needed, specific to the case, and the trauma nurse coordinator/program manager and whose members or designee attends at least 50% of the regular meetings;
- (e) Identification of discretionary and non-discretionary audit filters;
- (f) Documentation and review of times and reasons for trauma-related diversion of patients from the scene or referring hospital;
- (g) Documentation and review of response times for trauma surgeons, neurosurgeons, anesthesiologists or airway managers, and orthopaedists. All must demonstrate 80% compliance.
- (h) Monitoring of trauma team notification times;
- (i) Review of pre-hospital trauma care to include dead-on-arrivals; and
- (j) Review of times and reasons for transfer of injured patients.
- (28) An outreach program to include:
- (a) Written transfer agreements to address the transfer and receipt of trauma patients;
- (b) Programs for physicians within the community and within the referral area (to include telephone and on-site consultations) about how to access the trauma center resources and refer patients within the system;
- (c) Development of a Regional Advisory Committee (RAC) as specified in Rule .3502 of this Subchapter;
- (d) Development of regional criteria for coordination of trauma care;
- (e) Assessment of trauma system operations at the regional level; and
- (f) ATLS.
- (29) A program of injury prevention and public education to include:
- (a) Epidemiology research to include studies in injury control, collaboration with other institutions on research, monitoring progress of prevention programs, and consultation with qualified researchers on evaluation measures;
- (b) Surveillance methods to include trauma registry data, special Emergency Department and field collection projects;
- (c) Designation of a injury prevention coordinator; and
- (d) Outreach activities, program development, information resources, and collaboration with existing national, regional, and state trauma programs.
- (30) A trauma research program designed to produce new knowledge applicable to the care of injured patients to include:
- (a) Identifiable institutional review board process;
- (b) Extramural educational presentations that must include 12 education/outreach presentations over a three-year period; and
- (c) 10 peer-reviewed publications over a three-year period that could come from any aspect of the trauma program.

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- (31) A documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:
- (a) A general surgery residency program;
 - (b) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all attending general surgeons on the trauma service, orthopaedists, and neurosurgeons, with at least 50% of this being extramural;
 - (c) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all emergency physicians, with at least 50% of this being extramural;
 - (d) Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS;
 - (e) 20 contact hours of trauma-related continuing education (beyond in-house in-services) every two years for the trauma nurse coordinator/program manager;
 - (f) 16 hours of trauma-registry-related or trauma-related continuing education every two years, as deemed appropriate by the trauma nurse coordinator/program manager for the trauma registrar;
 - (g) At least an 80% compliance rate for 16 hours of trauma-related continuing education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, Emergency Departments, primary intensive care units, primary trauma floors, and other areas deemed appropriate by the trauma nurse coordinator/program manager; and
 - (h) 16 hours of trauma-related continuing education every two years for mid-level practitioners routinely caring for trauma patients.
- To receive designation as a Level II Trauma Center, a hospital shall have the following:
- (1) A trauma program and a trauma service that have been operational for at least six months prior to application for designation;
 - (2) Membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal;
 - (3) A trauma medical director who is a board-certified general surgeon. The trauma medical director must:
 - (a) Have a minimum of three years clinical experience on a trauma service or trauma fellowship training;
 - (b) Serve on the center's trauma service;
 - (c) Participate in providing care to patients with life-threatening urgent injuries;
 - (d) Participate in the North Carolina Chapter of the ACS' Committee on Trauma as well as other regional and national trauma organizations; and
 - (e) Remain a current provider in the ACS' Advanced Trauma Life Support Course and in the provision of trauma-related instruction to other health care personnel.
 - (4) A full-time trauma nurse coordinator (TNC)/program manager (TPM) who is a registered nurse, licensed by the North Carolina Board of Nursing;
 - (5) A full-time trauma registrar (TR) who has a working knowledge of medical terminology, is able to operate a personal computer, and has demonstrated the ability to extract data from the medical record;
 - (6) A hospital department/division/section for general surgery, neurological surgery, emergency medicine, anesthesiology, and orthopaedic surgery, with designated chair or physician liaison to the trauma program for each;
 - (7) Clinical capabilities in general surgery with two separate posted call schedules. One shall be for trauma, one for general surgery. In those instances where a physician may simultaneously be listed on both schedules, there must be a defined back-up surgeon listed on the schedule to allow the trauma surgeon to provide care for the trauma patient. The trauma service director shall specify, in writing, the specific credentials that each back-up surgeon must have. These, at a minimum, must state that the back-up surgeon has surgical privileges at the trauma center and is boarded or eligible in general surgery (with board certification in general surgery within five years of completing residency). If a trauma surgeon is simultaneously on call at more than one hospital, there shall be a

*History Note: Authority G.S. 131E-162;
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

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- defined, posted trauma surgery back-up call schedule composed of surgeons credentialed to serve on the trauma panel.
- (8) Response of a trauma team to provide evaluation and treatment of a trauma patient 24 hours per day that includes:
- (a) A trauma attending whose presence at the patient's bedside within 20 minutes of notification is documented and who participates in therapeutic decisions and is present at all operative procedures;
 - (b) An emergency physician who is present in the Emergency Department 24 hours per day who is either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine and practices emergency medicine as his primary specialty. This emergency physician if prepared or eligible must be board-certified within five years after successful completion of the residency and serves as a designated member of the trauma team until the arrival of the trauma surgeon;
 - (c) Neurosurgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, as long as there is either an in-house attending neurosurgeon; a Post Graduate Year 2 (PGY2) or higher in-house neurosurgery resident; or in-house emergency physician or the on-call trauma surgeon as long as the institution can document management guidelines and annual continuing medical education for neurosurgical emergencies. There must be a specified written back-up on the call schedule whenever the neurosurgeon is simultaneously on-call at a hospital other than the trauma center; and
 - (d) Orthopaedic surgery specialists who are never simultaneously on-call at another Level II or higher trauma center, who are promptly available, if requested by the trauma team leader, as long as there is either an in-house attending orthopaedic surgeon; a Post Graduate Year 2 (PGY2) or higher in-house orthopaedic surgery resident; or in-house emergency physician or the on-call trauma surgeon as long as the institution can document management guidelines and annual continuing medical education for orthopaedic emergencies. There must be a specified written back-up on the call schedule whenever the orthopaedic surgeon is simultaneously on-call at a hospital other than the trauma center; and
 - (e) An in-house anesthesiologist or a Clinical Anesthesiology Year 3 (CA3) resident unless an anesthesiologist on-call is advised and promptly available after notification or an in-house CRNA under physician supervision, practicing in accordance with G.S. 90-171.20(7)e, pending the arrival of the anesthesiologist.
- (9) A written credentialing process established by the Department of Surgery to approve mid-level practitioners and attending general surgeons covering the trauma service. The surgeons must have a minimum of board certification in general surgery within five years of completing residency;
- (10) Neurosurgeons and orthopaedists serving the trauma service who are currently board certified or eligible. Those who are eligible must be board certified within five years after successful completion of the residency;
- (11) Standard written protocols relating to trauma care management formulated and routinely updated;
- (12) Criteria to ensure team activation prior to arrival of trauma/burn patients to include the following:
- (a) Shock;
 - (b) Respiratory distress;
 - (c) Airway compromise;
 - (d) Unresponsiveness (Glasgow Coma Scale less than eight with potential for multiple injuries; and
 - (e) Gunshot wound to head, neck, or torso.
- (13) Surgical evaluation, based upon the following criteria, by the health professional who is promptly available:
- (a) Proximal amputations;
 - (b) Burns meeting institutional transfer criteria;
 - (c) Vascular compromise;
 - (d) Crush to chest or pelvis;
 - (e) Two or more proximal long bone fractures; and
 - (f) Spinal cord injury.
- (14) Surgical consults, based upon the following criteria, by the health professional who is promptly available:
- (a) Falls greater than 20 feet;

- (b) Pedestrian struck by motor vehicle;
- (c) Motor vehicle crash with:
 - (i) Ejection (includes motorcycle);
 - (ii) Rollover;
 - (iii) Speed greater than 40 mph; or
 - (iv) Death of another individual at the scene;
- (d) Extremes of age, less than five or greater than 70 years;
- (15) Clinical capabilities (promptly available if requested by the trauma team leader, with a posted on-call schedule), to include individuals credentialed in the following:
 - (a) Critical care;
 - (b) Hand surgery;
 - (c) Neurosurgery (The neurosurgeon must be dedicated to one hospital or a back-up call schedule must be available. If fewer than 25 emergency neurosurgical trauma operations are done in a year, and the neurosurgeon is dedicated only to that hospital, then a published back-up call list is not necessary.);
 - (d) Obstetrics/gynecologic surgery;
 - (e) Ophthalmic surgery;
 - (f) Oral maxillofacial surgery;
 - (g) Orthopaedics (dedicated to one hospital or a back-up call schedule must be available);
 - (h) Plastic surgery;
 - (i) Radiology;
 - (j) Thoracic surgery; and
 - (k) Urologic surgery.
- (16) An Emergency Department that has:
 - (a) A designated physician director who is board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
 - (b) 24-hour-per-day staffing by physicians physically present in the Emergency Department who:
 - (i) Are either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine). These emergency physicians must be board-certified within five years after successful completion of a residency;
 - (ii) Are designated members of the trauma team; and
 - (iii) Practice emergency medicine as their primary specialty.
- (c) Nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;
- (d) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);
 - (ii) Pulse oximetry;
 - (iii) End-tidal carbon dioxide determination equipment;
 - (iv) Suction devices;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Apparatus to establish central venous pressure monitoring;
 - (vii) Intravenous fluids and administration devices to include large bore catheters and intraosseous infusion devices;
 - (viii) Sterile surgical sets for airway control/cricothyrotomy, thoracotomy, vascular access, thoracostomy, peritoneal lavage, and central line insertion;
 - (ix) Apparatus for gastric decompression;
 - (x) 24-hour-per-day x-ray capability;
 - (xi) Two-way communication equipment for communication with the emergency transport system;
 - (xii) Skeletal traction devices, including capability for cervical traction;
 - (xiii) Arterial catheters;
 - (xiv) Thermal control equipment for patients;
 - (xv) Thermal control equipment for blood and fluids;
 - (xvi) Rapid infuser system;

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| <p>(17) An operating suite that is immediately available 24 hours per day and has:</p> <p>(a) 24-hour-per-day immediate availability of in-house staffing;</p> <p>(b) Equipment for patients of all ages to include:</p> <p>(i) Thermal control equipment for patients;</p> <p>(ii) Thermal control equipment for blood and fluids;</p> <p>(iii) 24-hour-per-day x-ray capability, including c-arm image intensifier;</p> <p>(iv) Endoscopes and bronchoscopes;</p> <p>(v) Craniotomy instruments;</p> <p>(vi) Capability of fixation of long-bone and pelvic fractures; and</p> <p>(vii) Rapid infuser system.</p> | <p>(xvii) Broselow tape;</p> <p>(xviii) Sonography; and</p> <p>(xix) Doppler.</p> | <p>tubes, bag-mask resuscitators, and pocket masks);</p> <p>(ii) Oxygen source with concentration controls;</p> <p>(iii) Cardiac emergency cart;</p> <p>(iv) Temporary transvenous pacemaker;</p> <p>(v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;</p> <p>(vi) Cardiac output monitoring capability;</p> <p>(vii) Electronic pressure monitoring capability;</p> <p>(viii) Mechanical ventilator;</p> <p>(ix) Patient weighing devices;</p> <p>(x) Pulmonary function measuring devices;</p> <p>(xi) Temperature control devices; and</p> <p>(xii) Intracranial pressure monitoring devices.</p> |
| <p>(18) A postanesthetic recovery room or surgical intensive care unit that has:</p> <p>(a) 24-hour-per-day in-house staffing by registered nurses;</p> <p>(b) Equipment for patients of all ages to include:</p> <p>(i) Capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;</p> <p>(ii) Capability for continuous monitoring of intracranial pressure;</p> <p>(iii) Pulse oximetry;</p> <p>(iv) End-tidal carbon dioxide determination capability;</p> <p>(v) Thermal control equipment for patients; and</p> <p>(vi) Thermal control equipment for blood and fluids.</p> | <p>(20) Acute hemodialysis capability or utilization of a written transfer agreement;</p> <p>(21) Physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;</p> <p>(22) Acute spinal cord management capability or written transfer agreement with a hospital capable of caring for a spinal cord injured patient;</p> <p>(23) Radiological capabilities that has at a minimum:</p> <p>(a) 24-hour-per-day in-house radiology technologist;</p> <p>(b) 24-hour-per-day in-house computerized tomography technologist;</p> <p>(c) Sonography;</p> <p>(d) Computed tomography;</p> <p>(e) Angiography; and</p> <p>(f) Resuscitation equipment to include airway management and IV therapy.</p> | <p>(e) Within 30 minutes of request, the ability to perform blood gas measurements, hematocrit level, and chest x-ray studies.</p> |
| <p>(19) An intensive care unit for trauma patients that has:</p> <p>(a) A designated surgical director of trauma patients;</p> <p>(b) A physician on duty in the intensive care unit 24 hours per day or immediately available from within the hospital as long as this physician is not the sole physician on-call for the Emergency Department;</p> <p>(c) Ratio of one nurse per two patients on each shift;</p> <p>(d) Equipment for patients of all ages to include:</p> <p>(i) Airway control and ventilation equipment (laryngoscopes, endotracheal</p> | <p>(24) Respiratory therapy services available in-house 24 hours per day;</p> <p>(25) 24-hour-per-day clinical laboratory service that must include:</p> <p>(a) Standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate;</p> <p>(b) Blood-typing and cross-matching;</p> <p>(c) Coagulation studies;</p> <p>(d) Comprehensive blood bank or access to a community central blood bank with storage facilities;</p> | |

- (e) Blood gases and pH determination; and
- (f) Microbiology.
- (26) A rehabilitation service that provides:
 - (a) A staff trained in rehabilitation care of critically injured patients;
 - (b) For major trauma patients, functional assessment and recommendation regarding short- and long-term rehabilitation needs within one week of the patient's admission to the hospital or as soon as hemodynamically stable;
 - (c) Full in-house rehabilitation service or a written transfer agreement with a rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities;
 - (d) Physical, occupational, speech therapies, and social services; and
 - (e) Substance abuse evaluation and counseling capability.
- (27) A performance improvement program, as outlined in the North Carolina Chapter of the American College of Surgeons Committee on Trauma document "Performance Improvement Guidelines for North Carolina Trauma Centers," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. This performance improvement program must include:
 - (a) The trauma registry agreed to by the North Carolina Chapter of the American College of Surgeons Committee on Trauma whose data is submitted to the OEMS at least quarterly and includes all the center's trauma patients as defined in Rule .3201(33) who are either diverted to an affiliated hospital, admitted to the trauma center for greater than 23:59 hours (24 hours or more) from an ED or hospital, die in the ED, are DOA or are transferred from the ED to the OR, ICU, or another hospital (including transfer to any affiliated hospital);
 - (b) Morbidity and mortality reviews to include all trauma deaths;
 - (c) Trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other healthcare providers, and reviews policies, procedures, and system issues and whose members or designee attends at least 50% of the regular meetings;
- (d) Multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, neurosurgery, orthopaedics, emergency medicine, anesthesiology, and other specialty physicians, as needed, specific to the case, and the trauma nurse coordinator/program manager and whose members or designee attends at least 50% of the regular meetings;
- (e) Identification of discretionary and non-discretionary audit filters;
- (f) Documentation and review of times and reasons for trauma-related diversion of patients from the scene or referring hospital;
- (g) Documentation and review of response times for trauma surgeons, neurosurgeons, anesthesiologists or airway managers, and orthopaedists. All must demonstrate 80% compliance;
- (h) Monitoring of trauma team notification times;
- (i) Review of pre-hospital trauma care to include dead-on-arrivals; and
- (j) Review of times and reasons for transfer of injured patients.
- (28) An outreach program to include:
 - (a) Written transfer agreements to address the transfer and receipt of trauma patients;
 - (b) Programs for physicians within the community and within the referral area (to include telephone and on-site consultations) about how to access the trauma center resources and refer patients within the system;
 - (c) Development of a Regional Advisory Committee (RAC) as specified in Rule .3502 of this Subchapter;
 - (d) Development of regional criteria for coordination of trauma care; and
 - (e) Assessment of trauma system operations at the regional level.
- (29) A program of injury prevention and public education to include:
 - (a) Designation of an injury prevention coordinator; and
 - (b) Outreach activities, program development, information resources, and collaboration with existing national, regional, and state trauma programs.
- (30) A documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:

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| <ul style="list-style-type: none"> (a) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all attending general surgeons on the trauma service, orthopaedics, and neurosurgeons, with at least 50% of this being extramural; (b) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education) every two years for all emergency physicians, with at least 50% of this being extramural; (c) Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS. (d) 20 contact hours of trauma-related continuing education (beyond in-house in-services) every two years for the trauma nurse coordinator/program manager; (e) 16 hours of trauma-registry-related or trauma-related continuing education every two years, as deemed appropriate by the trauma nurse coordinator/program manager, for the trauma registrar; (f) at least 80% compliance rate for 16 hours of trauma-related continuing education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, Emergency Departments, primary intensive care units, primary trauma floors, and other areas deemed appropriate by the trauma nurse coordinator/program manager; and (g) 16 contact hours of trauma-related continuing education every two years for mid-level practitioners routinely caring for trauma patients. | <ul style="list-style-type: none"> (2) Membership in and inclusion of all trauma patient records in the North Carolina Trauma Registry for at least six months prior to submitting a Request for Proposal application; (3) A trauma medical director who is a board-certified general surgeon. The trauma medical director must: <ul style="list-style-type: none"> (a) Serve on the center's trauma service; (b) Participate in providing care to patients with life-threatening or urgent injuries; (c) Participate in the North Carolina Chapter of the ACS' Committee on Trauma; (d) Remain a current provider in the ACS' Advanced Trauma Life Support Course in the provision of trauma-related instruction to other health care personnel. (4) A designated trauma nurse coordinator (TNC)/program manager (TPM) who is a registered nurse, licensed by the North Carolina Board of Nursing; (5) A trauma registrar (TR) who has a working knowledge of medical terminology, is able to operate a personal computer, and has demonstrated the ability to extract data from the medical record; (6) A hospital department/division/section for general surgery, emergency medicine, anesthesiology, and orthopaedic surgery, with designated chair or physician liaison to the trauma program for each; (7) Clinical capabilities in general surgery with a written posted call schedule that indicates who is on call for both trauma and general surgery. If a trauma surgeon is simultaneously on call at more than one hospital, there must be a defined, posted trauma surgery back-up call schedule composed of surgeons credentialed to serve on the trauma panel. The trauma service director shall specify, in writing, the specific credentials that each back-up surgeon must have. These, at a minimum, must state that the back-up surgeon has surgical privileges at the trauma center and is boarded or eligible in general surgery (with board certification in general surgery within five years of completing residency). (8) Response of a trauma team to provide evaluation and treatment of a trauma patient 24 hours per day that includes: <ul style="list-style-type: none"> (a) A trauma attending whose presence at the patient's bedside within 30 minutes of notification is documented and who participates in therapeutic decisions and is present at all operative procedures; (b) An emergency physician who is present in the Emergency Department 24 hours per day who is either board- |
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History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .3303 LEVEL III TRAUMA CENTER CRITERIA

To receive designation as a Level III Trauma Center, a hospital shall have the following:

- (1) A trauma program and a trauma service that have been operational for at least six months prior to application for designation;

- certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine and practices emergency medicine as his primary specialty. This emergency physician if prepared or eligible must be board-certified within five years after successful completion of the residency and serve as a designated member of the trauma team until the arrival of the trauma surgeon;
- (c) An anesthesiologist who is on-call and promptly available after notification by the trauma team leader or an in-house CRNA under physician supervision, practicing in accordance with G.S. 90-171.20(7)e, pending the arrival of the anesthesiologist within 20 minutes of notification.
- (9) A written credentialing process established by the Department of Surgery to approve mid-level practitioners and attending general surgeons covering the trauma service. The surgeons must have a minimum of board certification in general surgery within five years of completing residency;
- (10) Current board certification or eligibility of orthopaedists, with board certification within five years after successful completion of residency;
- (11) Standard written protocols relating to trauma care management formulated and routinely updated;
- (12) Criteria to ensure team activation prior to arrival of trauma/burn patients to include the following:
- (a) Shock;
- (b) Respiratory distress;
- (c) Airway compromise;
- (d) Unresponsiveness (Glasgow Coma Scale less than 8) with potential for multiple injuries; and
- (e) Gunshot wound to head, neck, or torso.
- (13) Surgical evaluation, based upon the following criteria, by the health professional who is promptly available:
- (a) Proximal amputations;
- (b) Burns meeting institutional transfer criteria;
- (c) Vascular compromise;
- (d) Crush to chest or pelvis;
- (e) Two or more proximal long bone fractures; and
- (f) Spinal cord injury.
- (14) Surgical consults, based upon the following criteria, by the health professional who is promptly available:
- (a) Falls greater than 20 feet;
- (b) Pedestrian struck by motor vehicle;
- (c) Motor vehicle crash with:
- (i) Ejection (includes motorcycle);
- (ii) Rollover;
- (iii) Speed greater than 40 mph; or
- (iv) Death of another individual at the scene;
- (d) Extremes of age, less than five or greater than 70 years;
- (15) Clinical capabilities (promptly available if requested by the trauma team leader, with a posted on-call schedule) to include individuals credentialed in the following:
- (a) Orthopaedics; and
- (b) Radiology.
- (16) An Emergency Department that has:
- (a) A designated physician director who is board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine);
- (b) 24-hour-per-day staffing by physicians physically present in the Emergency Department who:
- (i) Are either board-certified or prepared in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine) or board-certified or eligible by the American Board of Surgery, American Board of Family Practice, or American Board of Internal Medicine. These emergency physicians must be board-certified within five years after successful completion of a residency;
- (ii) Are designated members of the trauma team; and
- (iii) Practice emergency medicine as their primary specialty.
- (c) Nursing personnel with experience in trauma care who continually monitor the trauma patient from hospital arrival to disposition to an intensive care unit, operating room, or patient care unit;

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- (d) Resuscitation equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators, pocket masks, and oxygen);
 - (ii) Pulse oximetry;
 - (iii) End-tidal carbon dioxide determination equipment;
 - (iv) Suction devices;
 - (v) Electrocardiograph-oscilloscope-defibrillator with internal paddles;
 - (vi) Apparatus to establish central venous pressure monitoring;
 - (vii) Intravenous fluids and administration devices to include large bore catheters and intraosseous infusion devices;
 - (viii) Sterile surgical sets for airway control/cricothyrotomy, thoracotomy, vascular access, thoracostomy, peritoneal lavage, and central line insertion;
 - (ix) Apparatus for gastric decompression;
 - (x) 24-hour-per-day x-ray capability;
 - (xi) Two-way communication equipment for communication with the emergency transport system;
 - (xii) Skeletal traction devices;
 - (xiii) Thermal control equipment for patients; and
 - (xiv) Thermal control equipment for blood and fluids;
 - (xv) Rapid infuser system;
 - (xvi) Broselow tape; and
 - (xvii) Doppler.
- (17) An operating suite that has:
 - (a) Personnel available 24 hours a day, on-call, and available within 30 minutes of notification unless in-house;
 - (b) Age-specific equipment to include:
 - (i) Thermal control equipment for patients;
 - (ii) Thermal control equipment for blood and fluids;
 - (iii) 24-hour-per-day x-ray capability, including c-arm image intensifier;
 - (iv) Endoscopes and bronchoscopes;
- (v) Equipment for long bone and pelvic fracture fixation; and
- (vi) Rapid infuser system.
- (18) A postanesthetic recovery room or surgical intensive care unit that has:
 - (a) 24-hour-per-day availability of registered nurses within 30 minutes from inside or outside the hospital;
 - (b) Equipment for patients of all ages to include:
 - (i) Capability for resuscitation and continuous monitoring of temperature, hemodynamics, and gas exchange;
 - (ii) Pulse oximetry;
 - (iii) End-tidal carbon dioxide determination;
 - (iv) Thermal control equipment for patients; and
 - (v) Thermal control equipment for blood and fluids.
- (19) An intensive care unit for trauma patients that has:
 - (a) A designated surgical director of trauma patients;
 - (b) A physician on duty in the intensive care unit 24-hours-per-day or immediately available from within the hospital (which may be a physician who is the sole physician on-call for the Emergency Department);
 - (c) Equipment for patients of all ages to include:
 - (i) Airway control and ventilation equipment (laryngoscopes, endotracheal tubes, bag-mask resuscitators and pocket masks);
 - (ii) Oxygen source with concentration controls;
 - (iii) Cardiac emergency cart;
 - (iv) Temporary transvenous pacemaker;
 - (v) Electrocardiograph-oscilloscope-defibrillator;
 - (vi) Cardiac output monitoring capability;
 - (vii) Electronic pressure monitoring capability;
 - (viii) Mechanical ventilator;
 - (ix) Patient weighing devices;
 - (x) Pulmonary function measuring devices; and
 - (xi) Temperature control devices.
 - (d) Within 30 minutes of request, the ability to perform blood gas

- measurements, hematocrit level, and chest x-ray studies;
- (20) Acute hemodialysis capability or utilization of a written transfer agreement;
- (21) Physician-directed burn center staffed by nursing personnel trained in burn care or a written transfer agreement with a burn center;
- (22) Acute spinal cord management capability or written transfer agreement with a hospital capable of caring for a spinal cord injured patient;
- (23) Acute head injury management capability or written transfer agreement with a hospital capable of caring for a head injury;
- (24) Radiological capabilities that have at a minimum:
 - (a) Radiology technologist and computer tomography technologist available within 30 minutes of notification or documentation that procedures are available within 30 minutes;
 - (b) Computed Tomography;
 - (c) Sonography; and
 - (d) Resuscitation equipment to include airway management and IV therapy.
- (25) Respiratory therapy services on-call 24 hours per day;
- (26) 24-hour-per-day clinical laboratory service that must include:
 - (a) Standard analysis of blood, urine, and other body fluids, including micro-sampling when appropriate;
 - (b) Blood-typing and cross-matching;
 - (c) Coagulation studies;
 - (d) Comprehensive blood bank or access to a community central blood bank with storage facilities;
 - (e) Blood gases and pH determination; and
 - (f) Microbiology.
- (27) Full in-house rehabilitation service or written transfer agreement with a rehabilitation facility accredited by the Commission on Accreditation of Rehabilitation Facilities;
- (28) Physical therapy and social services.
- (29) A performance improvement program, as outlined in the North Carolina Chapter of the American College of Surgeons Committee on Trauma document "Performance Improvement Guidelines for North Carolina Trauma Centers," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. This performance improvement program must include:
 - (a) The trauma registry agreed to by the North Carolina Trauma Registry Task Force and OEMS, whose data is submitted to the OEMS at least quarterly and includes all the center's trauma patients as defined in Rule .3201(33) who are either diverted to an affiliated hospital, admitted to the trauma center for greater than 23:59 hours (24 hours or more) from an ED or hospital, die in the ED, are DOA or are transferred from the ED to the OR, ICU, or another hospital (including transfer to any affiliated hospital);
 - (b) Morbidity and mortality reviews to include all trauma deaths;
 - (c) Trauma performance committee that meets at least quarterly, to include physicians, nurses, pre-hospital personnel, and a variety of other healthcare providers, and reviews policies, procedures, and system issues and whose members or designee attends at least 50% of the regular meetings;
 - (d) Multidisciplinary peer review committee that meets at least quarterly and includes physicians from trauma, emergency medicine, and other specialty physicians as needed specific to the case, and the trauma nurse coordinator/program manager and whose members or designee attends at least 50% of the regular meetings;
 - (e) Identification of discretionary and non-discretionary audit filters;
 - (f) Documentation and review of times and reasons for trauma-related diversion of patients from the scene or referring hospital;
 - (g) Documentation and review of response times for trauma surgeons, airway managers, and orthopaedists. All must demonstrate 80% compliance;
 - (h) Monitoring of trauma team notification times;
 - (i) Documentation (unless in-house) and review of Emergency Department response times for anesthesiologists or airway managers and computerized tomography technologist;
 - (j) Documentation of availability of the surgeon on-call for trauma, such that compliance is 90% or greater where there is no trauma surgeon back-up call schedule;
 - (k) Trauma performance and multidisciplinary peer review committees may be incorporated together or included in other staff meetings as appropriate for the

- facility performance improvement rules;
 - (l) Review of pre-hospital trauma care to include dead-on-arrivals; and
 - (m) Review of times and reasons for transfer of injured patients.
- (30) An outreach program to include:
- (a) Written transfer agreements to address the transfer and receipt of trauma patients;
 - (b) Participation in a Regional Advisory Committee (RAC).
- (31) Coordination or participation in community prevention activities;
- (32) A documented continuing education program for staff physicians, nurses, allied health personnel, and community physicians to include:
- (a) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education every two years for all attending general surgeons on the trauma service, with at least 50% of this being extramural;
 - (b) 20 hours of Category I or II trauma-related continuing medical education (as approved by the Accreditation Council for Continuing Medical Education every two years for all emergency physicians, with at least 50% of this being extramural;
 - (c) Advanced Trauma Life Support (ATLS) completion for general surgeons on the trauma service and emergency physicians. Emergency physicians, if not boarded in emergency medicine, must be current in ATLS;
 - (d) 20 contact hours of trauma-related continuing education (beyond in-house in-services) every two years for the trauma nurse coordinator/program manager;
 - (e) 16 hours of trauma-registry-related or trauma-related continuing education every two years, as deemed appropriate by the trauma nurse coordinator/program manager, for the trauma registrar;
 - (f) At least an 80% compliance rate for 16 hours of trauma-related continuing education (as approved by the trauma nurse coordinator/program manager) every two years related to trauma care for RN's and LPN's in transport programs, Emergency Departments, primary intensive care units, primary trauma floors, and other areas deemed

- appropriate by the trauma nurse coordinator/program manager; and
- (g) 16 hours of trauma-related continuing education every two years for mid-level practitioners routinely caring for trauma patients.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .3304 INITIAL DESIGNATION PROCESS

- (a) For initial trauma center designation, the hospital shall request a consult visit by OEMS and have the consult within one year prior to submission of the RFP.
- (b) A hospital interested in pursuing trauma center designation shall submit a letter of intent 180 days prior to the submission of an RFP to the OEMS. The letter shall also define the hospital's primary trauma catchment area. Simultaneously, Level I or II applicants shall also demonstrate the need for the trauma center designation by submitting one original and three copies of documents that include at a minimum:
 - (1) The population to be served and the extent to which the population is underserved for trauma care with the methodology used to reach this conclusion;
 - (2) Geographic considerations to include trauma primary and secondary catchment area and distance from other trauma centers; and
 - (3) Trauma patient volume and severity of injury for the facility for the 24-month period of time preceding the application. The trauma center shall show that its trauma service will be taking care of at least 200 trauma patients with an Injury Severity Score (ISS) greater than or equal to 15 during the first 2-year period of its designation. This criteria shall be met without compromising the quality of care or cost effectiveness of any other designated Level I or II trauma center sharing all or part of its catchment area or by jeopardizing the existing trauma center's ability to meet this same 200-patient minimum.
- (c) Following receipt of the letter of intent by OEMS, any designated Level I or II trauma center(s) sharing all or part of the applicant's catchment area must provide to OEMS a trauma registry download for the same two-year period used by the applicant. This download shall be provided within 30 days of the request of OEMS.
- (d) OEMS shall review the regional data, from both the applicant and the existing trauma center(s), and ascertain the applicant's ability to satisfy the justification of need information required in Paragraphs (b)(1) – (3) of this Rule. Simultaneously, the applicant's primary RAC shall be notified of the application and be provided the regional data as required in Paragraphs (b)(1) – (3) of this Rule submitted by the applicant for review and comment. The RAC shall be given a minimum of 30 days to submit any concerns in writing for OEMS' consideration. If no comments are received, OEMS shall proceed.

- (e) OEMS shall notify the hospital in writing of its decision to allow submission of an RFP. The RAC shall also be notified so that any necessary changes in protocols can be considered.
- (f) OEMS shall also notify the respective Board of County Commissioners in the applicant's trauma primary catchment area of the request for initial designation to allow for comment.
- (g) Hospitals desiring to be considered for initial trauma center designation shall complete and submit an original and five copies of bound, page-numbered RFP to the OEMS at least 90 days prior to the proposed site visit date.
- (h) For Level I, II, and III applicants, the RFP shall demonstrate that the hospital meets the standards for the designation level applied for as found in Rules .3301, .3302, or .3303 of this Section.
- (i) If OEMS does not recommend a site visit, based upon failure to comply with Rules .3301, .3302, or .3303, the reasons shall be forwarded to the hospital in writing within 30 days of the decision. The hospital may reapply for designation within six months following the submission of an updated RFP. If the hospital fails to respond within six months, the hospital shall reapply following the process outlined in Paragraphs (a) – (h) of this Rule.
- (j) If the OEMS recommends the hospital for a site visit, the hospital shall be notified within 30 days and the site visit shall be conducted within six months of the recommendation. The site visit shall be scheduled on a date mutually agreeable to the hospital and the OEMS.
- (k) Any in-state reviewer for a Level I or II visit (except the OEMS representatives) shall be from outside the planning region in which the hospital is located. The composition of a Level I or II state site survey team shall be as follows:
- (1) One out-of-state Fellow of the ACS, experienced as a site surveyor, who shall be designated the primary reviewer.
 - (2) One emergency physician who currently works in a designated trauma center, is a member of the North Carolina College of Emergency Physicians, and is boarded in emergency medicine (by the American Board of Emergency Medicine or the American Osteopathic Board of Emergency Medicine),
 - (3) One in-state trauma surgeon who is a member of the North Carolina Committee on Trauma;
 - (4) One out-of-state trauma nurse coordinator/program manager;
 - (5) The medical director of the OEMS; and
 - (6) The Hospitals Specialist of the OEMS.
- (l) All site team members for a Level III visit shall be from in-state, and all (except for the OEMS representatives) shall be from outside the planning region in which the hospital is located. The composition of a Level III state site survey team shall be as follows:
- (1) One Fellow of the ACS, who is a member of the North Carolina Committee on Trauma and shall be designated the primary reviewer;
 - (2) One emergency physician who currently works in a designated trauma center, is a member of the North Carolina College of Emergency Physicians, and is boarded in emergency medicine (by the American Board

- of Emergency Medicine or the American Osteopathic Board of Emergency Medicine).
- (3) A trauma nurse coordinator/program manager;
 - (4) The medical director of the OEMS; and
 - (5) The Hospitals Specialist of the OEMS.
- (m) On the day of the site visit the hospital shall make available all requested patient medical charts.
- (n) A post-conference report based on the consensus of the site review team shall be given verbally during a summary conference. A written consensus report will be completed, to include a peer review report, by the primary reviewer and submitted to OEMS within 30 days of the site visit.
- (o) The report of the site survey team and the staff recommendations shall be reviewed by the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting which is more than 45 days following the site visit. Based upon the site visit report and the staff recommendation, the State Emergency Medical Services Advisory Council shall recommend to the OEMS that the request for trauma center designation be approved or denied.
- (p) All criteria defined in Rule .3301, .3302, or .3303 of this Section shall be met for initial designation at the level requested. Initial designation shall not be granted if deficiencies exist.
- (q) Hospitals with a deficiency(ies) may be given up to 12 months to demonstrate compliance. Satisfaction of deficiency(ies) may require an additional site visit. If compliance is not demonstrated within the time period, to be defined by OEMS, the hospital shall be required to submit a new application and updated RFP and follow the process outlined in Paragraphs (a) – (h) of this Rule.
- (r) The final decision regarding trauma center designation shall be rendered by the OEMS.
- (s) The hospital shall be notified, in writing, of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.
- (t) If a trauma center changes its trauma program administrative structure (such that the trauma service, trauma medical director, trauma nurse coordinator/program manager and/or trauma registrar are relocated on the hospital's organizational chart) at any time, it shall notify OEMS of this change in writing within 30 days of the occurrence.
- (u) Initial designation as a trauma center is valid for a period of three years.

History Note: Authority G.S. 131E-162; 143-509(3); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .3305 RENEWAL DESIGNATION PROCESS

- (a) One of two options may be utilized to achieve trauma center renewal:
- (1) Undergo a site visit conducted by OEMS to obtain a four-year renewal designation; or
 - (2) Undergo a verification visit arranged by the ACS, in conjunction with OEMS, to obtain a three- year renewal designation;
- (b) For hospitals choosing Subparagraph (a)(1) of this Rule:
- (1) Prior to the end of the designation period, the OEMS shall forward to the hospital an RFP for

- completion. The hospital shall, within 10 days of receipt of the RFP, define for OEMS the trauma center's trauma primary catchment area. Upon this notification, OEMS shall notify the respective Board of County Commissioners in the applicant's trauma primary catchment area of the request for renewal to allow for comment.
- (2) Hospitals seeking a renewal of trauma center designation shall complete and submit an original and five copies of a bound, page-numbered RFP as directed by the OEMS to the OEMS and the specified site surveyors at least 30 days prior to the site visit. The RFP shall include information that supports compliance with the criteria contained in Rule .3301, .3302, or .3303 of this Section as it relates to the trauma center's level of designation.
 - (3) All criteria defined in Rule .3301, .3302, or .3303 of this Section, as relates to the trauma center's level of designation, shall be met for renewal designation.
 - (4) A site visit shall be conducted within 120 days prior to the end of the designation period. The site visit shall be scheduled on a date mutually agreeable to the hospital and the OEMS.
 - (5) The composition of a Level I or II site survey team shall be the same as that specified in Rule .3304(k) of this Section.
 - (6) The composition of a Level III site survey team shall be the same as that specified in Rule .3304(l) of this Section.
 - (7) On the day of the site visit the hospital shall make available all requested patient medical charts.
 - (8) A post-conference report based on consensus of the site review team shall be given verbally during the summary conference. A written consensus report shall be completed, to include a peer review report, by the primary reviewer and submitted to OEMS within 30 days of the site visit.
 - (9) The report of the site survey team and a staff recommendation shall be reviewed by the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting which is more than 45 days following the site visit. Based upon the site visit report and the staff recommendation, the State Emergency Medical Services Advisory Council shall recommend to the OEMS that the request for trauma center renewal be approved or denied.
 - (10) Hospitals with a deficiency(ies) have two weeks to provide documentation to demonstrate compliance. If the hospital has a deficiency that cannot be corrected in two weeks, the hospital, instead of a renewal, may be given a time period (up to 12 months) to demonstrate compliance and undergo a focused review, which may require an additional site visit. If compliance is not demonstrated within the time period, as specified by OEMS, the trauma center designation shall not be renewed. To become redesignated, the hospital shall be required to submit an updated RFP and follow the initial applicant process outlined in Rule .3304 of this Section.
- (11) The final decision regarding trauma center renewal shall be rendered by the OEMS.
 - (12) The hospital shall be notified in writing of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.
 - (13) The four-year renewal date that may be eventually granted will not be extended due to the focused review period.
 - (14) Hospitals in the process of satisfying contingencies placed on them prior to December 31, 2001, shall be evaluated based on the rules that were in effect at the time of their renewal visit.
- (c) For hospitals choosing Subparagraph (a)(2) of this Rule:
- (1) At least six months prior to the end of the trauma center's designation period, the trauma center must notify the OEMS of its intent to undergo an ACS verification visit. It must simultaneously define in writing to the OEMS its trauma primary catchment area. Trauma centers choosing this option must then comply with all the ACS' verification procedures, as well as any additional state criteria as outlined in Rule .3301, .3302, or .3303, as apply to their level of designation.
 - (2) If a trauma center currently using the ACS' verification process chooses not to renew using this process, it must notify the OEMS at least six months prior to the end of its state trauma center designation period of its intention to exercise the option in Subparagraph (a)(1) of this Rule.
 - (3) When completing the ACS' documentation for verification, the trauma center must simultaneously submit two identical copies to OEMS. The trauma center must simultaneously complete documents supplied by OEMS to verify compliance with additional North Carolina criteria (i.e., criteria that exceed the ACS criteria) and forward these to OEMS and the ACS.
 - (4) The OEMS shall notify the Board of County Commissioners within the trauma center's trauma primary catchment area of the trauma center's request for renewal to allow for comments.
 - (5) The trauma center must make sure the site visit is scheduled to ensure that the ACS' final written report, accompanying medical record reviews and cover letter are received by OEMS at least 30 days prior to a regularly scheduled State Emergency Medical Services

Advisory Council meeting to ensure that the trauma center's state designation period does not terminate without consideration by the State Emergency Medical Services Advisory Council.

- (6) The composition of the Level I or Level II site team must be as specified in Rule .3304(k) of this Section, except that both the required trauma surgeons and the emergency physician may be from out-of-state. Neither North Carolina Committee on Trauma nor North Carolina College of Emergency Physician membership will be required of the surgeons or emergency physician, respectively, if from out-of-state.
- (7) The composition of the Level III site team must be as specified in Rule .3304(l) of this Section, except that the trauma surgeon, emergency physician, and trauma nurse coordinator/program manager may be from out-of-state. Neither North Carolina Committee on Trauma nor North Carolina College of Emergency Physician membership will be required of the surgeon or emergency physician, respectively, if from out-of-state.
- (8) All state trauma center criteria must be met as defined in Rules .3301, .3302, and .3303, for renewal of state designation. An ACS' verification is not required for state designation. An ACS' verification does not ensure a state designation.
- (9) The final written report issued by the ACS' verification review committee, the accompanying medical record reviews (from which all identifiers may be removed), and cover letter must be forwarded to OEMS within 10 working days of its receipt by the trauma center seeking renewal.
- (10) The written reports from the ACS and the OEMS staff recommendation shall be reviewed by the State Emergency Medical Services Advisory Council at its next regularly scheduled meeting. The State EMS Advisory Council shall recommend to OEMS that the request for trauma center renewal be approved or denied.
- (11) The hospital shall be notified in writing of the State Emergency Medical Services Advisory Council's and OEMS' final recommendation within 30 days of the Advisory Council meeting.
- (12) Hospitals with contingencies, as the result of a deficiency(ies), as determined by OEMS, may undergo a focused review (to be conducted by the OEMS) whereby the trauma center may be given up to 12 months to demonstrate compliance. Satisfaction of contingency(ies) may require an additional site visit. If compliance is not demonstrated within the time period, as specified by OEMS, the trauma center designation shall not be renewed. To

become redesignated, the hospital shall be required to submit a new RFP and follow the initial applicant process outlined in Rule .3304 of this Section.

History Note: Authority G.S. 131E-162; 143-509(3); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .3401 DENIAL, FOCUSED REVIEW, VOLUNTARY WITHDRAWAL, OR REVOCATION OF TRAUMA CENTER DESIGNATION

(a) The OEMS may deny the initial or renewal designation (without first allowing a focused review) of a trauma center for any of the following reasons:

- (1) Failure to comply with G.S. 131E-162 and the rules adopted under that article; or
- (2) Attempting to obtain a trauma center designation through fraud or misrepresentation; or
- (3) Endangerment to the health, safety, or welfare of patients cared for in the hospital; or
- (4) Repetition of contingencies placed on the trauma center in previous site visits.

(b) When a trauma center is required to have a focused review, an option only for a trauma center seeking renewal, it must be able to demonstrate compliance with the provisions of G.S.131E-162 and the rules adopted under that article within one year or less as required and delineated in writing by OEMS.

(c) The OEMS may revoke a trauma center designation at any time or deny a request for renewal of designation, whenever the OEMS finds that the trauma center has failed to comply with the provisions of G.S. 131E-162 and the rules adopted under that article; and

- (1) It is not probable that the trauma center can remedy the deficiencies within one year or less; or
- (2) Although the trauma center may be able to remedy the deficiencies within a reasonable period of time, it is not probable that the trauma center shall be able to remain in compliance with designation rules for the foreseeable future; or
- (3) The trauma center fails to meet the requirements of a focused review; or
- (4) Failure to comply endangers the health, safety, or welfare of patients cared for in the trauma center.

(d) The OEMS shall give the trauma center written notice of revocation. This notice shall be given personally or by certified mail and shall set forth:

- (1) The factual allegations;
- (2) The statutes or rules alleged to be violated; and
- (3) Notice of the hospital's right to a contested case hearing on the amendment of the designation.

(e) Focused review is not a procedural prerequisite to the revocation of a designation pursuant to Paragraph (d) of this Rule.

(f) With the OEMS' approval, a trauma center may voluntarily withdraw its designation for a maximum of one year by

submitting a written request. This request shall include the reasons for withdrawal and a plan for resolution of the issues. To reactivate the designation, the facility shall provide written documentation of compliance that is acceptable to the OEMS. Voluntary withdrawal shall not affect the original expiration date of the trauma center's designation.

(g) If the trauma center fails to resolve the issues which resulted in a voluntary withdrawal within the specified time period for resolution, the OEMS may revoke the trauma center designation.

(h) In the event of a revocation or voluntary withdrawal, the OEMS shall provide written notification to all hospitals and emergency medical services providers within the trauma center's defined trauma primary catchment area. The OEMS shall provide written notification to same if, and when, the voluntary withdrawal reactivates to full designation.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .3403 MISREPRESENTATION OF DESIGNATION

(a) Hospitals shall not represent themselves as trauma centers unless they are currently designated by the Department pursuant to Section .3300 of this Subchapter.

(b) Designation applies only to the hospital that submitted the RFP and underwent the formal site survey and does not extend to its satellite facilities or affiliates.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .3502 REGIONAL TRAUMA SYSTEM PLAN

(a) A Level I or II trauma center shall facilitate development of and provide RAC staff support that shall include, at a minimum, the following:

- (1) The trauma medical director(s) from the lead RAC agency;
- (2) Trauma nurse coordinator(s) or program manager(s) from the lead RAC agency.

(b) The RAC membership shall include, at a minimum, the following:

- (1) The trauma medical director(s) and the trauma nurse coordinator(s) or program manager(s) from The lead RAC agency;
- (2) If on staff, an outreach coordinator(s) or designee(s), as well as an identified RAC registrar or designee(s) from the lead RAC agency;
- (3) A senior level hospital administrator;
- (4) An emergency physician;
- (5) An Emergency Medical Services representative;
- (6) A representative from each hospital participating in the RAC;
- (7) Community representatives;
- (8) An EMS System physician involved in medical oversight.

(c) The RAC shall develop and submit a plan within one year of notification of the RAC membership, or for existing RACs within six months of the implementation date of this rule, to the OEMS containing at a minimum:

- (1) Organizational structure to include the roles of the members of the system;
- (2) Goals and objectives to include the orientation of the providers to the regional system;
- (3) RAC membership list, rules of order, terms of office, meeting schedule (held at a minimum of two times per year);
- (4) Copies of documents and information required by the OEMS as defined in Rule .3503 of this Section;
- (5) System evaluation tools to be utilized;
- (6) Written documentation of regional support for the plan; and
- (7) Performance improvement activities to include the RAC Registry.

(d) The RAC shall submit to the OEMS an annual progress report that assesses compliance with the regional trauma system plan and specifies any updates to the plan.

(e) Upon OEMS' receipt of a letter of intent for initial Level I or II trauma center designation pursuant to Rule .3304 (b) of this Subchapter, the applicant's RAC shall be provided the applicant's data from OEMS to review and comment. This data which should demonstrate the need for the trauma center designation must include at a minimum:

- (1) The population to be served and the extent to which the population is underserved for trauma care with the methodology used to reach this conclusion;
- (2) Geographic considerations to include trauma primary and secondary catchment area and distance from other trauma centers; and
- (3) Trauma patient volume and severity of injury for the facility for the 24-month period of time preceding the application. The trauma center shall show that its trauma service will be taking care of at least 200 trauma patients with an Injury Severity Score (ISS) greater than or equal to 15 during the first two-year period of its designation. This criteria shall be met without compromising the quality of care or cost effectiveness of any other designated Level I or II trauma center sharing all or part of its catchment area or by jeopardizing the existing trauma center's ability to meet this same 200-patient minimum.

(f) The RAC has 30 days to comment on the request for initial designation.

(g) The RAC shall also be notified of the OEMS approval to submit an RFP so that necessary changes in protocols can be considered.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03D .3503 REGIONAL TRAUMA SYSTEM POLICY DEVELOPMENT

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The RAC shall oversee the development, implementation, and evaluation of the regional trauma system to include:

- (1) Public information and education programs to include system access and injury prevention;
(2) Written trauma system guidelines to address the following:
(A) Regional communications;
(B) Triage;
(C) Treatment at the scene and in the pre-hospital, inter-hospital, and Emergency Department to include guidelines to facilitate the rapid assessment and initial resuscitation of the severely injured patient, including primary and secondary survey. Criteria addressing management during transport shall include continued assessment and management of airway, cervical spine, breathing, circulation, neurologic and secondary parameters, communication, and documentation.
(D) Transport to determine the appropriate mode of transport and level of care required to transport, considering patient condition, requirement for trauma center resources, family requests, and capability of transferring entity.
(E) Bypass procedures which define:
(i) Circumstances and criteria for bypass decisions;
(ii) Time and distance criteria; and
(iii) Mode of transport which bypasses closer facilities.
(F) Scene and inter-hospital diversion procedures which shall include delineation of specific factors such as hospital census or acuity, physician availability, staffing issues, disaster status, or transportation which would require routing of a patient to another trauma center.
(3) Transfer agreements (to include those with other hospitals, as well as specialty care facilities such as burn, pediatrics, spinal cord, and rehabilitation) which shall outline mutual understandings between facilities to transfer/accept certain patients. These shall specify responsible parties, documentation requirements, and minimum care requirements.
(4) A performance improvement plan that includes:
(A) A performance improvement committee of the RAC;
(i) Whose membership only includes health care professionals, as defined and

protected by G.S. 131E-95 or in G.S. 90-21.222A; and
(ii) Continuously evaluates the regional trauma system through structured review of process of care and outcomes.

- (B) A RAC registry database, once operational, that reports quarterly or as requested by the OEMS.

History Note: Authority G.S. 131E-162; Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03Q .0103 DEFINITIONS

As used in this Subchapter, unless the context clearly requires otherwise, the following terms have the meanings specified:

- (1) "Adequate" means, when applied to various areas of services, that the services are at least satisfactory in meeting a referred to need when measured against contemporary professional standards of practice.
(2) "AAAASF" means American Association for Accreditation of Ambulatory Surgery Facilities.
(3) "AAAHC" means Accreditation Association for Ambulatory Health Care.
(4) "Ancillary nursing personnel" means persons employed to assist registered nurses or licensed practical nurses in the care of patients.
(5) "Anesthesiologist" means a physician whose specialized training and experience qualify him or her to administer anesthetic agents and to monitor the patient under the influence of these agents. For the purpose of these Rules the term "anesthesiologist" shall not include podiatrists.
(6) "Anesthetist" means a physician or dentist qualified, as defined in Item (22) of this Rule, to administer anesthetic agents or a registered nurse qualified, as defined in Item (22) of this Rule, to administer anesthesia.
(7) "Authority Having Jurisdiction" means the Division of Facility Services.
(8) "Chief executive officer" or "administrator" means a qualified person appointed by the governing authority to act in its behalf in the overall management of the facility and whose office is located in the facility.
(9) "Dentist" means a person who holds a valid license issued by the North Carolina Board of Dental Examiners to practice dentistry.
(10) "Department" means the North Carolina Department of Health and Human Services.
(11) "Director of nursing" means a registered nurse who is responsible to the chief executive officer and has the authority and direct responsibility for all nursing services and nursing care for the entire facility at all times.

- (12) "Governing authority" means the individual, agency or group or corporation appointed, elected or otherwise designated, in which the ultimate responsibility and authority for the conduct of the ambulatory surgical facility is vested.
- (13) "JCAHO" means Joint Commission on Accreditation of Healthcare Organizations.
- (14) "Licensing agency" means the Department of Human Resources, Division of Facility Services.
- (15) "Licensed practical nurse" (L.P.N.) means any person licensed as such under the provisions of G.S. 90-171.
- (16) "Nursing personnel" means registered nurses, licensed practical nurses and ancillary nursing personnel.
- (17) "Operating room" means a room in which surgical procedures are performed.
- (18) "Patient" means a person admitted to and receiving care in a facility.
- (19) "Person" means an individual, a trust or estate, a partnership or corporation, including associations, joint stock companies and insurance companies; the state, or a political subdivision or instrumentality of the state.
- (20) "Pharmacist" means a person who holds a valid license issued by the North Carolina Board of Pharmacy to practice pharmacy in accordance with G.S. 90-85.
- (21) "Physician" means a person who holds a valid license issued by the North Carolina Medical Board to practice medicine. For the purpose of carrying out these Rules, a "physician" may also mean a person holding a valid license issued by the North Carolina Board of Podiatry Examiners to practice podiatry.
- (22) "Qualified person" when used in connection with an occupation or position means a person:
 - (a) who has demonstrated through relevant experience the ability to perform the required functions; or
 - (b) who has certification, registration or other professional recognition.
- (23) "Recovery area" means a room used for the post anesthesia recovery of surgical patients.
- (24) "Registered nurse" means a person who holds a valid license issued by the North Carolina Board of Nursing to practice nursing as defined in G.S. 90-171.
- (25) "Surgical suite" means an area which includes one or more operating rooms and one or more recovery rooms.

(a) Upon application for a license from a facility never before licensed, a representative of the Department shall make an inspection of that facility. Every building, institution or establishment for which a license has been issued shall be inspected for compliance with the rules found in this Subchapter. An ambulatory surgery facility shall be deemed to meet licensure requirements if the ambulatory surgery facility is accredited by JCAHO, AAAHC or AAAASF. Accreditation does not exempt a facility from statutory or rule requirements for licensure nor does it prohibit the Department from conducting inspections as provided in this Rule to determine compliance with all requirements.

(b) If the applicant has been issued a Certificate of Need and is found to be in compliance with the Rules found in this Subchapter then the Department shall issue a license to expire on December 31 of each year.

(c) The Department shall be notified at the time of:

- (1) any change as to the person who is the operator or owner of an ambulatory surgical facility;
- (2) any change of location;
- (3) any change as to a lease; and
- (4) any transfer, assignment or other disposition or change of ownership or control of 20 percent or more of the capital stock or voting rights thereunder of a corporation which is the operator or owner of an ambulatory surgical facility, or any transfer, assignment, or other disposition of the stock or voting rights thereunder of such corporation which results in the ownership or control of more than 20 percent of the stock or voting rights thereunder of such corporation by any person.

A new application shall be submitted to the Department in the event of such a change or changes.

(d) The Department shall not grant a license until plans and specifications, which are stated in Section .1400 of this Subchapter, covering the construction of new buildings, additions, or material alterations to existing buildings are approved by the Department.

(e) The facility design and construction shall be in accordance with the licensure rules for ambulatory surgical facilities found in this Subchapter, the North Carolina State Building Code, and local municipal codes.

(f) Submission of Plans

- (1) Before construction is begun, plans and specifications covering construction of the new buildings, alterations, renovations or additions to existing buildings, shall be submitted to the Division for approval.
- (2) The Division shall review the plans and notify the licensee that said buildings, alterations, additions, or changes are approved or disapproved. If plans are disapproved the Division shall give the applicant notice of deficiencies identified by the Division.
- (3) In order to avoid unnecessary expense in changing final plans, as a preliminary step, proposed plans in schematic form shall be reviewed by the Division.

*History Note: Authority G.S. 131E-149;
Eff. October 14, 1978;
Amended Eff. April 1, 2003; November 1, 1989.*

**10 NCAC 03Q .0202 REQUIREMENTS FOR
ISSUANCE OF LICENSE**

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| <p>(4) The plans shall include a plot plan showing the size and shape of the entire site and the location of all existing and proposed facilities.</p> <p>(5) Plans shall be submitted in duplicate in order that the Division may distribute a copy to the Department of Insurance for review of the North Carolina State Building Code requirements.</p> | <p>Recovery 70-75° F* 21-24° C* 30-60</p> <p>*Variable Range Required</p> <p>(2) For all other occupied or use areas, a minimum design temperature of 72°F. (22°C) at winter design conditions shall be provided.</p> <p>(b) All air-supply and air-exhaust systems for the operating suite and recovery area shall be mechanically operated. All fans serving exhaust systems shall be located at the discharge end of the system. The ventilation rates shown in this Paragraph shall be minimum acceptable rates and shall not be construed as precluding the use of higher ventilation rates.</p> |
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History Note: Authority G.S. 131E-147; 131E-149; Eff. October 14, 1978; Amended Eff. April 1, 2003.

10 NCAC 03Q .0402 SURGICAL SERVICES

- (a) The governing authority shall delineate surgical privileges for each physician and dentist performing surgery in accordance with criteria which it has established provided, however, that no physician or dentist may be given privileges to perform surgical procedures for which he or she does not have privileges to perform at the hospital with which the facility has a transfer agreement as provided in Paragraph (a) in Rule .0403 of this Section.
- (b) A roster of medical personnel having surgical and anesthesia privileges at the facility specifying the privileges and limitations of each, shall be readily obtainable by the person in charge of the surgical suite.
- (c) The administrator or his designee shall maintain a chronological register of all surgical procedures performed. This shall include type of procedure performed, type of anesthesia used, personnel participating, post operative diagnosis and any unusual or untoward occurrence.

History Note: Authority G.S. 131E-149; Eff. October 14, 1978; Amended Eff. April 1, 2003.

10 NCAC 03Q .1403 SUPPORTING ELEMENTS

In addition to those areas covered in Rules .1401 and .1402 of this Section, the facility shall provide space for the following:

- (1) the receiving and registering of patients in privacy for obtaining confidential information;
- (2) waiting space with public toilets, public telephone, drinking fountain, and wheelchair storage;
- (3) preoperative preparation and post operative space for both males and females with dressing rooms and toilet facilities; and
- (4) secure storage for patients' personal effects.

History Note: Authority G.S. 131E-149; Eff. October 14, 1978; Amended Eff. April 1, 2003.

10 NCAC 03Q .1405 MECHANICAL REQUIREMENTS

- (a) Temperatures and Relative Humidity
- (1) The heating and air conditioning systems shall be designed to provide the temperature and humidities shown below:

Area Designation	Temperature	Relative Humidity
		Percent
Operating	70-75° F* 21-24° C*	50-60

- (1) Outdoor intakes for operating rooms shall be located not less than 30 feet (9.14 m.) from exhausts from other ventilating systems, combustion equipment and plumbing vents and at least 3 feet 0 inches (.92 m.) above the roof and 6 feet (1.83 m.) above ground level.
- (2) The ventilation systems shall be designed and balanced to provide the pressure relationship as shown in this Paragraph.
- (3) All air supplied to operating rooms shall be delivered at or near the ceiling of the area served and all exhaust from the area shall be removed near floor level. At least two exhaust outlets shall be used in all operating rooms.
- (4) The bottom of any room supply air inlets, recirculation, and exhaust air outlets shall be located not less than 3 inches (7.62 cm.) above the floor.
- (5) Corridors shall not be used to supply air to or exhaust air from any room, except that exhaust from corridors may be used to exhaust-ventilate bathrooms, toilet rooms, janitors' closets and electrical or telephone closets opening directly on corridors.
- (6) All ventilation or air conditioning systems serving operating rooms shall have a minimum of two filter beds:
 - (A) Filter bed No. 1 shall be located upstream of the air conditioning equipment and shall have a minimum efficiency of 25 percent. Filter bed No. 2 shall be downstream of the supply fan and of recirculating spray water and water reservoir-type humidifiers. Filter bed No. 2 shall have a minimum efficiency of 90 percent.
 - (B) All filter efficiencies shall be certified by an independent testing agency and shall be based on the atmospheric dust spot efficiency determination in accordance with ASHRAE Standard 52-68; except that the exhausts from all laboratory hoods in which infectious or radioactive materials are processed shall be equipped with filters having a 99 percent efficiency based on the DOP (dioctyophthalate)

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- test method and there shall be equipment and procedure for the safe removal of contaminated filters.
- (C) Filter frames shall provide an airtight fit with the enclosing ductwork. All joints between filter segments and the enclosing ductwork shall be gasketed or sealed to provide a positive seal against air leakage. Each filter bed serving sensitive areas or central air systems shall have a manometer installed across each filter bed.
- (D) Ventilation systems serving recovery rooms shall not be tied in with soiled holding or work rooms, janitors' closets, or waiting rooms if the air is to be recirculated in any manner except through approved filters.
- (7) Air handling duct systems shall not have duct linings.
- (8) The following general air pressure relationships and ventilation shall apply:

Area Designation	Pressure Relationship to Adjacent Areas	Minimum Total Air Changes per Hour Supplied to Room	All Air	
			Exhausted Directly to Outdoors	Recirculated Within Room Units
Operating Room	P	25	Optional	Only with approved filters.
Recovery Room	E	6	Optional	See Sub-paragraph (b)(6)(D) of this Rule.
Soiled Workroom or Soiled Holding	N	10	Yes	No
Clean Workroom or Clean Holding	P	4	Optional	Optional
Examination Room	+/-	6	Optional	Optional
Treatment Room	+/-	6	Optional	Optional
Medication room	P	4	Optional	Optional
X-Ray (Diagnostic And Treatment)	+/-	6	Optional	Optional
Laboratory (general)	N	6	Optional	Optional

P = Positive N = Negative E = Equal +/- = continuous Directional control not required

- (9) Operating rooms or procedure rooms which are used with either life sustaining electrical equipment or identified as a critical care location shall comply with the requirements for ventilation in NFPA 99, Chapter 5, Environmental Systems.
- (10) Prior to occupancy of the facility, the facility shall obtain documentation verifying that all mechanical systems have been tested, balanced, and operated to demonstrate that the installation and performance of these systems conform to the approved design. Test results shall be maintained in the facility maintenance files.
- (11) Upon completion of equipment installation, the facility shall acquire and maintain a complete set of manufacturers' operating, maintenance, and preventive maintenance instructions, parts lists, and procurement information including equipment numbers and descriptions.
- (12) Operating staff shall be provided with instructions for properly operating systems and equipment.
- (c) Medical gases: The performance, maintenance, installation, and testing of medical gas systems shall comply with the requirements of National Fire Protection Association Standard 99. When any piping or supply of medical gases is installed, altered, or augmented, the altered zone shall be tested and certified as required by National Fire Protection Association Standard 99. Testing shall be conducted by the facility and at least one other independent testing organization to ensure that the system is safe for patient use.
- History Note: Authority G.S. 131E-149; Eff. October 14, 1978; Amended Eff. April 1, 2003; December 24, 1979.*

10 NCAC 03Q .1406 PLUMBING AND OTHER PIPING SYSTEMS

(a) All building plumbing systems shall be installed in accordance with the requirements of the North Carolina State Building Code, Volume II.

(b) **Plumbing Fixtures**

- (1) The material used for plumbing fixtures shall be of non-absorptive acid-resistant material.
- (2) Lavatories and sinks required shall have the water supply spout mounted so that its discharge point is a minimum distance of five inches (12.7 cm.) above the rim of the fixture. All fixtures used by medical and nursing staff shall be trimmed with valves which can be operated without the use of hands. Where blade handles are used for this purpose, they shall not exceed four and one-half inches (11.43 cm.) in length, except that handles on scrub sinks and clinical sinks shall be not less than six inches (15.24 cm.) long.
- (3) Clinical sinks shall have an integral trap in which the upper portion of a visible trap seal provides a water surface.

(c) **Water Supply Systems**

- (1) Systems shall be designed to supply water to the fixtures and equipment at a sufficient pressure to operate all fixtures and equipment during maximum demand periods.
- (2) Each water service main, branch main, riser and branch to a group of fixtures shall be valved. Stop valves shall be provided at each fixture.
- (3) Backflow preventers shall be installed on hose bibbs and on all fixtures to which hoses or tubing can be attached.
- (4) Hot water distribution systems shall be arranged to provide hot water at each hot water outlet at all times. Hot water at the handwashing and bathing facilities shall not exceed 116° F (46.6°C).

(d) **Drainage Systems**

- (1) Drain lines from sinks in which acid wastes may be poured shall be fabricated from an acid-resistant material.
- (2) Piping systems shall be designed to avoid, insofar as is possible, installations in the ceiling directly over operating rooms.
- (3) Floor drains shall not be installed in operating rooms.
- (4) Building sewers shall discharge into a community sewerage system. Where such a system is not available, a facility providing sewage treatment which conforms to applicable local and state regulations is required.

(e) Non-flammable medical gas system installations shall be in accordance with the requirements of NFPA Standard 99 and NFPA 50. Clinical vacuum (suction) system installations shall be in accordance with the requirements of NFPA Standard 99. The minimum number of outlets is shown below.

Minimum Medical Gas Station Outlets and Vacuum Station Inlets

Location	Oxygen	Vacuum	Medical Air
Operating Room	2/room	3/room	1/room
Recovery Room	1/bed	3/bed	1/bed

(f) Service outlets for built-in housekeeping vacuum systems, if used, shall not be located within operating rooms.

History Note: Authority G.S. 131E-149; Eff. October 14, 1978; Amended Eff. April 1, 2003.

10 NCAC 03Q .1407 ELECTRICAL REQUIREMENTS

(a) **General**

- (1) All material including equipment, conductors, controls and signaling devices shall be installed to provide a complete electrical system with the necessary characteristics and capacity to supply the electrical facilities shown in the specifications or indicated on the plans. All materials shall be listed as complying with applicable standards of Underwriters' Laboratories, Inc., or other similarly established standards, where such standards have been established.
- (2) All material and equipment, including conductors, controls, and signaling devices, shall be installed in compliance with applicable sections of North Carolina State Building Code, Volume VII IV, Electrical. A written record of performance tests on electrical systems and equipment shall show compliance with applicable codes and standards.
- (3) Lighting and appliance panelboards shall be located on the same floor as the circuits they serve.

(b) **Lighting**

- (1) All spaces occupied by people and equipment shall have electric lighting.
- (2) Operating rooms shall have general lighting for the room in addition to local lighting provided by special lighting units at the surgical and obstetrical tables. Each fixed special lighting unit at the tables, except for portable units, shall be connected to an independent circuit.

(c) **Power**

- (1) If non-flammable anesthetics are to be used, the facility shall meet the requirements of NFPA 99, Health Care Facilities Code.
- (2) Procedures that create a direct electrical pathway to the heart or create conditions meeting the definition of a wet location shall be provided with an isolated power system (IPS) in the patient care area.

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| <p>(3) Procedures that require electrically powered devices that because of patient safety cannot tolerate an outage due to equipment faults shall be provided with an isolated power system (IPS) in the patient care area.</p> <p>(4) Procedures that can be safely carried out with conventional grounded power systems shall be provided with ground fault circuit interrupters on each circuit installed in the operating or procedure room serving the patient care area.</p> <p>(5) Critical care areas require a Type 1 essential electrical system.</p> <p>(6) Procedures requiring the use of electrical life support equipment require a Type 1 essential electrical system.</p> <p>(7) All facilities shall have as a minimum a Type 3 essential electrical system.</p> <p>(8) All devices, switches, receptacles connected to the essential electrical system shall be distinctively identified so that personnel can easily select which device is expected to operate during failure of normal source of power.</p> <p>(9) Fuel for the essential electrical system generator shall be stored on site in sufficient quantity to provide for not less than 24 hours of operation.</p> <p>(d) Receptacles</p> <p>(1) Each operating or procedure room shall have at least eight 120 volt duplex receptacles.</p> <p>(2) In locations where mobile X-ray is used, an additional receptacle, distinctively marked for X-ray use, shall be provided.</p> <p>(3) Fixed and mobile X-ray equipment installations shall conform to Article 660 of the North Carolina State Building Code, Electrical.</p> | <p>PO Box 9101, Quincy, MA 02269-9101 at the cost shown for each code or standard listed.</p> <p>(a) 10 Portable Fire Extinguishers \$29.75</p> <p>(b) 13 Installation of Sprinkler Systems \$42.75</p> <p>(c) 20 Installation of Centrifugal Fire Pumps \$29.75</p> <p>(d) 22 Water Tanks for Private Fire Protection \$29.75</p> <p>(e) 25 Water-Based Fire Protection Systems \$32.75</p> <p>(f) 30 Flammable and Combustible Liquids Code \$32.25</p> <p>(g) 31 Installation of Oil-Burning Equipment \$29.75</p> <p>(h) 37 Stationary Combustion Engines and Gas Turbines \$26.75</p> <p>(i) 50 Bulk Oxygen Systems at Consumer Sites \$22.25</p> <p>(j) 53 Fire Hazards in Oxygen-Enriched Atmospheres \$29.75</p> <p>(k) 54 National Fuel Gas Code \$35.25</p> <p>(l) 55 Compressed and Liquefied Gases in Portable Cylinders \$22.25</p> <p>(m) 58 Storage and Handling of Liquefied Petroleum Gases \$35.25</p> <p>(n) 59A Liquefied Natural Gas (LNG) \$26.75</p> <p>(o) 72 National Fire Alarm Code \$42.75</p> <p>(p) 80 Fire Doors and Windows \$29.75</p> <p>(q) 82 Incinerators, Waste and Linen Handling Systems and Equipment \$22.25</p> <p>(r) 90A Installation of Air Conditioning and Ventilating Systems \$26.75</p> <p>(s) 90B Installation of Warm Air Heating and Air Conditioning Systems \$22.25</p> <p>(t) 92A Smoke-Control Systems \$26.75</p> <p>(u) 92B Smoke Management Systems in Malls, Atria, Large Areas \$26.75</p> <p>(v) 99 Health Care Facilities \$42.75</p> <p>(w) 101 Safety to Life from Fire in Buildings and Structures \$53.50</p> <p>(x) 101A Alternative Approaches to Life Safety \$35.25</p> <p>(y) 105 Smoke-Control Door Assemblies \$22.25</p> |
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*History Note: Authority G.S. 131E-149;
Eff. October 14, 1978;
Amended Eff. April 1, 2003.*

10 NCAC 03Q .1409 LIST OF REFERENCED CODES AND STANDARDS

The following codes and standards are adopted by reference including subsequent amendments. Copies of these publications can be obtained from the various organizations at the addresses listed:

- (1) The North Carolina State Building Code, current edition, all volumes. Copies of this code may be purchased from the N.C. Department of Insurance Engineering Division located at 410 North Boylan Avenue, Raleigh, NC 27603 at a cost of four hundred eight dollars (\$408.00).
- (2) The National Fire Protection Association codes and standards listed below, current editions. Copies of these codes and standards may be obtained from the National Fire Protection Association, 1 Batterymarch Park,

- (z) 110 Emergency and Standby Power Systems \$26.75
- (aa) 221 Fire Walls and Fire Barrier Walls \$22.25
- (bb) 241 Construction, Alteration, and Demolition Operations \$26.75
- (cc) 780 Lightning Protection Code \$29.75
- (dd) 801 Facilities Handling Radioactive Materials \$26.75
- (3) American Society of Heating, Refrigerating & Air Conditioning Engineers, (ASHRAE) HVAC APPLICATIONS, current edition. Copies of this document may be obtained from the American Society of Heating, Refrigerating & Air Conditioning Engineers at United Engineer Center, 345 East 47th Street, New York, NY 10017 at a cost of one hundred forty-four dollars (\$144.00).

History Note: Authority G.S. 131E-149; Eff. April 1, 2003.

10 NCAC 03Q .1410 APPLICATION OF PHYSICAL PLANT REQUIREMENTS

The physical plant requirements for each facility shall be applied as follows:

- (1) All newly licensed facilities shall comply with the requirements of Section .1400;
- (2) Existing licensed facilities shall meet licensure and code requirements in effect at the time of construction, alteration, or modification;
- (3) New additions, alterations, modifications, and repairs of existing licensed facilities shall meet the technical requirements of Section .1400, however, where strict conformance with current requirements would be impractical, the authority having jurisdiction shall approve alternative measures where the facility can demonstrate to the Division's satisfaction that the alternative measures do not reduce the safety or operating effectiveness of the facility;
- (4) Rules contained in Section .1400 are minimum requirements and not intended to prohibit buildings, systems or operational conditions that exceed minimum requirements;
- (5) Equivalency: Alternate methods, procedures, design criteria, and functional variations from the physical plant requirements, because of extraordinary circumstances, new programs, or unusual conditions, shall be approved by the authority having jurisdiction when the facility can effectively demonstrate to the Division's satisfaction, that the intent of the physical plant requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility; and
- (6) Where rules, codes, or standards have any conflict, the most stringent requirement shall apply.

History Note: Authority G.S. 131E-149; Eff. April 1, 2003.

10 NCAC 03Q .1411 ACCESS AND SAFETY

Projects involving replacement of, alterations of, and additions to existing licensed facilities shall be planned and phased so that construction will minimize disruptions of facility operations. Facility access, exit ways, safety provisions, and building and life safety systems shall be maintained so that the health and safety of the occupants will not be jeopardized during construction. Additional safety and operating measures shall be planned, documented, and executed to compensate for hazards related to construction or renovation activities to maintain an equivalent degree of health, safety, and operational effectiveness to that required by rules, standards, and codes for a facility not under construction or renovation.

History Note: Authority G.S. 131E-149; Eff. April 1, 2003.

10 NCAC 03R .1126 REQUIRED PERFORMANCE STANDARDS

- (a) An applicant proposing to add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.
- (b) An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility, except an applicant proposing to transfer existing certified nursing facility beds from a State Psychiatric Hospital to a community facility, shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.
- (c) An applicant proposing to add adult care home beds to an existing facility shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed adult care home beds within the facility in which the new beds are to be operated was at least 85 percent.
- (d) An applicant proposing to establish a new adult care home facility or add adult care home beds to an existing facility shall not be approved unless occupancy is projected to be at least 85 percent for the total number of adult care home beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be stated.

History Note: Authority G.S. 131E-175; 131E-176; 131E-177(1); 131E-183(b); S.L. 2001, c. 234; Eff. November 1, 1996; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2003.

10 NCAC 03R .1912 DEFINITIONS

These definitions shall apply to all rules in this Section:

- (1) "Approved linear accelerator" means a linear accelerator which was not operational prior to the beginning of the review period.
- (2) "Complex Radiation treatment" is equal to 1.0 ESTV and means: treatment on three or more sites on the body; use of special techniques such as tangential fields with wedges, rotational or arc techniques; or use of custom blocking.
- (3) "Equivalent Simple Treatment Visit [ESTV]" means one basic unit of radiation therapy which normally requires up to fifteen (15) minutes for the uncomplicated set-up and treatment of a patient on a megavoltage teletherapy unit including the time necessary for portal filming.
- (4) "Existing linear accelerator" means a linear accelerator in operation prior to the beginning of the review period.
- (5) "Intermediate Radiation treatment" means treatment on two separate sites on the body, three or more fields to a single treatment site or use of multiple blocking and is equal to 1.0 ESTV.
- (6) "Linear accelerator" means MRT equipment which is used to deliver a beam of electrons or photons in the treatment of cancer patients.
- (7) "Linear accelerator service area" means a single or multi-county area as used in the development of the need determination in the applicable State Medical Facilities Plan.
- (8) "Megavoltage unit" means MRT equipment which provides a form of teletherapy that involves the delivery of energy greater than, or equivalent to, one million volts by the emission of x-rays, gamma rays, electrons, or other radiation.
- (9) "Megavoltage radiation therapy (MRT)" means the use of ionizing radiation in excess of one million electron volts in the treatment of cancer.
- (10) "MRT equipment" means a machine or energy source used to provide megavoltage radiation therapy including linear accelerators and other particle accelerators.
- (11) "Radiation therapy equipment" means medical equipment which is used to provide radiation therapy services.
- (12) "Radiation therapy services" means those services which involve the delivery of controlled and monitored doses of radiation to a defined volume of tumor bearing tissue within a patient. Radiation may be delivered to the tumor region by the use of radioactive implants or by beams of ionizing radiation or it may be delivered to the tumor region systemically.
- (13) "Radiation therapy service area" means a single or multi-county area as used in the

- (14) "Simple Radiation treatment" means treatment on a single site on the body, single treatment field or parallel opposed fields with no more than simple blocks and is equal to 1 ESTV.
- (15) "Simulator" means a machine that reproduces the geometric relationships of the MRT equipment to the patient.
- (16) "Special technique" means radiation therapy treatments that may require increased time for each patient visit including:
 - (a) total body irradiation (photons or electrons) which equals 4.0 ESTVs;
 - (b) hemi-body irradiation which equals 2.0 ESTVs;
 - (c) intraoperative radiation therapy which equals 10.0 ESTVs;
 - (d) particle radiation therapy which equals 2.0 ESTVs;
 - (e) weekly radiation therapy management, conformal, which equals 1.5 ESTVs;
 - (f) limb salvage irradiation at lengthened SSD which equals 1.0 ESTV;
 - (g) additional field check radiographs which equals .50 ESTV;
 - (h) stereotactic radiosurgery treatment management which equals 3.0 ESTVs; and
 - (i) pediatric patient which equals 1.2 ESTVs.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Amended Eff. November 1, 1996; Temporary Amendment January 1, 1999; Temporary Eff. January 1, 1999 expired October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03R .1914 REQUIRED PERFORMANCE STANDARDS

- (a) An applicant proposing to acquire a linear accelerator shall demonstrate that each of the following standards shall be met:
 - (1) an applicant's existing linear accelerators located in the proposed service area performed at least 6,750 ESTV treatments per machine in the twelve months prior to the date the application was submitted;
 - (2) each proposed new linear accelerator shall be utilized at an annual rate of 250 patients or

- (3) 6,750 ESTV treatments during the third year of operation of the new equipment; and an applicant's existing linear accelerators located in the proposed service area shall be projected to be utilized at an annual rate of 6,750 ESTV treatments per machine during the third year of operation of the new equipment.
- (b) A linear accelerator shall not be held to the standards in Paragraph (a) of this Rule if the applicant provides documentation that the linear accelerator has been or shall be used exclusively for clinical research and teaching.
- (c) An applicant proposing to acquire radiation therapy equipment other than a linear accelerator shall provide the following information:
- (1) the number of patients that are projected to receive treatment from the proposed radiation therapy equipment, classified by type of equipment, diagnosis, treatment procedure, and county of residence; and
 - (2) the maximum number and type of procedures that the proposed equipment is capable of performing.
- (d) The applicant shall document all assumptions and provide data supporting the methodology used to determine projected utilization as required in this Rule.

History Note: Authority G.S. 131E-177(1); 131E-183 (b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Amended Eff. November 1, 1996; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 expired October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. January 1, 2002; Temporary Amendment Eff. March 15, 2002; Amended Eff. April 1, 2003.

10 NCAC 03R .2113 DEFINITIONS

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

- (1) "Ambulatory surgical case" means an individual who receives one or more ambulatory surgical procedures in an operating room during a single operative encounter.
- (2) "Ambulatory surgical service area" means a single or multi-county area as used in the development of the ambulatory surgical facility need determination in the applicable State Medical Facilities Plan.
- (3) "Ambulatory surgical services" means those surgical services provided to patients as part of an ambulatory surgical program within a licensed ambulatory surgical facility or a general acute care hospital licensed under G.S. 131E, Article 5, Part A.

- (4) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1b).
- (5) "Operating room" means an inpatient operating room, an outpatient or ambulatory surgical operating room, a shared operating room, or an endoscopy procedure room in a licensed health service facility.
- (6) "Ambulatory surgical program" means a program as defined in G.S. 131E-176(1c).
- (7) "Ambulatory surgical procedure" means a procedure performed in an operating room which requires local, regional or general anesthesia and a period of post-operative observation of less than 24 hours.
- (8) "Existing operating rooms" means those operating rooms in ambulatory surgical facilities and hospitals which were reported in the License Application for Ambulatory Surgical Facilities and Programs and in Part III of Hospital Licensure Renewal Application Form submitted to the Licensure Section of the Division of Facility Services and which were licensed and certified prior to the beginning of the review period.
- (9) "Approved operating rooms" means those operating rooms that were approved for a certificate of need by the Certificate of Need Section prior to the date on which the applicant's proposed project was submitted to the Agency but that have not been licensed and certified.
- (10) "Multispecialty ambulatory surgical program" means a program as defined in G.S. 131E-176(15a).
- (11) "Outpatient or ambulatory surgical operating room" means an operating room used solely for the performance of ambulatory surgical procedures.
- (12) "Shared operating room" means an operating room that is used for the performance of both ambulatory and inpatient surgical procedures.
- (13) "Specialty area" means an area of medical practice in which there is an approved medical specialty certificate issued by a member board of the American Board of Medical Specialties and includes, but is not limited to the following: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, urology, orthopedics, and oral surgery.
- (14) "Specialty ambulatory surgical program" means a program as defined in G.S. 131E-176(24c).
- (15) "Practical utilization" is 4.3 surgical cases per day for an outpatient or ambulatory surgical operating room, 3.5 surgical cases per day for a shared operating room, 2.7 surgical cases per day for an inpatient operating room, and 4.3 cases per day for an endoscopy procedure room.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. November 1, 1990; Amended Eff. March 1, 1993; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. January 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002.

10 NCAC 03R .2116 FACILITY

- (a) An applicant proposing to establish a licensed ambulatory surgical facility that will be physically located in a physician's or dentist's office or within a general acute care hospital shall demonstrate that reporting and accounting mechanisms exist and can be used to confirm that the licensed ambulatory surgery facility is a separately identifiable entity physically and administratively, and is financially independent and distinct from other operations of the facility in which it is located.
- (b) An applicant proposing a licensed ambulatory surgical facility shall receive accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the Accreditation Association for Ambulatory Health Care or a comparable accreditation authority within two years of completion of the facility.
- (c) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of operating rooms, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall document that the physical environment of the facility conforms to the requirements of federal, state, and local regulatory bodies.
- (d) In competitive reviews, an applicant proposing to perform ambulatory surgical procedures in at least three specialty areas shall be considered more favorably than an applicant proposing to perform ambulatory surgical procedures in fewer than three specialty areas.
- (e) The applicant shall provide a floor plan of the proposed facility identifying the following areas:
 - (1) receiving/registering area;
 - (2) waiting area;
 - (3) pre-operative area;
 - (4) operating room by type;
 - (5) recovery area; and
 - (6) observation area.
- (f) An applicant proposing to expand by converting a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or by adding a specialty to a specialty ambulatory surgical program that does not propose to add physical space to the existing ambulatory surgical facility shall

demonstrate the capability of the existing ambulatory surgical program to provide the following for each additional specialty area:

- (1) physicians;
- (2) ancillary services;
- (3) support services;
- (4) medical equipment;
- (5) surgical equipment;
- (6) receiving/registering area;
- (7) clinical support areas;
- (8) medical records;
- (9) waiting area;
- (10) pre-operative area;
- (11) operating rooms by type;
- (12) recovery area; and
- (13) observation area.

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. January 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002; Amended Eff. April 1, 2003.

10 NCAC 03R .2717 REQUIRED STAFFING AND STAFF TRAINING

- (a) An applicant proposing to acquire an MRI scanner shall demonstrate that one diagnostic radiologist certified by the American Board of Radiologists shall be available to provide the proposed services who has had:
 - (1) training in magnetic resonance imaging as an integral part of his or her residency training program; or
 - (2) six months of supervised MRI experience under the direction of a certified diagnostic radiologist; or
 - (3) at least six months of fellowship training, or its equivalent, in MRI; or
 - (4) a combination of MRI experience and fellowship training equivalent to Subparagraph (a)(1), (2) or (3) of this Rule.
- (b) An applicant proposing to acquire a dedicated fixed breast MRI scanner shall provide documentation that the radiologist is trained and has experience in interpreting images produced by an MRI scanner configured exclusively to perform mammographic studies.
- (c) The applicant shall provide evidence of the availability of two full-time MRI technologist-radiographers and that one of these technologists shall be present during the hours of operation of the MRI scanner.
- (d) An applicant proposing to acquire an MRI scanner shall demonstrate that the following staff training is provided:
 - (1) American Red Cross or American Heart Association certification in cardiopulmonary

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- (2) resuscitation (CPR) and basic cardiac life support; and
- (2) an organized program of staff education and training which is integral to the services program and ensures improvement in technique and the proper training of new personnel.

(e) An applicant proposing to acquire a mobile MRI scanner shall document that the requirements in Paragraphs (a) and (c) of this Rule shall be met at each host facility.

Authority G.S. 131E-177(1); 131E-183(b).

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2003.

10 NCAC 03R .3705 REQUIRED STAFFING AND STAFF TRAINING

(a) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall document that the scanner will be staffed by the following personnel:

- (1) One or more full-time nuclear medicine imaging physicians who:
 - (A) are licensed by the State to handle medical radioisotopes;
 - (B) have specialized in the acquisition and interpretation of nuclear images, including tomographic studies, for at least one year;
 - (C) have acquired knowledge about PET through experience or postdoctoral education; and
 - (D) have had practical training with an operational PET scanner;
- (2) Engineering and physics personnel with training and experience in the operation and maintenance of PET scanning equipment;

10 NCAC 03R .6352 CERTIFICATE OF NEED REVIEW SCHEDULE

The Department of Health and Human Services (DHHS) has established the following review schedules for certificate of need applications.

- (1) Acute Care Beds (in accordance with the need determination in 10 NCAC 03R .6356)

Hospital Service System	CON Beginning Review Date
Brunswick County Hospital	July 1, 2002

- (2) Operating Rooms (in accordance with the need determination in 10 NCAC 03R .6358)

Ambulatory Surgery Service Area (Constituent Counties)	Certificate of Need Beginning Review Date
8 (Bladen, Cumberland, Robeson, Sampson)	March 1, 2002
10 (Buncombe, Haywood, Madison, Mitchell, Yancey)	March 1, 2002
24 (Greene, Lenoir, Martin, Pitt)	July 1, 2002
27 (Hoke, Lee, Montgomery, Moore, Richmond, Scotland)	March 1, 2002

- (3) Radiation safety personnel with training and experience in the handling of short-lived positron emitting nuclides; and
- (4) Nuclear medicine technologists certified in this field by the Nuclear Medicine Technology Certification board or the American Registry of Radiologic Technologists with training and experience in positron emission computed tomographic nuclear medicine imaging procedures.

(b) An applicant proposing to acquire a cyclotron shall document that the cyclotron shall be staffed by radiochemists or radiopharmacists who:

- (1) have at least one year of training and experience in the synthesis of short-lived positron emitting radioisotopes; and
- (2) have at least one year of training and experience in the testing of chemical, radiochemical, and radionuclidic purity of PET radiopharmaceutical synthesis.

(c) An applicant proposing to acquire a PET scanner, a mobile PET scanner, or a cyclotron, shall document that the personnel described in Paragraphs (a) and (b) of this Rule shall be available at all times that the scanner or cyclotron are operating.

(d) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall document that a program of continuing staff education will be provided that will insure the proper training of new personnel and the maintenance of staff competence as clinical PET applications, techniques and technology continue to develop and evolve.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2003.

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- (3) Open Heart Surgery Services (in accordance with the need determination in 10 NCAC 03R .6359)

County	CON Beginning Review Date
Robeson	May 1, 2002

- (4) Heart-Lung Bypass Machines (in accordance with the need determination in 10 NCAC 03R .6360)

Hospital Service System	CON Beginning Review Date
Pitt County Memorial NorthEast Medical Center	May 1, 2002 August 1, 2002

- (5) Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 03R .6361)

County	CON Beginning Review Date
Gaston	April 1, 2002
Wake	September 1, 2002

- (6) Shared Fixed Cardiac Catheterization Equipment (in accordance with the need determination in 10 NCAC 03R .6362)

Hospital Service System	CON Beginning Review Date
Columbus County	September 1, 2002

- (7) Radiation Oncology Treatment Center (in accordance with the need determination in 10 NCAC 03R .6368)

Radiation Oncology Treatment Center Service Area	CON Beginning Review Date
6 (Cleveland, Gaston, Lincoln, Rutherford)	June 1, 2002

- (8) Mobile Dedicated Positron Emission Tomography (PET) Scanners (in accordance with the need determination in 10 NCAC 03R .6369)

Positron Emission Tomography (PET) Scanners Planning Region	CON Beginning Review Date
1 (HSAs I, II, III)	August 1, 2002
2 (HSAs IV, V, VI)	November 1, 2002

- (9) Magnetic Resonance Imaging Scanners (in accordance with the need determinations in 10 NCAC 03R .6370)

Magnetic Resonance Imaging Scanners Service Areas (Constituent Counties)	CON Beginning Review Date
4 (Ashe, Avery, Watauga)	August 1, 2002
6 (Rutherford, Cleveland)	April 1, 2002
8 (Gaston)	June 1, 2002
9 (Cabarrus, Montgomery, Rowan, Stanly)	June 1, 2002
10 (Iredell)	December 1, 2002
11 (Alleghany, Davie, Forsyth, Stokes, Surry, Wilkes, Yadkin)	April 1, 2002
13 (Caswell, Durham, Granville, Person, Vance, Warren)	May 1, 2002
17 (Anson, Mecklenburg, Union)	October 1, 2002
18 (Cumberland, Hoke, Moore, Robeson, Sampson)	May 1, 2002
19 (Franklin, Harnett, Johnston, Wake)	November 1, 2002
23 (Beaufort, Bertie, Greene, Hyde, Martin, Pitt, Washington)	November 1, 2002

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- (10) Dedicated Fixed Breast Magnetic Resonance Imaging (MRI) Scanner Need Determination (in accordance with 10 NCAC 03R .6371)

Magnetic Resonance Imaging Scanners Service Area	CON Beginning Review Date
17 (Anson, Mecklenburg, Union)	December 1, 2002

- (11) Magnetic Resonance Imaging Scanners (in accordance with the need determination in 10 NCAC 03R .6372)

Magnetic Resonance Imaging Scanners Service Area	CON Beginning Review Date
3 (Buncombe, Madison, McDowell, Mitchell, Yancey)	August 1, 2002
10 (Iredell)	April 1, 2002
15 (Davidson, Guilford, Randolph & Rockingham)	October 1, 2002
21 (Bladen, Brunswick, Columbus, Duplin, New Hanover, Pender)	September 1, 2002

- (12) Adult Care Home Beds (in accordance with the need determination in 10 NCAC 03R .6374)

County	CON Beginning Review Date
Ashe	August 1, 2002
Cherokee	June 1, 2002
Dare	May 1, 2002
Gates	November 1, 2002
Graham	April 1, 2002
Greene	September 1, 2002
Halifax	November 1, 2002
Jones	September 1, 2002
Macon	April 1, 2002
Madison	June 1, 2002
Mitchell	August 1, 2002
Pender	September 1, 2002
Tyrrell	May 1, 2002
Washington	May 1, 2002

- (13) Medicare-Certified Home Health Agencies or Offices (in accordance with the need determination in 10 NCAC 03R .6375)

County	CON Beginning Review Date
Montgomery	March 1, 2002
Pamlico	December 1, 2002

- (14) Hospice Home Care Programs (in accordance with the need determination in 10 NCAC 03R .6378)

County	CON Beginning Review Date
Beaufort	March 1, 2002
Craven	March 1, 2002
Johnston	December 1, 2002
Robeson	December 1, 2002
Rowan	June 1, 2002
Wilson	March 1, 2002

- (15) Single County New Hospice Inpatient Beds (in accordance with the need determination in 10 NCAC 03R .6379)

County	CON Beginning Review Date

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Cleveland	October 1, 2002
Cumberland	July 1, 2002
Gaston	June 1, 2002
Richmond	July 1, 2002
Rutherford	October 1, 2002

- (16) Adolescent Residential Chemical Dependency (Substance Abuse) Treatment Beds (in accordance with the need determination in 10 NCAC 03R .6382)

Mental Health Planning Region	CON Beginning Review Date
North Central Region	July 1, 2002

- (17) Adult Chemical Dependency (Substance Abuse) Treatment Beds, (in accordance with the need determination in 10 NCAC 03R .6382)

Mental Health Planning Region	CON Beginning Review Date
North Central Region	July 1, 2002

- (18) Chemical Dependency (Substance Abuse) Beds – Adult Detox-Only Beds (in accordance with the need determination in 10 NCAC 03R .6383)

Mental Health Planning Area	CON Beginning Review Date
1 (Cherokee, Clay, Graham, Haywood, Jackson, Macon, Swain)	July 1, 2002
2 (Buncombe, Madison, Mitchell, Yancey)	July 1, 2002
4 (Henderson, Transylvania)	July 1, 2002
5 (Alexander, Burke, Caldwell, McDowell)	July 1, 2002
6 (Rutherford, Polk)	July 1, 2002
7 (Cleveland, Gaston, Lincoln)	July 1, 2002
10 (Rowan, Stanly, Cabarrus, Union)	July 1, 2002
11 (Surry, Yadkin, Iredell)	July 1, 2002
13 (Rockingham)	July 1, 2002
15 (Alamance, Caswell)	July 1, 2002
16 (Orange, Person, Chatham)	July 1, 2002
17 Durham	July 1, 2002
18 (Vance, Granville, Franklin, Warren)	July 1, 2002
19 (Davidson)	July 1, 2002
21 (Bladen, Columbus, Robeson, Scotland)	July 1, 2002
24 (Johnston)	July 1, 2002
25 (Wake)	July 1, 2002
26 (Randolph)	July 1, 2002
29 (Wayne)	July 1, 2002
30 (Wilson, Greene)	July 1, 2002
31 (Edgecombe, Nash)	July 1, 2002
32 (Halifax)	July 1, 2002
33 (Carteret, Craven, Jones, Pamlico)	July 1, 2002
34 (Lenoir)	July 1, 2002
36 (Bertie, Gates, Hertford, Northampton)	July 1, 2002
37 (Beaufort, Hyde, Martin, Tyrrell, Washington)	July 1, 2002
38 (Camden, Chowan, Currituck, Dare, Pasquotank, Perquimans)	July 1, 2002
39 (Duplin, Sampson)	July 1, 2002

- (19) There are 10 categories of projects for certificate of need review. The DHHS shall determine the appropriate review category or categories for all applications submitted pursuant to 10 NCAC 03R .0304. For proposals which include more than one category, the DHHS may require the applicant to submit separate applications. If it is not practical to submit separate applications, the DHHS shall determine in which category the application shall be reviewed. The review of an application for a certificate of need shall

commence in the next applicable review schedule after the application has been determined to be complete. The 10 categories are:

- (A) Category A. Proposals submitted by acute care hospitals, except those proposals included in Categories B through H and Category J, including but not limited to the following types of projects: renovation, construction, equipment, and acute care services.
- (B) Category B. Proposals for nursing care beds; adult care home beds; new continuing care retirement communities applying for exemption under 10 NCAC 03R .6389(b) or .6390; and relocations of nursing care beds under 10 NCAC 03R .6389(d) or 10 NCAC 03R .6389(f).
- (C) Category C. Proposals for new psychiatric facilities; psychiatric beds in existing health care facilities; new intermediate care facilities for the mentally retarded (ICF/MR) and ICF/MR beds in existing health care facilities; new substance abuse and chemical dependency treatment facilities; substance abuse and chemical dependency treatment beds in existing health care facilities; transfers of nursing care beds from State Psychiatric Hospitals to local communities pursuant to 10 NCAC 03R .6389(e); transfers of ICF/MR beds from State Mental Retardation Centers to community facilities pursuant to Chapter 858 of the 1983 Sessions Laws.
- (D) Category D. Proposals for new dialysis stations in response to the "county need" or "facility need" methodologies; and relocations of existing dialysis stations to another county.
- (E) Category E. Proposals for inpatient rehabilitation facilities; inpatient rehabilitation beds; licensed ambulatory surgical facilities; new operating rooms and relocations of existing operating rooms as defined in 10 NCAC 03R .6358(b).
- (F) Category F. Proposals for new Medicare-certified home health agencies or offices; new hospices; new hospice inpatient facility beds; and new hospice residential care facility beds.
- (G) Category G. Proposals for conversion of hospital beds to nursing care under 10 NCAC 03R .6389(a);

and conversion of acute care hospitals to long-term acute care hospitals.

- (H) Category H. Proposals for bone marrow transplantation services, burn intensive care services, neonatal intensive care services, open heart surgery services, solid organ transplantation services, air ambulance equipment, cardiac angioplasty equipment, cardiac catheterization equipment, heart-lung bypass machines, gamma knives, lithotriptors, magnetic resonance imaging scanners, positron emission tomography scanners, major medical equipment as defined in G.S. 131E-176 (14f), diagnostic centers as defined in G.S. 131E-176 (7a), and oncology treatment centers as defined in G.S. 131E-176 (18a).
- (I) Category I. Proposals involving cost overruns; expansions of existing continuing care retirement communities which are licensed by the Department of Insurance at the date the application is filed and are applying under 10 NCAC 03R .6389(b) for exemption from need determinations in 10 NCAC 03R .6373 or 10 NCAC 03R .6390 for exemption from need determinations in 10 NCAC 03R .6374; relocations within the same county of existing health service facilities, beds or dialysis stations (excluding relocation of operating rooms as defined in 10 NCAC 03R .6358(b)) which do not involve an increase in the number of health service facility beds or stations; reallocation of beds or services; Category A proposals submitted by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; proposals submitted pursuant to 10 NCAC 03R .6385(c) by Academic Medical Center Teaching Hospitals designated prior to January 1, 1990; acquisition of replacement equipment that does not result in an increase in the inventory; and any other proposal not included in Categories A through H and Category J.
- (J) Category J. Proposals for demonstration projects.

(20) A service, facility, or equipment for which a need determination is identified in Items (1) through (18) of this Rule shall have only one scheduled review date and one corresponding application filing deadline in the calendar year as specified in these items, even though the

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following review schedule shows multiple review dates for the broad category. Applications for certificates of need for new institutional health services not specified in Items (1) through (18) of this Rule shall be reviewed pursuant to the following review schedule, with the exception that no reviews

are scheduled if the need determination is zero. Need determinations for additional dialysis stations pursuant to the "county need" or "facility need" methodologies shall be reviewed in accordance with 10 NCAC 03R .6376 or 10 NCAC 03R .6377.

CON Beginning Review Date	Review Categories for HSA I, II, III	Review Categories for HSA IV, V, VI
January 1, 2002	--	--
February 1, 2002	--	--
March 1, 2002	A, E, G, I, J	A, C, E, F, G, H, I, J
April 1, 2002	B, C, D, H, I	D
May 1, 2002	--	B, C, H, I
June 1, 2002	A, B, C, F, H, I	--
July 1, 2002	C	A, C, E, F, I
August 1, 2002	B, H, I	--
September 1, 2002	--	B, C, H, I
October 1, 2002	A, C, D, E, F, H, I	D
November 1, 2002	--	A, B, C, H, I
December 1, 2002	C, H, I	F

For purposes of Magnetic Resonance Imaging (MRI) scanners reviews only, Anson County in MRI Area 17 is considered to be in HSA III and Caswell County in MRI Area 13 is considered to be in HSA IV.

(21) In order to give the DHHS sufficient time to provide public notice of review and public notice of public hearings as required by G.S. 131E-185, the deadline for filing certificate of need applications is 5:00 p.m. on the 15th day of the month preceding the "CON Beginning Review Date." In instances when the 15th day of the month falls on a weekend or holiday, the filing deadline is 5:00 p.m. on the next business day. The filing deadline is absolute and applications received after the deadline shall not be reviewed in that review period.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b).
Temporary Adoption Eff. January 1, 2002;
Temporary Adoption Eff. April 8, 2002;
Eff. April 1, 2003.*

10 NCAC 03R .6376 DIALYSIS STATION NEED DETERMINATION METHODOLOGY FOR REVIEWS BEGINNING APRIL 1, 2002

(a) The Medical Facilities Planning Section (MFPS) shall determine need for new dialysis stations twice during calendar year 2002, and shall make a report of such determinations available to all who request it. The first report shall be called the North Carolina January 2002 Semiannual Dialysis Report (SDR). Data to be used for these determinations, and their sources are as follows:

(1) Numbers of dialysis patients as of June 30, 2001, by type, county and facility, from the Southeastern Kidney Council, Inc. (SEKC)

- (2) Certificate of need decisions, decisions appealed, appeals settled, and awards, from the Certificate of Need Section, DFS;
- (3) Facilities certified for participation in Medicare, from the Certification Section, DFS; and
- (4) Need determinations for which certificate of need decisions have not been made, from MFPS records.

Need determinations in this report shall be an integral part of the State Medical Facilities Plan.

(b) Need for new dialysis stations shall be determined as follows:

- (1) County Need (using the trend line ending with 12/31/00 data)
 - (A) The average annual rate (%) of change in total number of dialysis patients resident in each county from the end of 1996 to the end of 2000 is multiplied by the county's June 30, 2001 total number of patients in the SDR, and the product is added to each county's most recent total number of patients reported in the SDR. The sum is the county's projected total June 30, 2002 patients.
 - (B) The percent of each county's total patients who were home dialysis patients on June 30, 2001 is multiplied by the county's projected total June 30, 2002 patients, and the product is subtracted from the county's projected total June 30, 2002 patients. The remainder is the

- county's projected June 30, 2002 in-center dialysis patients.
- (C) The projected number of each county's June 30, 2002 in-center patients is divided by 3.2. The quotient is the projection of the county's June 30, 2002 in-center dialysis stations.
- (D) From each county's projected number of June 30, 2002 in-center stations is subtracted the county's number of stations certified for Medicare, CON-approved and awaiting certification, awaiting resolution of CON appeals, and the number represented by need determinations in previous State Medical Facilities Plans or Semiannual Dialysis Reports for which CON decisions have not been made. The remainder is the county's June 30, 2002 projected station surplus or deficit.
- (E) If a county's June 30, 2002 projected station deficit is 10 or greater and the January 2002 SDR shows that utilization of each dialysis facility in the county is 80% or greater, the June 30, 2002 county station need determination is the same as the June 30, 2002 projected station deficit. If a county's June 30, 2002 projected station deficit is less than 10 or if the utilization of any dialysis facility in the county is less than 80%, the county's June 30, 2002 station need determination is zero.
- (2) Facility Need. A dialysis facility located in a county for which the result of the County Need methodology is zero in the January 2002 Semiannual Dialysis Report (SDR) is determined to need additional stations to the extent that:
- (A) Its utilization, reported in the January 2002 SDR, is 3.2 patients per station or greater;
- (B) Such need, calculated as follows, is reported in an application for a certificate of need:
- (i) The facility's number of in-center dialysis patients reported in the June 2001 Transitional Dialysis Report (SDR₁) is subtracted from the number of in-center dialysis patients reported in the January 2002 SDR (SDR₂). The difference is multiplied by 2 to project the net in-center change for one year. Divide the projected net in-center change for the year by the number of in-center patients from SDR₁ to determine the projected annual growth rate.
- (ii) The quotient from Subpart (b)(2)(B)(i) of this Rule is divided by 12.
- (iii) The quotient from Subpart (b)(2)(B)(ii) of this Rule is multiplied by 6 (the number of months from June 30, 2001 until December 31, 2001) for the January 2002 SDR.
- (iv) The product from Subpart (b)(2)(B)(iii) of this Rule is multiplied by the number of the facility's in-center patients reported in the January 2002 SDR and that product is added to such reported number of in-center patients.
- (v) The sum from Subpart (b)(2)(B)(iv) of this Rule is divided by 3.2, and from the quotient is subtracted the facility's current number of certified stations as recorded in the January 2002 SDR and the number of pending new stations for which a certificate of need has been issued. The remainder is the number of stations needed.
- (C) The facility may apply to expand to meet the need established in Subpart (b)(2)(B)(v) of this Rule, up to a maximum of 10 stations.
- (c) The schedule for publication of the January 2002 Semiannual Dialysis Report (SDR) and for receipt of certificate of need applications for the April 1, 2002 Review Period shall be as follows:

Data for Period Ending	Due Date for SEKC Report	Publication of SDR	Receipt of CON Applications	Beginning Review Date
June 30, 2001	Nov. 12, 2001	Jan. 2, 2002	March 15, 2002	April 1, 2002

(d) An application for a certificate of need pursuant to this Rule shall be considered consistent with G.S. 131E-183(a)(1) only if it demonstrates a need by utilizing one of the methods of determining need outlined in this Rule.

(e) An application for a new End Stage Renal Disease facility shall not be approved unless it projects need for at least 10 stations based on utilization of 3.2 patients per station per week as of the first day of operation of the facility.

(f) Home patients shall not be included in determination of need for new stations.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03R .6389 POLICIES FOR NURSING CARE FACILITIES

(a) Provision Of Hospital-Based Nursing Care.

(1) A certificate of need may be issued to a hospital which is licensed under G.S. 131E, Article 5, and which meets the conditions set forth below and in 10 NCAC 03R .1100, to convert up to 10 beds from its licensed acute care bed capacity for use as hospital-based nursing care beds without regard to determinations of need in 10 NCAC 03R .6373 if the hospital:

- (A) is located in a county which was designated as non-metropolitan by the U. S. Office of Management and Budget on January 1, 2002; and
- (B) on January 1, 2002, had a licensed acute care bed capacity of 150 beds or less.

The certificate of need shall remain in force as long as the Department of Health and Human Services determines that the hospital is meeting the conditions outlined in 10 NCAC 03R .6389(a).

(2) "Hospital-based nursing care" is defined as nursing care provided to a patient who has been directly discharged from an acute care bed and cannot be immediately placed in a licensed nursing facility because of the unavailability of a bed appropriate for the individual's needs. Nursing care beds developed under 10 NCAC 03R .6389(a) are intended to provide placement for residents only when placement in other nursing care beds is unavailable in the geographic area. Hospitals which develop nursing care beds under 10 NCAC 03R .6389(a) shall discharge patients to other nursing facilities with available beds in the geographic area as soon as possible where appropriate and permissible under applicable law. Necessary documentation including copies of physician referral forms (FL 2) on all patients in hospital-based nursing units shall be made

available for review upon request by duly authorized representatives of licensed nursing facilities.

(3) For purposes of 10 NCAC 03R .6389(a), beds in hospital-based nursing care shall be certified as a "distinct part" as defined by the Health Care Financing Administration. Nursing care beds in a "distinct part" shall be converted from the existing licensed acute care bed capacity of the hospital and shall not be reconverted to any other category or type of bed without a certificate of need. An application for a certificate of need for reconverting beds to acute care shall be evaluated against the hospital's service needs utilizing target occupancies shown in 10 NCAC 03R .6385(d), without regard to the acute care bed need shown in 10 NCAC 03R .6356.

(4) A certificate of need issued for a hospital-based nursing care unit shall remain in force as long as the following conditions are met:

- (A) the nursing care beds shall be certified for participation in the Title XVIII (Medicare) and Title XIX (Medicaid) Programs;
- (B) the hospital discharges residents to other nursing facilities in the geographic area with available beds when such discharge is appropriate and permissible under applicable law;
- (C) patients admitted shall have been acutely ill inpatients of an acute hospital or its satellites immediately preceding placement in the nursing care unit.

(5) The granting of beds for hospital-based nursing care shall not allow a hospital to convert additional beds without first obtaining a certificate of need.

(6) Where any hospital, or the parent corporation or entity of such hospital, any subsidiary corporation or entity of such hospital, or any corporation or entity related to or affiliated with such hospital by common ownership, control or management:

- (A) applies for and receives a certificate of need for nursing care bed need determinations in 10 NCAC 03R .6373; or
- (B) currently has nursing home beds licensed as a part of the hospital under G.S. 131E, Article 5; or
- (C) currently operates nursing care beds under the Federal Swing Bed Program (P.L. 96-499), such hospital shall not be eligible to apply for a certificate of need for hospital-based nursing care beds under 10 NCAC 03R .6389(a). Hospitals designated

by the State of North Carolina as Critical Access Hospitals pursuant to Section 1820(f) of the Social Security Act, as amended, which have not been allocated nursing care beds under provisions of G.S. 131E-175 through G.S. 131E-190, may apply to develop beds under 10 NCAC 03R .6389(a). However, such hospitals shall not develop nursing care beds both to meet needs determined in 10 NCAC 03R .6373 and 10 NCAC 03R .6389(a).

- (7) Beds certified as a "distinct part" under 10 NCAC 03R .6389(a) shall be counted in the inventory of existing nursing care beds and used in the calculation of unmet nursing care bed need for the general population of a planning area. Applications for certificates of need pursuant to 10 NCAC 03R .6389(a) shall be accepted only for the March 1 review cycle. Nursing care beds awarded under 10 NCAC 03R .6389(a) shall be deducted from need determinations for the county as shown in 10 NCAC 03R .6373. The Department of Health and Human Services shall monitor this program and ensure that patients affected by 10 NCAC 03R .6389(a) are receiving services, and that conditions under which the certificate of need was granted are being met.

(b) Plan Exemption For Continuing Care Retirement Communities.

- (1) Qualified continuing care retirement communities may include from the outset, or add or convert bed capacity for nursing care without regard to the nursing care bed need shown in 10 NCAC 03R .6373. To qualify for such exemption, applications for certificates of need shall show that the proposed nursing care bed capacity:

- (A) Will only be developed concurrently with, or subsequent to, construction on the same site of facilities for both of the following levels of care:
- (i) independent living accommodations (apartments and homes) for persons who are able to carry out normal activities of daily living without assistance; such accommodations may be in the form of apartments, flats, houses, cottages, and rooms;
 - (ii) licensed adult care home beds for use by persons who, because of age or disability require some personal services, incidental medical services, and room and

board to assure their safety and comfort.

- (B) Will be used exclusively to meet the needs of persons with whom the facility has continuing care contracts (in compliance with the Department of Insurance statutes and rules) who have lived in a non-nursing unit of the continuing care retirement community for a period of at least 30 days. Exceptions shall be allowed when one spouse or sibling is admitted to the nursing unit at the time the other spouse or sibling moves into a non-nursing unit, or when the medical condition requiring nursing care was not known to exist or be imminent when the individual became a party to the continuing care contract.
 - (C) Reflects the number of nursing care beds required to meet the current or projected needs of residents with whom the facility has an agreement to provide continuing care, after making use of all feasible alternatives to institutional nursing care.
 - (D) Will not be certified for participation in the Medicaid program.
- (2) One half of the nursing care beds developed under this exemption shall be excluded from the inventory used to project nursing care bed need for the general population. All nursing care beds developed pursuant to the provisions of S.L. 1983, c. 920, or S.L. 1985, c. 445 shall be excluded from the inventory.

(c) Determination Of Need For Additional Nursing Care Beds In Single Provider Counties. When a nursing care facility with fewer than 80 nursing care beds is the only nursing care facility within a county, it may apply for a certificate of need for additional nursing care beds in order to bring the minimum number of nursing care beds available within the county to no more than 80 nursing care beds without regard to the nursing care bed need determination for that county as listed in 10 NCAC 03R .6373.

(d) Relocation Of Certain Nursing Facility Beds. A certificate of need to relocate existing licensed nursing facility beds to another county(ies) may be issued to a facility licensed as a nursing facility under G.S. 131E, Article 6, Part 1, provided that the conditions set forth in 10 NCAC 03R .6389(d) and in 10 NCAC 03R .1100 and the review criteria in G.S. 131E-183(a) are met.

- (1) A facility applying for a certificate of need to relocate nursing facility beds shall demonstrate that:
 - (A) it is a non-profit nursing facility supported by and directly affiliated with a particular religion and that it is the only nursing facility in North Carolina supported by and affiliated with that religion;

- (B) the primary purpose for the nursing facility's existence is to provide long-term care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
 - (C) relocation of the nursing facility beds to one or more sites is necessary to more effectively provide nursing care to followers of the specified religion in an environment which emphasizes religious customs, ceremonies, and practices;
 - (D) the nursing facility is expected to serve followers of the specified religion from a multi-county area; and
 - (E) the needs of the population presently served shall be met adequately pursuant to G.S. 131E-183.
- (2) Exemption from the provisions of 10 NCAC 03R .6373 shall be granted to a nursing facility for purposes of relocating existing licensed nursing care beds to another county provided that it complies with all of the criteria listed in 10 NCAC 03R .6389(d)(1)(A) through (E).
- (3) Any certificate of need issued under 10 NCAC 03R .6389(d) shall be subject to the following conditions:
- (A) the nursing facility shall relocate beds in at least two stages over a period of at least six months or such shorter period of time as is necessary to transfer residents desiring to transfer to the new facility and otherwise make discharge arrangements acceptable to residents not desiring to transfer to the new facility; and
 - (B) the nursing facility shall provide a letter to the Licensure and Certification Section, on or before the date that the first group of beds are relocated, irrevocably committing the facility to relocate all of the nursing facility beds for which it has a certificate of need to relocate; and
 - (C) subsequent to providing the letter to the Licensure and Certification Section described in 10 NCAC 03R .6389(d)(3)(B), the nursing facility shall accept no new patients in the beds which are being relocated, except new patients who, prior to admission, indicate their desire to transfer to the facility's new location(s).

(e) Transfer Of Nursing Facility Beds From State Psychiatric Hospital Nursing Facilities To Community Facilities.

- (1) Beds in State Psychiatric Hospitals that are certified as nursing facility beds may be relocated to licensed nursing facilities.

However, before nursing facility beds are transferred out of the State Psychiatric Hospitals, services shall be available in the community. State hospital nursing facility beds that are relocated to licensed nursing facilities shall be closed within ninety days following the date the transferred beds become operational in the community. Licensed nursing facilities proposing to operate transferred nursing facility beds shall commit to serve the type of residents who are normally placed in nursing facility beds at the State psychiatric hospitals. To help ensure that relocated nursing facility beds will serve those persons who would have been served by State psychiatric hospitals in nursing facility beds, a certificate of need application to transfer nursing facility beds from a State hospital shall include a written memorandum of agreement between the Director of the applicable State psychiatric hospital; the Chief of Adult Community Mental Health Services and the Chief of Institutional Services in the Division of MH/DD/SAS; the Secretary of Health and Human Services; and the person submitting the proposal.

- (2) 10 NCAC 03R .6389(e) does not allow the development of new nursing care beds. Nursing care beds transferred from State Psychiatric Hospitals to the community pursuant to 10 NCAC 03R .6389(e)(1) shall be excluded from the inventory.

(f) Relocation Of Nursing Facility Beds. Relocations of existing licensed nursing facility beds are allowed only within the host county and to contiguous counties currently served by the facility, except as provided in 10 NCAC 03R .6389(d). Certificate of need applicants proposing to relocate licensed nursing facility beds shall:

- (1) demonstrate that the proposal shall not result in a deficit in the number of licensed nursing facility beds in the county that would be losing nursing facility beds as a result of the proposed project, as reflected in the State Medical Facilities Plan in effect at the time the certificate of need review begins, and
- (2) demonstrate that the proposal shall not result in a surplus of licensed nursing facility beds in the county that would gain nursing facility beds as a result of the proposed project, as reflected in the State Medical Facilities Plan in effect at the time the certificate of need review begins.

History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2003.

10 NCAC 03R .6393 POLICIES FOR PSYCHIATRIC INPATIENT FACILITIES

(a) **Transfer of Psychiatric Beds from State Psychiatric Hospitals to Community Facilities.** Beds in the State psychiatric hospitals used to serve short-term psychiatric patients may be relocated to community facilities. However, before psychiatric beds are transferred out of the State psychiatric hospitals, services and programs shall be available in the community. State hospital psychiatric beds which are relocated to community facilities shall be closed within 90 days following the date the transferred psychiatric beds become operational in the community. Facilities proposing to operate transferred psychiatric beds shall commit to serve the type of short-term patients normally placed at the State psychiatric hospitals. To help ensure that relocated psychiatric beds will serve those persons who would have been served by the State psychiatric hospitals, a proposal to transfer psychiatric beds from a State hospital shall include a written memorandum of agreement between the area MH/DD/SAS program serving the county where the psychiatric beds are to be located, the Secretary of Health and Human Services, and the person submitting the proposal.

(b) **Allocation of Psychiatric Beds.** A hospital submitting a Certificate of Need application to add inpatient psychiatric beds shall convert excess licensed acute care beds to psychiatric beds. In determining excess licensed acute care beds, the hospital shall subtract the average occupancy rate for its licensed acute care beds over the previous 12-month period from the appropriate target occupancy rate for acute care beds listed in 10 NCAC 03R .6385(d) and multiply the difference in the percentage figure by the number of its existing licensed acute care beds to calculate the excess licensed acute care beds.

(c) **Linkages Between Treatment Settings.** An applicant applying for a certificate of need for psychiatric inpatient facility beds shall document that the affected area mental health, developmental disabilities and substance abuse authorities have been contacted and invited to comment on the proposed services.

*History Note: Authority G.S. 131E-176(25); 131E-177(1); 131E-183(b);
Temporary Adoption Eff. January 1, 2002;
Eff. April 1, 2003.*

10 NCAC 03U .0102 DEFINITIONS

The terms and phrases used in this Subchapter shall be defined as follows except when the content of the rule clearly requires a different meaning. The definitions prescribed in G.S. 110-86 also apply to these Rules.

- (1) "Agency" means Division of Child Development, Department of Health and Human Services located at 319 Chapanoke Road, Suite 120, Raleigh, North Carolina 27603.
- (2) "Appellant" means the person or persons who request a contested case hearing.
- (3) "Basic School-Age Care Training" (BSAC Training) means the seven clock hours of training developed by the North Carolina State University Department of 4-H Youth Development and the Division of Child Development on the elements of quality school-age care.

- (4) "Child Care Program" means a single center or home, or a group of centers or homes or both, which are operated by one owner or supervised by a common entity.
- (5) "Child care provider" as defined by G.S. 110-90.2(a)(2)a. and used in Section .2700 of this Subchapter, includes but is not limited to the following employees who have contact with the children in a child care program: facility directors, administrative staff, teachers, teachers' aides, cooks, maintenance personnel and drivers.
- (6) "Child Development Associate Credential" means the national early childhood credential administered by the Council for Early Childhood Professional Recognition.
- (7) "Developmentally appropriate" means suitable to the chronological age range and developmental characteristics of a specific group of children.
- (8) "Division" means the Division of Child Development within the Department of Health and Human Services.
- (9) "Drop-in care" means a child care arrangement where children attend on an intermittent, unscheduled basis.
- (10) "Early Childhood Environment Rating Scale - Revised edition" (Harms, Cryer, and Clifford, 1998, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are two and a half years old through five years old, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (11) "Family Day Care Rating Scale" (Harms and Clifford, 1989, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by children in family child care homes to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1)

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- of this Rule and will be available for public inspection during regular business hours.
- (12) "Group" means the children assigned to a specific caregiver, or caregivers, to meet the staff/child ratios set forth in G.S. 110-91(7) and this Subchapter, using space which is identifiable for each group.
- (13) "Household member" means a person who resides in a family home as evidenced by factors including, but not limited to, maintaining clothing and personal effects at the household address, receiving mail at the household address, using identification with the household address, or eating and sleeping at the household address on a regular basis.
- (14) "Infant/Toddler Environment Rating Scale" (Harms, Cryer, and Clifford, 1990, published by Teachers College Press, New York, NY) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of children in the group are younger than thirty months old, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (15) "Licensee" means the person or entity that is granted permission by the State of North Carolina to operate a child care facility.
- (16) "North Carolina Early Childhood Credential" means the state early childhood credential that is based on completion of coursework and standards found in the North Carolina Early Childhood Instructor Manual published jointly under the authority of the Department and the Department of Community Colleges. These standards are incorporated by reference and include subsequent amendments. A copy of the North Carolina Early Childhood Credential requirements is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection or copying at no charge during regular business hours.
- (17) "Operator" means the person or entity held legally responsible for the child care business. The terms "operator", "sponsor" or "licensee" may be used interchangeably.
- (18) "Parent" means a child's parent, legal guardian, or full-time custodian.
- (19) "Part-time care" means a child care arrangement where children attend on a regular schedule but less than a full-time basis.
- (20) "Passageway" means a hall or corridor.
- (21) "Preschooler" or "preschool-aged child" means any child who does not fit the definition of school-aged child in this Rule.
- (22) "School-Age Care Environment Rating Scale" (Harms, Jacobs, and White, 1996, published by Teachers College Press) is the instrument used to evaluate the quality of care received by a group of children in a child care center, when the majority of the children in the group are older than five years, to achieve three through five points for the program standards of a rated license. This instrument is incorporated by reference and includes subsequent editions. Individuals wishing to purchase a copy for may call Teachers College Press at 1-800-575-6566. The cost of this scale at the time of rule publication in August 2002 is twelve dollars and ninety-five cents (\$12.95). A copy of this instrument is on file at the Division at the address given in Item (1) of this Rule and will be available for public inspection during regular business hours.
- (23) "School-aged child" means any child who is at least five years old on or before October 16 of the current school year and who is attending, or has attended, a public or private grade school or kindergarten; or any child who is not at least five years old on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before moving to and becoming a resident of North Carolina; or any child who is at least five years old on or before April 16 of the current school year, is determined by the principal of the school to be gifted and mature enough to justify admission to the school, and is enrolled no later than the end of the first month of the school year.
- (24) "Seasonal Program" means a recreational program as set forth in G. S. 110-86(2)(b).
- (25) "Section" means Division of Child Development.
- (26) "Substitute" means any person who temporarily assumes the duties of a staff person for a time period not to exceed two consecutive months.
- (27) "Temporary care" means any child care arrangement which provides either drop-in care or care on a seasonal or other part-time basis and is required to be regulated pursuant to G.S. 110-86.
- (28) "Volunteer" means a person who works in a child care facility and is not monetarily compensated by the facility.

*History Note: Authority G.S. 110-88; 143B-168.3;
Eff. January 1, 1986;
Amended Eff. April 1, 1992; October 1, 1991; October 1, 1990;
November 1, 1989;
Temporary Amendment Eff. January 1, 1996;*

*Amended Eff. April 1, 2003; July 1, 2000; April 1, 1999;
July 1, 1998; April 1, 1997.*

10 NCAC 03U .0302 APPLICATION FOR A LICENSE FOR A CHILD CARE CENTER

(a) The individual who will be legally responsible for the operation of the center, which includes assuring compliance with the licensing law and standards, shall apply for a license using the form provided by the Division. If the operator will be a group, organization, or other entity, an officer of the entity who is legally empowered to bind the operator shall complete and sign the application.

(b) The applicant shall arrange for inspections of the center by the local health, building and fire inspectors. The applicant shall provide an approved inspection report signed by the appropriate inspector to the Division representative.

- (1) A provisional classification may be accepted in accordance with Rule .0401(1) of this Subchapter.
- (2) When a center does not conform with a specific building, fire, or sanitation standard, the appropriate inspector may submit a written explanation of how equivalent, alternative protection is provided. The Division may accept the inspector's documentation in lieu of compliance with the specific standard. Nothing in this Regulation is to preclude or interfere with issuance of a provisional license pursuant to Section .0400 of this Subchapter.

(c) The applicant, or the person responsible for the day-to-day operation of the center, shall be able to describe the plans for the daily program, including room arrangement, staffing patterns, equipment, and supplies, in sufficient detail to show that the center shall comply with applicable requirements for activities, equipment, and staff/child ratios for the capacity of the center and type of license requested. The applicant shall make the following written information available to the Division for review to verify compliance with provisions of this Subchapter and the licensing law:

- (1) daily schedules;
- (2) activity plans;
- (3) emergency care plan;
- (4) discipline policy;
- (5) incident reports;
- (6) incident logs; and
- (7) a copy of the certified criminal history check for the applicant, or the applicant's designee as defined in Rule .2701(g) of this Subchapter, from the Clerk of Superior Court's office in the county or counties where the individual has resided during the previous 12 months.

(d) The applicant shall, at a minimum, demonstrate to the Division representative that measures shall be implemented to have the following information in the center's files and readily available to the representative for review:

- (1) Staff records which include an application for employment and date of birth; documentation of previous education, training, and experience; medical and health records; documentation of participation in training and

- (2) staff development activities; and required criminal records check documentation;
- (2) Children's records which include an application for enrollment; medical and immunization records; and permission to seek emergency medical care;
- (3) Daily attendance records;
- (4) Records of monthly fire drills giving the date each drill is held, the time of day, the length of time taken to evacuate the building, and the signature of the person who conducted the drill;
- (5) Records of monthly playground inspections documented on a checklist provided by the Division; and
- (6) Records of medication administered.

(e) The Division representative shall measure all rooms to be used for child care and shall assure that an accurate sketch of the center's floor plan is part of the application packet. The Division representative shall enter the dimensions of each room to be used for child care, including ceiling height, and shall show the location of the bathrooms, doors, and required exits on the floor plan.

(f) The Division representative shall make one or more inspections of the center and premises to assess compliance with all applicable requirements.

- (1) If all applicable requirements of G.S. 110 and this Section are met, the Division shall issue the license.
- (2) If all applicable requirements of G.S. 110 and this Section are not met, the representative may recommend issuance of a provisional license in accordance with Section .0400 of this Subchapter or the representative may recommend denial of the application. Final disposition of the recommendation to deny is the decision of the Secretary.
- (3) The license shall be displayed in an area that parents are able to view daily.

(g) When a person applies for a child care center license, the Secretary may deny the application for the license under the following circumstances:

- (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
- (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
- (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
- (4) if the Division determines that the applicant has a relationship with an operator or former operator who previously held a license under an administrative action described in Subparagraph (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the

former operator would be involved with the applicant's child care facility in one or more of the following ways:

- (A) would participate in the administration or operation of the facility;
 - (B) has a financial interest in the operation of the facility;
 - (C) provides care to children at the facility;
 - (D) resides in the facility; or
 - (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;
- (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this Subchapter; or
- (6) if abuse or neglect has been substantiated against the person.

History Note: Authority G.S. 110-88(2); 110-88(5); 110-91; 110-92; 110-93; 110-99; 143B-168.3; Eff. January 1, 1986; Amended Eff. April 1, 2003; April 1, 2001; July 1, 1998; January 1, 1996; November 1, 1989; July 1, 1988; January 1, 1987.

10 NCAC 03U .1701 GENERAL PROVISIONS RELATED TO LICENSURE OF HOMES

- (a) All family child care homes shall comply with the standards for licensure set forth in this Section. A one- star rated license shall be issued to a family child care home operator who complies with the minimum standards for a license contained in this Section and G.S. 110-91.
- (b) If an additional individual provides care on a regular basis of at least once per week, while the operator is not on the premises, the additional individual shall meet all requirements for qualifications, training, and records as found in G.S. 110-91(8), 10 NCAC 03U .2702 and this Section. Copies of required information shall be on file in the home available for review and shall be transferable to other family child care homes where the individual is providing substitute care.
- (c) An individual who is a regular substitute and provides care during planned absences of the operator such as vacations and scheduled appointments, shall be at least 21 years old, have a high school diploma or GED, have completed a first aid course as described in Rule .1705, Paragraphs (a)(3) and (b)(2) of this Section, have completed a health questionnaire, have proof of negative results of a tuberculosis test completed within 12 months prior to the first day of providing substitute care, and submit criminal records check forms as required in 10 NCAC 03U .2702, Paragraph (j). Copies of required information shall be on file in the home available for review and shall be transferable to other family child care homes where the individual is providing substitute care.
- (d) It shall be the operator's responsibility to review the appropriate requirements found in this Subchapter and in G.S. 110 with any individuals who are providing care prior to the individual's assuming responsibility for the children. The

operator and individual providing care shall sign and date a statement which attests that this review was completed. This statement shall be kept on file in the home available for review.

- (e) An individual who provides care during unplanned absences of the operator, such as medical emergencies, shall be at least 18 years old and submit criminal records check forms as required in 10 NCAC 03U .2702, Paragraph (j). The children of an emergency caregiver shall not be counted in the licensed capacity for the first day of the emergency caregiver's service.
- (f) The provisions of G.S. 110-91(8) which exclude persons with certain criminal records or personal habits or behavior which may be harmful to children from operating or being employed in a family child care home are hereby incorporated by reference and shall also apply to any person on the premises with the operator's permission when the children are present. This exclusion shall not apply to parents or other persons who enter the home only for the purpose of performing parental responsibilities; nor does it include persons who enter the home for brief periods for the purpose of conducting business with the operator and who are not left alone with the children.
- (g) The parent of a child enrolled in any family child care home subject to regulation under G.S. 110, Article 7 of these Rules shall be allowed unlimited access to the home during its operating hours for the purposes of contacting the child or evaluating the home and the care provided by the operator. The parent shall notify the operator of his or her presence immediately upon entering the premises.
- (h) An operator licensed to care for children overnight may sleep during the nighttime hours when all the children are asleep provided:
- (1) the operator and the children in care, excluding the operator's own children, are on ground level; and
 - (2) the operator can hear and respond quickly to the children if needed; and
 - (3) a battery operated smoke detector or an electrically operated (with a battery backup) smoke detector is located in each room where children are sleeping.

History Note: Authority G.S. 110-85; 110-86(3); 110-88(1); 110-91; 110-99; 110-105; 143B-168.3; Eff. January 1, 1986; Amended Eff. April 1, 2003; April 1, 1999; July 1, 1998; January 1, 1991; January 1, 1990; July 1988; January 1, 1987.

10 NCAC 03U .1702 APPLICATION FOR A LICENSE FOR A FAMILY CHILD CARE HOME

- (a) Any person who plans to operate a family child care home shall apply for a license using a form provided by the Division. The applicant shall submit the completed application, which complies with the following, to the Division:
- (1) Only one licensed family child care home shall operate at the location address of any home.
 - (2) The applicant shall list each location address where a licensed family child care home will operate.
- (b) When a family child care home will operate at more than one location address by cooperative arrangement among two or more families, the following procedures shall apply:

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- (1) One parent whose home is used as a location address shall be designated the coordinating parent and shall co-sign the application with the applicant.
- (2) The coordinating parent is responsible for knowing the current location address at all times and shall provide the information to the Division upon request.
- (c) The applicant shall assure that the structure in which the family child care home is located complies with the following requirements:
 - (1) The North Carolina Building Code for family child care homes or have written approval for use as a family child care home by the local building inspector as follows:
 - (A) Meet North Carolina Residential Building Code or be a manufactured home bearing a third party inspection label certifying compliance with the Federal Manufactured Home Construction and Safety Standards or certifying compliance with construction standards adopted and enforced by the State of North Carolina. Homes shall be installed in accordance with North Carolina Manufactured/Mobile Home Regulations published by the NC Department of Insurance.
Exception: Single wide manufactured homes will be limited to a maximum of three preschool-aged children (not more than two may be two years of age or less) and two school-aged children.
 - (B) All children are kept on the ground level with an exit at grade.
 - (C) All homes are equipped with an electrically operated (with a battery backup) smoke detector, or one electrically operated and one battery operated smoke detector located next to each other.
 - (D) All homes are provided with at least one five lb. 2-A: 10-B: C type extinguisher readily accessible for every 2,500 square feet of floor area.
 - (E) Fuel burning space heaters, fireplaces and floor furnaces which are listed and approved for that installation and are provided with a protective screen attached securely to substantial supports will be allowed. However, unvented fuel burning heaters and portable electric space heaters of all types are prohibited.
 - (2) All indoor areas used by children are heated in cool weather and ventilated in warm weather.
 - (3) Hot pipes or radiators which are accessible to the children are covered or insulated.
 - (d) The applicant shall also submit supporting documentation with the application for a license to the Division. The supporting documentation shall include a copy of the certified criminal history check from the Clerk of Superior Court's office in the county or counties where the applicant and any household member(s) over age 15, have resided during the previous 12 months; a copy of documentation of completion of a first aid and cardiopulmonary resuscitation (CPR) course; proof of negative results of the applicant's tuberculosis test completed within the past 12 months; a completed health questionnaire; a copy of current pet vaccinations for any pet in the home; a negative well water bacteriological analysis if the home has a private well; copies of any inspections required by local ordinances; and any other documentation required by the Division according to these Rules to support the issuance of a license.
 - (e) Upon receipt of a complete application and supporting documentation, a Division representative shall make an announced visit to each home unless the applicant meets the criteria in Paragraph (g) of this Rule to determine compliance with the requirements to offer technical assistance when needed, and to provide information about local resources.
 - (1) If all applicable requirements of G.S. 110 and this Section are met, a license shall be issued.
 - (2) If the applicable requirements are not met but the applicant has the potential to comply, the Division representative shall establish with the applicant a time period for the home to achieve full compliance. If the Division representative determines that all applicable requirements are met within the established time period, a license shall be issued.
 - (3) If all applicable requirements are not met or cannot be met within the established time, the Division shall deny the application. Final disposition of the recommendation to deny is the decision of the Division.
 - (f) The Division may allow the applicant to temporarily operate prior to the Division representative's visit described in Paragraph (e) of this Rule, when the applicant is currently licensed as a family child care home operator, needs to relocate, notifies the Division of the relocation, and the Division representative is unable to visit before the relocation occurs. A person is not able to operate legally until he or she has received from the Division either temporary permission to operate or a license.
 - (g) When a person applies for a family child care home license, the Secretary may deny the application for the license under the following circumstances:
 - (1) if any child care facility license previously held by that person has been denied, revoked or summarily suspended by the Division;
 - (2) if the Division has initiated denial, revocation or summary suspension proceedings against any child care facility license previously held by that person and the person voluntarily relinquished the license;
 - (3) during the pendency of an appeal of a denial, revocation or summary suspension of any child care facility license previously held by that person;
 - (4) if the Division determines that the applicant has a relationship with an operator or former

operator who previously held a license under an administrative action described in Subparagraph (g)(1), (2), or (3) of this Rule. As used in this Rule, an applicant has a relationship with a former operator if the former operator would be involved with the applicant's child care facility in one or more of the following ways:

- (A) would participate in the administration or operation of the facility;
- (B) has a financial interest in the operation of the facility;
- (C) provides care to the children at the facility;
- (D) resides in the facility; or
- (E) would be on the facility's board of directors, be a partner of the corporation, or otherwise have responsibility for the administration of the business;

- (5) based on the person's previous non-compliance as an operator with the requirements of G.S. 110 and this Subchapter; or
- (6) if abuse or neglect has been substantiated against the person, or if abuse or neglect was substantiated against a household member.

(h) Use of the license is limited to the following conditions:

- (1) The license cannot be bought, sold, or transferred from one individual to another.
- (2) The license is valid only for the location address/addresses listed on it.
- (3) The license must be returned to the Division in the event of termination, revocation, suspension, or summary suspension.
- (4) The license shall be displayed in a prominent place that parents are able to view daily and shall be shown to each child's parent when the child is enrolled.

(i) A licensee is responsible for notifying the Division whenever a change occurs which affects the information shown on the license.

History Note: Authority G.S. 110-88(5); 110-91; 110-93; 110-99; 143B-168.3; Eff. January 1, 1986; Amended Eff. April 1, 2003; April 1, 2001; July 1, 1998; January 1, 1991; November 1, 1989; January 1, 1987.

10 NCAC 03U .1720 SAFETY AND SANITATION REQUIREMENTS

(a) To assure the safety of children in care, the operator shall:

- (1) empty firearms of ammunition and keep both in separate locked storage;
- (2) keep items used for starting fires, such as matches and lighters, out of the children's reach;
- (3) keep all medicines in locked storage;
- (4) keep hazardous cleaning supplies and other items that might be poisonous , e.g., toxic

- (5) plants, out of reach or in locked storage when children are in care;
- (6) keep first-aid supplies in a place accessible to the operator;
- (7) ensure the equipment and toys are in good repair and are developmentally appropriate for the children in care;
- (8) have a working telephone within the family child care home. Telephone numbers for the fire department, law enforcement office, emergency medical service, and poison control center shall be posted near the telephone;
- (9) have access to a means of transportation that is always available for emergency situations; and be able to recognize common symptoms of illnesses.

(b) The operator may provide care for a mildly ill child who has a Fahrenheit temperature of less than 100 degrees axillary or 101 degrees orally and who remains capable of participating in routine group activities; provided the child does not:

- (1) have the sudden onset of diarrhea characterized by an increased number of bowel movements compared to the child's normal pattern and with increased stool water; or
- (2) have two or more episodes of vomiting within a 12 hour period; or
- (3) have a red eye with white or yellow eye discharge until 24 hours after treatment; or
- (4) have scabies or lice; or
- (5) have known chicken pox or a rash suggestive of chicken pox; or
- (6) have tuberculosis, until a health professional states that the child is not infectious; or
- (7) have strep throat, until 24 hours after treatment has started; or
- (8) have pertussis, until five days after appropriate antibiotic treatment; or
- (9) have hepatitis A virus infection, until one week after onset of illness or jaundice; or
- (10) have impetigo, until 24 hours after treatment; or
- (11) have a physician's or other health professional's written order that the child be separated from other children.

(c) No drug or medication shall be administered to any child without specific instructions from the child's parent, a physician, or other authorized health professional. No drug or medication shall be administered for non-medical reasons, such as to induce sleep.

- (1) Prescribed medicine shall be in its original container bearing the pharmacist's label which lists the child's name, date the prescription was filled, the physician's name, the name of the medicine or the prescription number, and directions for dosage, or be accompanied by written instructions for dosage, bearing the child's name, which are dated and signed by the prescribing physician or other health professional. Prescribed medicine shall be administered as authorized in writing by the

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- (2) child's parent, only to the person for whom it is prescribed.
- (2) Over-the-counter medicines, such as cough syrup, decongestant, acetaminophen, ibuprofen, topical teething medication, topical antibiotic cream for abrasions, or medication for intestinal disorders shall be in its original container and shall be administered as authorized in writing by the child's parent, not to exceed amounts and frequency of dosage specified in the printed instructions accompanying the medicine. The parent's authorization shall give the child's name, the specific name of the over-the counter medicine, dosage instructions, the parent's signature, and the date signed. Over-the counter medicine may also be administered in accordance with instructions from a physician or other authorized health professional.
- (3) When any questions arise concerning whether medication provided by the parent should be administered, that medication shall not be administered without signed, written dosage instructions from a licensed physician or authorized health professional.
- (4) A written statement from a parent may give blanket permission for up to six months to authorize administration of medication for asthma and allergic reactions. A written statement from a parent may give blanket permission for up to one year to authorize administration of topical ointments such as sunscreen and over-the-counter diapering creams. The written statement shall describe the specific conditions under which the medication and creams are to be administered and detailed instructions on how they are to be administered. A written statement from a parent may give blanket permission to administer a one-time, weight appropriate dose of acetaminophen in cases where the child has a fever and the parent can not be reached.
- (5) Any medication remaining after the course of treatment is completed shall be returned to the child's parents.
- (6) Any time the operator administers medication other than sunscreen and diapering creams to any child in care, the child's name, the date, time, amount and type of medication given, and the signature of the operator shall be recorded. This information shall be noted on a form provided by the Division or on a separate form developed by the operator which includes the required information. This information shall be available for review by a representative of the Division during the time period the medication is being administered and for at least six months after the medication is administered.
- (d) To assure the health of children through proper sanitation, the operator shall:
 - (1) collect and submit samples of water from each well used for the children's water supply for bacteriological analysis to the local health department or a laboratory certified to analyze drinking water for public water supplies by the North Carolina Division of Laboratory Services every two years. Results of the analysis shall be on file in the home;
 - (2) have sanitary toilet, diaper changing and handwashing facilities. Diaper changing areas shall be separate from food preparation areas;
 - (3) use sanitary diapering procedures. Diapers shall be changed whenever they become soiled or wet. The operator shall:
 - (A) wash his or her hands before, as well as after, diapering each child;
 - (B) ensure the child's hands are washed after diapering the child; and
 - (C) place soiled diapers in a covered, leak-proof container which is emptied and cleaned daily;
 - (4) use sanitary procedures when preparing and serving food. The operator shall:
 - (A) wash his or her hands before and after handling food and feeding the children; and
 - (B) ensure the child's hands are washed before and after the child is fed;
 - (5) wash his or her hands, and ensure the child's hands are washed, after toileting or handling bodily fluids;
 - (6) refrigerate all perishable food and beverages. The refrigerator shall be in good repair and maintain a temperature of 45 degrees Fahrenheit or below. A refrigerator thermometer is required to monitor the temperature;
 - (7) date and label all bottles for each individual child, except when there is only one bottle-fed child in care;
 - (8) have a house that is free of rodents;
 - (9) screen all windows and doors used for ventilation;
 - (10) have all household pets vaccinated with up-to-date vaccinations as required by North Carolina law and local ordinances. Rabies vaccinations are required for cats and dogs; and
 - (11) store garbage in waterproof containers with tight fitting covers.
- (e) The operator shall not force children to use the toilet and the operator shall consider the developmental readiness of each individual child during toilet training.

History Note: Authority G.S. 110-88; 110-91(6); Eff. July 1, 1998; Amended Eff. April 1, 2003; April 1, 2001.

SECTION .2400 - CHILD CARE FOR MILDLY ILL CHILDREN

10 NCAC 03U .2401 SCOPE

The regulations in this Section apply to all child care centers offering short term care to children who are mildly ill and who would otherwise be excluded from care as required by Rule .0804 (a) of this Subchapter. Care may be provided as a component of a child care center that provides child care to well children, or may be provided as a separate stand alone program. All rules in this Subchapter shall apply except as provided in this Section.

History Note: Authority G.S. 110-88(11); 143B-168.3; Eff. July 1, 1988; Amended Eff. April 1, 2003; November 1, 1989.

10 NCAC 03U .2404 INCLUSION/EXCLUSION REQUIREMENTS

(a) Centers may enroll mildly ill children who meet the following inclusion criteria:

- (1) Centers that enroll children with Level One symptoms may admit children as follows:
 - (A) children who meet the guidelines for attendance in 10 NCAC 03U .0804, except that they are unable to participate fully in routine group activities and are in need of increased rest time or less vigorous activities; or
 - (B) children with fever controlled with medication of 102° or less orally, or 101° or less axillary;
- (2) Centers that enroll children with Level Two symptoms may admit children with the following:
 - (A) Inability to participate in much group activity while requiring extra sleep, clear liquids, light meals and passive activities such as stories, videos or music as determined by a health care professional; or
 - (B) Fever controlled with medication of 103° maximum orally, 102° maximum axillary, or 104° maximum rectally, with a health care professional's written screening; or
 - (C) Vomiting fewer than three times in any eight hour period, without signs of dehydration; or
 - (D) Diarrhea without signs of dehydration and without blood or mucus in the stool, fewer than five times in any eight hour period; or
 - (E) With written approval from a child's physician and preadmission screening by an on-site health care professional prior to the current day's attendance unless excluded by Subparagraphs (b) (1), (2), (3), (4), (6), or (7) of this Rule.

(b) Any child exhibiting the following symptoms shall be excluded from any care:

- (1) Temperature unresponsive to control measures; or

- (2) Undiagnosed or unidentified rash; or
 - (3) Respiratory distress as evidenced by an increased respiratory rate and unresponsiveness to treatment, flaring nostrils, labored breathing or intercostal retractions; or
 - (4) Major change in condition requiring further care or evaluation; or
 - (5) Contagious diseases required to be reported to the health department, except as provided in Part (a)(2)(E) of this Rule; or
 - (6) Other conditions as determined by a health care professional or onsite administrator; or
 - (7) Sluggish mental status.
- (c) Children less than three months of age shall not be in care.
 (d) Once admitted, children shall be assessed and evaluated at least every four hours or more frequently if warranted based on medication administration or medical treatment to determine if symptoms continue to meet inclusion criteria.

History Note: Authority G.S. 110-88(11); 143B-168.3; Eff. April 1, 2003.

10 NCAC 03U .2409 CHILDREN'S RECORDS

In addition to all other children's records required in G.S. 110 and this Subchapter, the following shall be completed for the children admitted to the mildly ill area:

- (1) Preadmission health assessment which includes documentation of health status, current symptoms, baseline temperature and respiratory rate, and any medications administered in the last 24 hours.
- (2) General admission information which includes information about the child's typical behavior, activity level, patterns of eating, sleeping and toileting.
- (3) An individualized plan of care describing how the child's needs shall be met, based upon Parts (a)(1) and (a)(2) of this Rule, shall be developed by the parent and a staff member who has completed training described in Subparagraph (a)(3) of Rule .2408 of this Section.
- (4) A daily written record shall be maintained and a copy given to parents of each child's eating, sleeping and toileting patterns; medications administered; activity levels; changes in symptoms; and any additional information that the provider deems relevant.

(b) All records shall be on file in the mildly ill area prior to attending. If a child is enrolled in the well child care component of a child care center, records may be maintained in the well child care area, along with a copy of the child's enrollment application as required in Rule .0801 of this Subchapter. The records specified in Subparagraphs (a)(1) – (a)(4) of this Rule shall be kept in the mildly ill area.

History Note: Authority G.S. 110-88(11); 143B-168.3; Eff. April 1, 2003.

10 NCAC 03U .2702 CRIMINAL RECORD CHECK REQUIREMENTS FOR CHILD CARE PROVIDERS

(a) Child care providers shall submit the following to their employer no later than five working days after beginning work:

- (1) a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides;
- (2) a signed Authority for Release of Information using the form provided by the Division;
- (3) a fingerprint card using SBI form FD-258; and
- (4) a signed statement declaring under penalty of perjury if he or she has been convicted of a crime other than a minor traffic violation.

If the child care provider has been convicted of a crime, including, but not limited to, those specified in G.S. 110-90.2, the child care provider shall acknowledge on the statement that he or she is aware that the employment is conditional pending approval by the Division. If the child care provider has lived in North Carolina for less than five consecutive years immediately preceding the date the fingerprint card is completed, a second fingerprint card shall be submitted in order to complete a national check.

(b) If the child care provider has been convicted of a crime, including, but not limited to, those specified in G.S. 110-90.2, he or she may submit to the Division additional information concerning the conviction that could be used by the Division in making the determination of the provider's qualification for employment. The Division may consider the following in making a decision: length of time since conviction; nature of the crime; circumstances surrounding the commission of the offense or offenses; evidence of rehabilitation; number and type of prior offenses; and age of the individual at the time of occurrence.

(c) The child care provider's employer shall mail the local criminal history check, Authority for Release of Information using the form provided by the Division, and fingerprint card(s) to the Division no later than three working days after receipt. A copy of the submitted information, and the declaration statement, shall be maintained in the child care provider's personnel file, and shall be available for review by a representative of the Division until the notice of qualification is received by the provider. At that time the submitted information and the declaration statement may be discarded. The notice of qualification shall be maintained in the child care provider's personnel file, and shall be available for review by a representative of the Division.

(d) The child care provider shall be on probationary status pending the determination of qualification or disqualification by the Division.

(e) The Division shall notify the child care provider in writing of the determination by the Division of the individual's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Division shall notify the employer, if any, in writing of the Division's determination concerning the child care provider; however, the employer shall not be told the specific information used in making the determination.

(f) If the child care provider changes employers within one year from the date of qualification that was based on fingerprinting, he or she shall submit a certified criminal history check from the Clerk of Superior Court's office in the county where the individual resides. This local check shall be submitted to his or her employer no later than five working days after beginning work. The employer shall complete the steps as defined in

Paragraphs (c), (d) and (h) of this Rule, except that the fingerprint card and the Authority for Release of Information as referenced in Paragraph (c) is not required. If the criminal history check was completed more than one year prior to employment, the child care provider shall complete all forms as required in Paragraph (a) of this Rule.

(g) Family child care home providers and household members over the age of 15 who change the location of their operation shall submit a certified criminal history check from the Clerk of Superior Court's office in the county or counties where the provider and household members had lived during the previous 12 months. This local check shall be submitted to the child care consultant no later than 10 business days after the location change. A new fingerprint card shall not be required unless deemed necessary by the Division in making its determination of qualification.

(h) Child care providers determined by the Division to be disqualified shall be terminated by the center or family child care home immediately upon receipt of the disqualification notice.

(i) Refusal on the part of the employer to dismiss a child care provider who has been found to be disqualified shall be grounds for suspension, denial or revocation of the permit in addition to any other administrative action or civil penalties pursued by the Division. If an employer appeals the administrative action, the child care provider shall not be employed during the appeal process.

(j) A substitute child care provider who is employed for more than five days, whether working full or part-time, shall submit all forms as required in Paragraph (a) of this Rule to the employer by the end of the fifth working day. The employer shall complete the steps as defined in Paragraphs (c), (d) and (h) of this Rule.

History Note: Authority G.S. 110-90.2; 114-19.5; 143B-168.3; S.L. 1995, c. 507, s. 23.25; Temporary Adoption Eff. January 1, 1996; Eff. April 1, 1997; Amended Eff. April 1, 2003.

10 NCAC 03U .2808 COMPLIANCE HISTORY STANDARDS FOR A RATED LICENSE FOR FAMILY CHILD CARE HOMES

(a) To achieve one point for compliance history standards for a star rating, a family child care home shall have a compliance history of 60% - 64% as assessed by the Division.

(b) To achieve two points for compliance history standards for a star rating, a family child care home shall have a compliance history of 65% - 69% as assessed by the Division.

(c) To achieve three points for compliance history standards for a star rating, a family child care home shall have a compliance history of 70% - 74% as assessed by the Division.

(d) To achieve four points for compliance history standards for a star rating, a family child care home shall have a compliance history of 75% - 79% as assessed by the Division.

(e) To achieve five points for compliance history standards for a star rating, a family child care home shall have a compliance history of 80% or higher as assessed by the Division.

(f) The Division shall assess the compliance history by evaluating the violations of requirements that have occurred over the previous three years or during the length of time the family

child care home has been operating, whichever is less. Demerits shall be assigned for each occurrence of violations within these categories: supervision of children (6 points), exceeding capacity (6 points), staff qualifications and training (2-5 points), health and safety practices (3-6 points), discipline (6 points), developmentally appropriate activities (2-4 points), adequate space (6 points), nutrition and feeding practices (1-3 points), program records (1-3 points), and transportation (1-3 points), if applicable. When a range of points is listed, the minimum and maximum number of demerits possible for the violations within these categories are indicated. The point value of each demerit for violations within the categories shall be based on the potential detriment to the health and safety of children. A compliance history percentage shall be calculated each year by subtracting the total number of demerits on each visit from the total demerits possible during a 12 month period based on the services provided and converting to a percentage. The yearly compliance history percentage shall be averaged over three years for the compliance history percentage referenced in this Rule. A copy of the Division compliance history score sheet used to calculate the compliance history percentage is available for review at the address given in Rule .0102 of this Section.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Amended Eff. April 1, 2003.

10 NCAC 26H .0212 EXCEPTIONS TO DRG REIMBURSEMENT

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

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

- (3) The per diem rate for psychiatric services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing psychiatric services as derived from the most recently filed cost reports.
- (4) Hospitals that do not routinely provide psychiatric services shall have their rate set at the median rate.
- (5) The per diem rate for rehabilitation services is established at the lesser of the actual cost trended to the rate year or the calculated median rate of all hospitals providing rehabilitation services as derived from the most recently filed cost reports.
- (6) Rates established under this Paragraph shall be adjusted for inflation consistent with the methodology under Rule .0211 Subparagraph (d)(5) of this Section.

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

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

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

(e) Hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the fiscal years ending September 30, 2000 and thereafter shall be entitled to a lump sum payment for the period from September 18, 2000 through September 30, 2000. Lump sum payments for subsequent fiscal years calculated and paid no less frequently than annually and no more frequently than quarterly for inpatient

and outpatient hospital services in amounts or percentages determined by the Director of the Division of Medical Assistance, for periods preceding or following the payment date subject to the provisions of Subparagraphs (1) through (7) of this Paragraph.

- (1) To ensure that the payments authorized by this Paragraph do not exceed the applicable upper limits, such payments (when added to Medicaid payments received or to be received for these services) shall not exceed for the 12 month period ending September 30th of the year for which payments are made the applicable percentage of:
 - (A) The reasonable cost of inpatient and outpatient hospital Medicaid services; plus
 - (B) The reasonable direct and indirect costs attributable to inpatient and outpatient Medicaid services of operating Medicare approved graduate medical education programs.
- (2) For purposes of this Paragraph:
 - (A) The phrase "applicable percentage" refers to the upper payment limit as a percentage of reasonable costs established by 42 C.F.R. 447.272 and 42 C.F.R. 447.321 for different categories of hospitals.
 - (B) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of this Rule.
 - (C) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.
- (3) Qualified public hospitals shall receive payments under this Paragraph in amounts (including the expenditures described in Part A (iii) of this Subparagraph) not to exceed the applicable percentage of each hospital's Medicaid costs for the 12 month period ending September 30th of the fiscal year for which such payments are made, less any Medicaid payments received or to be received for these services.
 - (A) A qualified public hospital is a hospital that meets the other requirements of this Paragraph; and
 - (i) was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments are made; and
 - (ii) verified its status as a public hospital by certifying State, local, hospital district or authority government

- (iii) control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U. S. Department of Health and Human Services at least 30 days prior to the date of any such payment that remains valid as of the date of any such payment; and files with the Division on or before 10 working days prior to the date of any such payment by use of a form prescribed by the Division certification of expenditures eligible for FFP as described in 42 C.F.R. 433.51(b). This provision shall not apply to qualified public hospitals that are also designated by North Carolina as Critical Access Hospitals pursuant to 42 USC 1395i-4.
- (4) Hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the fiscal years ending September 30, 2000 and thereafter that are not qualified public hospitals as defined in this Paragraph shall be entitled to lump sum payments in amounts that do not exceed the applicable percentage of each hospital's Medicaid costs (calculated in accordance with Subparagraph (1) of this Paragraph) for the 12 month period ending September 30th of the fiscal year for which such payments are made less any Medicaid payments received or to be received for these services.
- (5) Payments authorized by this Paragraph shall be made solely on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which payments are made. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.
- (6) To ensure that estimated payments pursuant to Subparagraph (5) of this Paragraph do not exceed the aggregate upper limits to such payments established by applicable federal law

and regulation (42 C.F.R. 447.272 and 42 C.F.R. 447.321), such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost reports for the period for which payments are made. There shall be a separate cost settlement procedure for inpatient and outpatient hospital services. In addition for both inpatient and outpatient hospital services, there shall be a separate aggregate cost settlement pool for qualified public hospitals that are owned or operated by the State, for qualified public hospitals that are owned or operated by an instrumentality or unit of government within a State and for hospitals qualified for payment under this Paragraph that are not qualified public hospitals. As to each of these separate cost settlement procedures, if it is determined that aggregate payments under this Paragraph exceed aggregate upper limits for such payments, any hospital that received payments under this Paragraph in excess of unreimbursed reasonable costs as defined in this Paragraph shall promptly refund its proportionate share of aggregate payments in excess of aggregate upper limits. The proportionate share of each such hospital shall be ascertained by calculating for each such hospital its percentage share of all payments to all members of the cost settlement group that are in excess of unreimbursed reasonable costs, and multiplying that percentage times the amount by which aggregate payments being cost settled exceed aggregate upper limits applicable to such payments. No additional payment shall be made in connection with the cost settlement.

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

(f) Subject to availability of funds, hospitals licensed by the State of North Carolina and reimbursed under the DRG methodology for more than 50 percent of their Medicaid inpatient discharges for the fiscal years ending September 30th and thereafter; that are not qualified public hospitals as defined in Paragraph (e)(3)(A) of this Rule; that operate Medicare approved graduate medical education programs and reported on cost reports filed with the Division of Medical Assistance Medicaid costs attributable to such programs; and that incur unreimbursed costs for providing inpatient and outpatient services to uninsured patients in an amount in excess of two million five hundred thousand dollars (\$2,500,000) shall be eligible for a lump sum payment for the period from September 18, 2000 through September 30, 2000. Lump sum payments for subsequent fiscal years calculated and paid no less frequently than annually and no more frequently than quarterly in amounts or percentages determined by the Director of the Division of Medical Assistance, for periods preceding or following the payment date subject to the provisions of Subparagraphs (1) through (7) of this Paragraph.

- (1) Qualification for 12 month periods ending September 30th of each year shall be based on the most recent cost report data and uninsured patient data filed with and certified to the Division by hospitals at least 60 days prior to the date of any payment under this Paragraph.
- (2) To ensure that the payments authorized by this Paragraph do not exceed the applicable upper limits, such payments (when added to Medicaid payments received or to be received for these services) shall not exceed for the 12 month period ending September 30th of the year for which payments are made the applicable percentage of:
 - (A) The reasonable cost of inpatient and outpatient hospital Medicaid Services; plus
 - (B) The reasonable direct and indirect costs attributable to inpatient and outpatient Medicaid services of operating Medicare approved graduate medical education programs.
- (3) For purposes of this Paragraph:
 - (A) The phrase "applicable percentage" refers to the upper payment limit as a percentage of reasonable costs established by 42 C.F.R. 447.272 and 42 C.F.R. 447.321 for different categories of hospitals.
 - (B) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of this Rule.
 - (C) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received, but shall include all Medicaid payments received other than disproportionate share hospital payments, calculated after any payments made pursuant to Paragraph (e) of this Rule.
- (4) Under no circumstances shall the payment authorized by this Paragraph exceed a percentage of the hospital's unreimbursed cost for providing services to uninsured patients determined by the Division under Paragraph (e) of Rule .0213 of this Section.
- (5) Payments authorized by this Paragraph shall be made solely on the basis of an estimate of costs incurred and payments received for Medicaid services during the period for which payments are made. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid inpatient and outpatient services as reported on

the most recent cost reports filed before the Director's determination is made and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.

- (6) To ensure that estimated payments pursuant to Subparagraph (5) of this Paragraph do not exceed the aggregate upper limit to such payments established by applicable federal law and regulation (42 C.F.R. 447.272 and 42 C.F.R. 447.321), such payments shall be cost settled within 12 months of receipt of the completed and audited Medicare/Medicaid cost reports for the period for which such payments were made. The cost settlement shall be as described in Paragraph (e)(6) of this Rule.
- (7) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55(c); 42 C.F.R. 447, Subpart C; 42 C.F.R. 447.321; Eff. February 1, 1995; Temporary Amendment Eff. September 15, 1995, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 1, 1996; Temporary Amendment Eff. September 25, 1996; Temporary Amendment Eff. September 30, 1997; Temporary Amendment Expired July 31, 1998; Temporary Amendment Eff. September 16, 1998; Temporary Amendment Expired June 13, 1999; Temporary Amendment Eff. September 22, 1999; Temporary Amendment Expired July 11, 2000; Temporary Amendment Eff. June 13, 2001; September 21, 2000; Temporary Amendment Eff. May 15, 2002; Amended Eff. April 1, 2003.

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

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

that is not a hospital inpatient service cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if it meets the criteria of Subparagraph (a)(1) and one of the criteria included in Subparagraphs (a)(2) through (a)(6) of this Rule.

- (1) The hospital has at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric services as of December 21, 1987 or at a hospital that predominantly serves individuals under 18 years of age.
- (2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state.
- (3) The hospital's low income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:
 - (A) The ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and
 - (B) The ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments divided by the hospital's total inpatient charges.
- (4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues.
- (5) The hospital, in ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50 percent of the total Medicaid patient days provided by all hospitals in the State.
- (6) It is a Psychiatric hospital operated by the North Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) or UNC Hospitals operated by the University of North Carolina.
 - (b) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments.
 - (c) An additional one time payment for the 12-month period ending September 30th, 1995, in an amount determined by the

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

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

- (1) An eligible hospital shall receive a monthly disproportionate share payment based on the monthly bed days of services to low income persons of each hospital divided by the total monthly bed days of services to low income persons of all hospitals items allocated funds.
- (2) This payment shall be in addition to the disproportionate share payments made in accordance with Subparagraphs (a)(1) through (5) of this Rule. However, DMH/DD/SAS operated hospitals are not required to qualify under the requirements of Subparagraphs (a)(1) through (5) of this Rule.
- (3) The amount of allocated funds shall be determined by the Director of the Division of Medical Assistance, but not to exceed the quarterly grant award of funds (plus appropriate non-federal match) earmarked for disproportionate share hospital payments less payments made under Subparagraphs (a)(1) through (5) of this Rule divided by three.

In Subparagraph (d)(1) of this Rule, bed days of services to low income persons is defined as the number of bed days provided to individuals that have been determined by the hospital as patients that do not possess the financial resources to pay portions or all charges associated with care provided. Low income persons include those persons that have been determined eligible for medical assistance. The count of bed days used to determine payment is based upon the month immediately prior to the month that payments are made. Disproportionate share payments to hospitals are limited in accordance with The Social Security Act as amended, Title XIX section 1923(g), limit on amount of payment to hospitals.

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

- (1) For purposes of this Paragraph eligible hospitals are hospitals that for the fiscal year for which payments are being made and either for the fiscal year immediately preceding the

period for which payments under this Paragraph are being ascertained or for such earlier period as may be determined by the Director:

- (A) Qualify as disproportionate share hospitals under Subparagraphs (a)(1) through (a)(5) of this Rule;
 - (B) Operate Medicare approved graduate medical education programs and reported on cost reports filed with the Division of Medical Assistance Medicaid costs attributable to such programs;
 - (C) Incur unreimbursed costs (calculated without regard to payments under either this Paragraph or Paragraph (f) of this Rule) for providing inpatient and outpatient services to uninsured patients in an amount in excess of two million five hundred thousand dollars (\$2,500,000); and
 - (D) Meet the definition of qualified public hospitals set forth in Subparagraph (7) of this Paragraph.
- (2) Qualification for 12-month periods ending September 30th of each year shall be based on the most recent cost report data and uninsured patient data filed with and certified to the Division at least 60 days prior to the date of any payment under this Paragraph.
 - (3) Payments made pursuant to this Paragraph shall be calculated and paid no less frequently than annually, and prior to the calculation and payment of any disproportionate share payments pursuant to Paragraph (f) of this Rule, and may cover periods within the fiscal year preceding or following the payment date.
 - (4) For the 12-month period ending September 30, 1996 a payment shall be made to each qualified hospital in an amount determined by the Director of the Division of Medical Assistance based on a percentage (not to exceed a maximum of 23 percent) of the unreimbursed costs incurred by each qualified hospital for inpatient and outpatient services provided to uninsured patients.
 - (5) In subsequent 12-month periods ending September 30th of each year, the percentage payment shall be ascertained and established by the Division by ascertaining funds available for payments pursuant to this Paragraph divided by the total unreimbursed costs of all hospitals that qualify for payments under this Paragraph for providing inpatient and outpatient services to uninsured patients.
 - (6) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when this payment is added to other disproportionate share hospital payments, the total

disproportionate share payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients. The total of all disproportionate share hospital payments shall not exceed the limits on disproportionate share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f).

- (7) For purposes of this Paragraph, a qualified public hospital is a hospital that:
 - (A) Qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (5) of this Rule;
 - (B) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;
 - (C) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained;
 - (D) Verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Subparagraph that is still valid as of the date of any such payments;
 - (E) Files with the Division at least 60 days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as shall be determined by the Director; and
 - (F) Submits to the Division on or before 10 working days prior to the date any such payments under this Paragraph by use of a form prescribed by the Division a certification of expenditures eligible for FFP as described in 42 C.F.R. 433.51(b).
- (8) To ensure that the estimated payments pursuant to this Paragraph do not exceed the

upper limits to such payments established by applicable federal law and regulation described in Subparagraph (6) of this Paragraph, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. If any hospital received payments pursuant to this Paragraph in excess of the percentage established by the Director under Subparagraph (4) or (5) of this Paragraph, ascertained without regard to other disproportionate share hospital payments that may have been received for services during the 12-month period ending September 30th for which such payments were made, such excess payments shall be refunded to the Division. No additional payment shall be made to qualified hospitals in connection with the cost settlement.

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

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

- (1) Qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (5) of this Rule;
- (2) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;
- (3) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained;
- (4) Verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Subparagraph that is still valid as of the date of any such payment;
- (5) Files with the Division at least 60 days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as may be determined by the Director; and
- (6) Submits to the Division on or before 10 working days prior to the date of any such payment under this Paragraph by use of a form

- prescribed by the Division a certification of expenditures eligible for FFP as described in 42 C.F.R. 433.51(b).
- (7) The payments to qualified public hospitals pursuant to this Paragraph for any given period shall be based on and shall not exceed the unreimbursed charges certified to the Division by each such hospital by use of a form prescribed by the Division for inpatient and outpatient services provided to uninsured patients either for the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or for such earlier period as may be determined by the Director, to be converted by the Division to unreimbursed cost by multiplying unreimbursed charges times the cost-to-charge ratio established by the Division for each hospital for the fiscal year during which such charges were incurred. Payments authorized by this Paragraph shall be made no more frequently than quarterly or less frequently than annually and may cover periods within the fiscal year preceding or following the payment date.
- (8) Any payments pursuant to this Paragraph shall be ascertained, paid and cost settled after any other disproportionate share hospital payments that may have been or may be paid by the Division for the same fiscal year.
- (9) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on Disproportionate Share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year in which such payments are made.
- (10) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Subparagraph (f)(6) of this Rule and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. The federal portion of any payments in excess of either of the upper limits described in Subparagraph (f)(6) will be promptly repaid. Subject to the availability of funds, and to the upper limits described in Subparagraph (f)(6), additional payments shall be made as part of the cost settlement process to hospitals qualified for payment under this Paragraph in an amount not to exceed the hospital-specific upper limit for each such hospital.
- (11) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55 (c).
- (g) Effective with dates of payment beginning October 31, 1996, hospitals that provide services to clients of state agencies are considered to be a disproportionate share hospital (DSH) when the following conditions are met:
- (1) The hospital has a Medicaid inpatient utilization rate not less than one percent and has met the requirements of Subparagraph (a)(1) of this Rule; and
 - (2) The state agency has entered into a Memorandum of Understanding (MOU) with the Division of Medical Assistance (Division); and
 - (3) The inpatient and outpatient services are authorized by the state agency for which the uninsured client meets the program requirements.
 - (A) For purposes of this Paragraph, uninsured patients are those clients of the state agency that have no third parties responsible for any hospital services authorized by the state agency.
 - (B) DSH payments are paid for services to qualified uninsured clients on the following basis:
 - (i) For inpatient services the amount of the DSH payment is determined by the state agency in accordance with the applicable Medicaid inpatient payment methodology as stated in Rule .0211 of this Section.
 - (ii) For outpatient services the amount of the DSH payment is determined by the state agency in accordance with the applicable Medicaid outpatient payment methodology as stated in The Division of Medical Assistance Subpart of The Current Operations, Capital Improvements, and Finance Act of 2002 of the 2002 General Assembly of North Carolina.

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

(C) Based upon this Subsection, DSH payments as submitted by the state agency shall be paid monthly in an amount to be reviewed and approved by the Division of Medical Assistance. The total of all payments shall not exceed the limits on disproportionate share hospital funding as set forth for the state by HCFA.

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

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

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

(3) The payments to qualified hospitals pursuant to this Paragraph for any given period shall be based on charges certified to the Division by each hospital by use of a form prescribed by the Division for inpatient and outpatient Medicaid HMO services either for the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or such earlier period as may

be determined by the Director to be converted by the Division to cost by multiplying charges times the cost-to-charge ratio established by the Division for each hospital for the fiscal year during which such charges were incurred. The payment shall then be determined by multiplying the cost times a percentage determined annually by the Division. The payment percentage established by the Division shall be calculated to ensure that the Medicaid HMO DSH payment authorized by this Paragraph is equivalent as a percentage of reasonable cost to the Medicaid Supplemental payment (calculated without regard to the certified public expenditures portion of such payment) authorized by Paragraph (e) of Rule .0212 of this Section. Payments authorized by this Paragraph shall be made no more frequently than quarterly nor less frequently than annually and may cover periods within the fiscal year preceding or following the payment date.

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

(5) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Subparagraph (h)(4) of this Rule and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with the cost settlement.

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

(i) Additional disproportionate share hospital payments for the 12-month periods ending September 30th of each year (subject to the availability of funds and to the payment limits specified in

this Paragraph) shall be paid to large free-standing inpatient rehabilitation hospitals that are qualified public hospitals licensed by the State of North Carolina.

- (1) For purposes of this Paragraph a large free-standing inpatient rehabilitation hospital is a hospital licensed for more than 100 rehabilitation beds.
- (2) For purposes of this Paragraph a qualified public hospital is a hospital that:
 - (A) Qualifies for disproportionate share hospital status under Subparagraph (a)(1) through (5) of this Rule;
 - (B) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;
 - (C) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained; and
 - (D) Verifies its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Paragraph that is still valid as of the date of any such payment.

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

- (3) Payments authorized by this Paragraph for any given period shall be based on and shall not exceed for the 12-month period ending September 30th of the year for which payments are made the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:
 - (A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of Rule .0212 of this Section.
 - (B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.
- (4) The disproportionate share hospital payments to qualified public hospitals shall be made on the basis of an estimate of costs incurred and

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

- (5) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year for which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on DSH funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year for which such payments are made.
- (6) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Subparagraph 3 of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with the cost settlement.
- (7) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).
- (j) Additional disproportionate share hospital payments for the 12-month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to hospitals licensed by the State of North Carolina that are designated as critical access hospitals under 42 U.S.C. 1395i-4 for the period to which such payment relates; incurred for the 12-month period ending September 30th of the fiscal year to which such payments relate unreimbursed costs for providing inpatient and outpatient services to Medicaid

patients; and qualify as a disproportionate share hospital under the minimum requirements specified by 42 U.S.C. 1396r-4(d).

- (1) Qualification for 12-month periods ending September 30th shall be based on the most recent cost report data filed with and certified to the Division at least 60 days prior to the date of any payment under this Paragraph.
- (2) Payments authorized by this Paragraph shall be made no more frequently than quarterly nor less frequently than annually, may cover periods within the fiscal year preceding or following the payment date, and shall be calculated, paid and cost settled after any other Medicaid payments of any kind to which a hospital may be entitled for the same fiscal year.
- (3) Payments to qualified hospitals under this Paragraph for any period shall be based on and shall not exceed the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:
 - (A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of Rule .0212 of this Section.
 - (B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.
 - (C) The disproportionate share hospital payments to qualified hospitals pursuant to this Paragraph shall be made on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which the payment relates. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made, and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.
 - (D) The payment limits of the Social Security Act, Title XIX, Section

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

- (E) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Part D of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with such cost settlement.
- (F) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C; Eff. February 1, 1995; Amended Eff. July 1, 1995; Filed as a Temporary Amendment Eff. September 15, 1995, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Filed as a Temporary Amendment Eff. September 29, 1995, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 1, 1996; Temporary Amendment Eff. September 25, 1996; Temporary Amendment Eff. April 15, 1997; Temporary Amendment Eff. September 30, 1997; Temporary Amendment Eff. September 16, 1998; Temporary Amendment Expired on June 13, 1999; Temporary Amendment Eff. September 22, 1999; Temporary Amendment Expired on July 11, 2000; Temporary Amendment Eff. September 21, 2000;

*Temporary Amendment Eff. June 1, 2001;
Temporary Amendment Eff. May 15, 2002;
Amended Eff. April 1, 2003.*

**TITLE 15A – DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES**

**15A NCAC 01C .0101 STATEMENT OF PURPOSE,
POLICY, AND SCOPE**

- (a) The purpose of the rules in this Subchapter is to establish procedures within the Department of Environment and Natural Resources (DENR) for conforming with the North Carolina Environmental Policy Act (NCEPA).
- (b) Rules for implementation of the NCEPA (1 NCAC 25) are hereby incorporated by including subsequent amendments and editions. Copies of these Rules can be obtained from the Department of Administration, State Clearinghouse, 1302 Mail Service Center, Raleigh, NC 27699-1302.
- (c) Environmental documents shall be available to public officials and citizens before decisions are made and before actions are taken. The information shall be reliable and sufficient to allow selection among alternatives.
- (d) The Secretary is the "responsible state official" for DENR. The Secretary may delegate responsibility for the implementation of the NCEPA to staff.
- (e) The provisions of the rules in this Subchapter, the state rules (1 NCAC 25), and the NCEPA shall be read together as a whole in order to comply with the spirit and letter of the law.
- (f) These Rules establish the procedures for determining whether an environmental document is required when DENR is the State Project Agency.

*History Note: Authority G.S. 113A-2; 113A-6; 113A-9;
143B-10;
Eff. August 1, 1989;
Transferred from T15.01D .0201 Eff. November 1, 1989;
Amended Eff. April 1, 2003; August 1, 1996; March 1, 1990.*

15A NCAC 01C .0103 DEFINITIONS

The definition of any word or phrase used in rules of this Subchapter is the same as given in G.S. 113A-9 and in 1 NCAC 25, including subsequent amendments and editions. The following words and phrases have the following meaning.

- (1) "Agency" means the Divisions and Offices of DENR, as well as the boards, commissions, committees, and councils of DENR having decision-making authority and adopting these rules by reference; except where the context clearly indicates otherwise.
- (2) "Channel Disturbance" means activities that permanently remove or degrade the natural functions of the stream such as culverting, relocation, channelization or streambank stabilization methods including gabions, rip rap or similar hard structures.
- (3) "Cumulative Impacts" mean 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. Cumulative impacts are the reasonably foreseeable impacts from individually minor but collectively significant activities.
- (4) "Direct Impacts" mean environmental impacts which are caused by an activity and occurring at the same time and place.
- (5) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking or placing of any waste into or on any land or water so that the waste or any constituent part of the waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters, or beneath or on the surface of the land.
- (6) "Ecosystem" means all the interrelated organisms and their environment within a defined area.
- (7) "Forestry Management Plan" means a document that guides the practical and sustainable application of biological, physical, quantitative, managerial, economic, social and policy principles to the regeneration, management, utilization and conservation of forests to meet specified goals and objectives while maintaining the productivity of the forest. Forest management includes management for aesthetics, fish, recreation, urban values, water, wilderness, wildlife, wood products and other forest resource values.
- (8) "Hazardous Waste" means a waste, or combination of wastes, in any state or form including gas, liquid or solid, that because of its quantity, concentration or physical, chemical or infectious characteristics may cause or contribute to an increase in mortality or an increase in irreversible or incapacitating reversible illness, or pose a present or potential hazard to human health or the environment when improperly treated, stored, transported, disposed of or otherwise managed.
- (9) "High Quality Waters (HQW)" means a subset of waters with quality higher than the existing classification standards. These include those rated as excellent based on biological and physical/chemical characteristics through Division of Water Quality monitoring or special studies; native and special native trout waters (and their tributaries) designated by the Wildlife Resources Commission; primary nursery areas (PNA) designated by the Marine Fisheries Commission and other functional nursery areas designated by the Marine Fisheries Commission; all water supply watersheds which are either classified as WS-I or WS-II or those for which a formal petition for reclassification as WS-I or WS-II has been received from the appropriate local government and accepted by the Division of Water Quality; and all Class SA waters.

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| <p>(10) "Inlet" means a waterway between islands connecting a lagoon, estuary, sound or similar water body with the ocean.</p> <p>(11) "Instream Flow" means the amount of water needed in a stream to adequately provide for downstream uses occurring within the stream channel, including some or all of the following: aquatic habitat, recreation, wetlands maintenance, navigation, hydropower, riparian vegetation, and water quality.</p> <p>(12) "Land-Disturbing Activity" means any use of the land by any person in residential, industrial, educational, institutional or commercial development, highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation.</p> <p>(13) "Lead Agency" means the agency or agencies preparing or having taken primary responsibility for preparing an environmental document. The lead agency is a sub-agency of the state project agency.</p> <p>(14) "Non-State Entity" means local governments, special purpose units of government, contractors, and individuals or corporations to whom NCEPA may apply.</p> <p>(15) "Perennial Stream" means a channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.</p> <p>(16) "Prime agricultural and forest land" means lands which possess the best combination of physical and chemical characteristics for producing food, feed, fiber (including forest products), forage, oilseed, and other agricultural products (including livestock), without intolerable soil erosion. This does not apply to lands which are already in or committed to development projects such as water impoundment, transportation, and urban development.</p> <p>(17) "Reclaimed Water Utilization" means the use of reclaimed water that meets the criteria provided in 15A NCAC 02H .0219(k) for beneficial uses in lieu of water from other sources.</p> <p>(18) "Resource" means any natural product or value, not necessarily economic, but including trees, minerals, wildlife, clean air and water, fisheries, ecosystems, landscapes and open space.</p> <p>(19) "River Basin" means the watershed of a major river system.</p> | <p>(20) "Secondary Impacts" mean indirect impacts caused by and resulting from a specific activity that occur later in time or further removed in distance than direct impacts, but are reasonably foreseeable. Indirect impacts may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.</p> <p>(21) "Secretary" means the Secretary of DENR.</p> <p>(22) "State Project Agency" means the state department or council of state agency which has been designated pursuant to 1 NCAC 25 .0210(a) for ensuring compliance with NCEPA.</p> <p>(23) "Stream Enhancement" means the process of implementing stream rehabilitation practices in order to improve water quality or ecological function. These practices are typically conducted on the stream bank or in the flood prone area. Enhancement activities may also include the placement of in-stream habitat structures.</p> <p>(24) "Stream Restoration" means the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium.</p> <p>(25) "Total Design Withdrawal" means the pumping rate at which water can be removed from the contributing stream. It is the sum of any pre-existing withdrawal capacity plus any withdrawal increase.</p> <p>(26) "Wetlands" mean "wetlands" as defined in 15A NCAC 02B .0202.</p> |
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History Note: Authority G.S. 113A-2; 113A-6; 113A-9; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0104 AGENCY COMPLIANCE

- (a) Each DENR agency shall interpret the provisions of the NC EPA as a supplement to its existing authority and as a mandate to view its policies and programs in the light of the NC EPA's comprehensive environmental objectives, except where existing law applicable to the DENR agency's operations expressly prohibits compliance or makes compliance impossible.
- (b) As part of making a decision on a project for which an environmental document has been prepared, the DENR agency decision-maker shall review the document and incorporate it as part of continuing deliberations. The resulting decision shall be made after weighing all of the impacts and mitigation measures

presented in the environmental document, which shall become part of the decision-making record.

History Note: Authority G.S. 113A-2; 113A-5; 113A-6; 113A-10; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0107 LIMITATION ON ACTIONS DURING NCEPA PROCESS

(a) While work on an environmental document is in progress, no DENR agency shall undertake in the interim any action which might limit the choice among alternatives or otherwise prejudice the ultimate decision on the issue. A permit approval or other action to approve land disturbing activity or construction of part of the project or action, other than those actions necessary for gathering information needed to prepare the environmental document, limits the choice among alternatives and shall not be approved until the final environmental document for the action is published in the Environmental Bulletin pursuant to 01 NCAC 25 .0212 and adopted by the DENR agency through the procedures established by the Department of Administration's Rules for administering NC EPA and this Subchapter of the Department's rules.

(b) If a DENR agency is considering a proposed action for which an environmental document is to be or is being prepared, the DENR agency shall promptly notify the initiating party that the DENR agency cannot take final action until the environmental documentation is completed and available for use as a decision-making tool. The notification shall be consistent with the statutory and regulatory requirements of the DENR agency and may be in the form of a notification that the application is incomplete.

(c) When a DENR agency decides that a proposed activity, for which state actions are pending or have been taken, requires environmental documentation then the DENR agency shall promptly notify all DENR action agencies of the decision. When statutory and regulatory requirements prevent a DENR agency from suspending action, the DENR agency shall deny any action for which it determines an environmental document is necessary but not yet available as a decision-making tool.

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 113A-7; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0108 EMERGENCIES

(a) Where emergency circumstances make it necessary to take an otherwise lawful action with potential environmental effects without observing the public review provisions of the NC EPA, the DENR agency taking the action shall notify the Secretary and limit actions to those necessary to control and mitigate for the immediate threat to the public health, safety, and welfare.

(b) DENR agencies may prepare and maintain environmental documents for repetitive emergency programs affecting the public, to review the scope of involved activities, identify specific effects to be expected, and mitigation measures that can be employed in various circumstances to assure protection of the public and long-term environmental productivity.

(c) The minimum criteria established pursuant to Section .0400 of this Subchapter or the review processes for environmental

assessments or environmental impact statements set out in Rules 1 NCAC 25 .0506 and .0605, may be altered where an emergency makes it necessary to take action or control or mitigate any threat to the public health, safety and welfare caused by the emergency. Rule 1 NCAC 25 .1002 establishes the procedures to supplement the provisions of this Chapter in an emergency consistent with the policies of NC EPA.

History Note: Authority G.S. 113A-4; 113A-6; 113A-7; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0205 IMPLEMENTATION

DENR agencies shall prepare environmental documents in accordance with the NC EPA, its related rules at 1 NCAC 25, and the rules in this Subchapter. As set out in Rule .0109 of this Subchapter, consultants may prepare environmental documents.

History Note: Authority G.S. 113A-2; 113A-4; 113A-5; 113A-6; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0206 WHEN TO PREPARE ENVIRONMENTAL DOCUMENTS

(a) DENR agencies shall prepare an environmental assessment in accordance with the NC EPA and the related state rules at 1 NCAC 25 for those activities described in Section .0300 of this Subchapter, and for those activities above the thresholds set in DENR's minimum criteria described in Section .0400 of this Subchapter.

(b) An environmental assessment is not necessary if a DENR agency has decided to prepare an environmental impact statement, because the scope or complexity of the activity has a clear potential for environmental effects.

(c) DENR agencies shall insure that the activity that is the subject of the environmental document is properly defined. Closely connected activities should be reviewed together. Closely connected activities include:

- (1) activities that automatically trigger other activities that may require environmental impact statements;
- (2) activities that cannot or will not proceed unless other activities occur either previously or simultaneously; and
- (3) activities that are interdependent parts of a larger plan of development and depend on the larger plan of development for justification.

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0207 INCORPORATION BY REFERENCE

(a) DENR agencies shall incorporate material into environmental documents by reference to cut down on bulk without impeding DENR agency and public reviews of the action. The incorporated material shall be cited in the document and its contents briefly described.

(b) Incorporated-by-reference material must be made available by the applicant for inspection by reviewers and potentially interested persons within the time allowed for comment.

History Note: Authority G.S. 113A-4; 113A-6; 113A-10; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0208 INCOMPLETE OR UNAVAILABLE INFORMATION

(a) Where a DENR agency is evaluating significant effects upon the environment in an environmental document and there are gaps in relevant information or scientific uncertainty, the DENR agency should always make clear that such information is lacking or that uncertainty exists.

(b) If the information relevant to the effects is essential to a reasonable choice among alternatives and the overall costs of and time for obtaining it are not out of proportion to the potential environmental effects of the activity, the DENR agency should include the information in the environmental document.

(c) If the information relevant to the effects is essential to a reasoned choice among alternatives and the overall cost of and time for obtaining it are out of proportion to the potential environmental effects of the activity, or the means of obtaining it are not known (beyond the state of the art), then the DENR agency shall weigh the need for the action against the risk and severity of possible adverse impacts were the action to proceed in the face of uncertainty. If the DENR agency proceeds, it shall include within the environmental document:

- (1) a statement that such information is incomplete or unavailable;
- (2) a statement of the relevance of the incomplete or unavailable information to evaluating reasonably foreseeable significant adverse impacts on the human environment;
- (3) a summary of existing credible scientific evidence which is relevant to evaluating the reasonably foreseeable significant adverse impacts on the human environment; and
- (4) the DENR agency's evaluation of such impacts based upon theoretical approaches or research methods generally accepted in the scientific community.

(d) For the purposes of this Section, "reasonably foreseeable" includes impacts which have catastrophic consequences, even if their probability of occurrence is low, provided that the analysis of the impacts is supported by credible scientific evidence, is not based on pure conjecture, and is within the rule of reason.

History Note: Authority G.S. 113A-4; 113A-6; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0304 ACTIVITIES ABOVE THE MINIMUM CRITERIA

Any activity which is outside the parameters of the minimum criteria set out in Section .0400 of this Subchapter is required to have environmental documentation under the NCEPA.

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 113A-11; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0305 TYPES OF ACTIVITIES REQUIRING ENVIRONMENTAL DOCUMENTATION

The following DENR agency activities will be deemed to have a potential effect upon the environment of the state and require preparation of an environmental document unless they fall under the minimum criteria set out in Section .0400 of this Subchapter.

- (1) Proposed construction of facilities or infrastructures on lands and waters owned or managed by any DENR agency.
- (2) Specific programs conducted by DENR agencies on lands and waters or in the atmosphere owned or managed by the state.
- (3) Demolition of or additions, rehabilitation and/or renovations to a structure listed in the National Register of Historic Places or more than 50 years of age except where agreement exists with the Department of Cultural Resources that the structure lacks architectural or historical significance.
- (4) Ground disturbances involving National Register listed archaeological sites or areas around buildings 50 years old or older, except where agreement exists with the Department of Cultural Resources.

History Note: Authority G.S. 113A-4; 113A-6; 113A-8; 113A-9; 113A-10; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0405 PURPOSE OF THE MINIMUM CRITERIA THRESHOLDS

(a) This Section establishes minimum criteria to be used in determining when environmental documents are not required. The minimum criteria, as defined in state rules at 1 NCAC 25, shall be used by the Secretary and DENR agencies to provide sound decision-making processes by allowing separation of activities with a high potential for environmental effects from those with only a minimum potential.

(b) The minimum criteria set out in this Section are established to determine when environmental documentation under the NCEPA is not required. An activity must be at or below each applicable minimum criteria threshold to maintain this status. As set out in Rule .0306 of Section .0300, the Secretary may require environmental documentation for activities that would otherwise qualify under these minimum criteria thresholds.

History Note: Authority G.S. 113A-2; 113A-4; 113A-6; 113A-11; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0408 MINOR CONSTRUCTION ACTIVITIES

This Rule sets out the general and specific minimum criteria for construction activities. Construction and land disturbing activities must fall under both the general minimum criteria and any specific minimum criteria applicable to the project.

- (1) General criteria. The following categories of land disturbing activity do not require preparation of an environmental document.

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- (a) In the 20 coastal counties, land disturbing activity that:
 - (i) is located more than 575 feet away from waters classified as High Quality Waters (HQW) or impacts less than five acres located all or in part within 575 feet of waters classified as High Quality Waters (HQW);
 - (ii) is located outside of any Outstanding Resource Waters (ORW) watershed or area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225; and
 - (iii) impacts less than five acres located in any Outstanding Resource Waters (ORW) watershed or in any area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225.
- (b) Land disturbing activity outside the twenty coastal counties that:
 - (i) is located more than one mile from waters classified as HQW or impacts less than five acres located within one mile of and draining to waters classified as HQW;
 - (ii) is located outside of any Outstanding Resource Waters (ORW) watershed or area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225;
 - (iii) impacts less than five acres located in any Outstanding Resource Waters (ORW) watershed or in any area that requires specific management actions to protect ORW waters as defined in 15A NCAC 02B .0225; and
 - (iv) is located more than 25 feet from any waters classified as Trout (Tr) waters or impacts less than five acres located all or in part within 25 feet of any waters classified as Trout (Tr) waters.
- (c) Channel disturbance and land disturbing activities associated with
 - (d) non-compensatory stream restoration or stream enhancement.
 - (e) Land disturbing activities impacting wetlands if the activity will result in the loss of one acre or less of Class WL wetlands.
 - (e) Land disturbing activities impacting streams if the activity will result in channel disturbance of less than 500 linear feet of perennial streams. Land disturbing activities that impact 500 linear feet or more of perennial streams do not require preparation of an environmental document if stream restoration or stream enhancement is performed.
- (2) Specific Criteria. Construction or expansion activities listed below require an environmental document if they exceed either the minimum criteria set out in Item (1) of this Rule or the thresholds established below.
 - (a) The following activities related to wastewater treatment systems.
 - (i) Relocation of discharge points within the same river basin;
 - (ii) New discharge facilities with a proposed permitted expansion of less than 500,000 gallons per day and producing an instream waste concentration of less than 33 percent during the 7-day 10-year low flow conditions;
 - (iii) Expansion of an existing discharge facility of less than 500,000 gallons per day additional flow;
 - (iv) New surface irrigation, high rate infiltration, or subsurface waste water systems with a proposed permitted capacity not exceeding 100,000 gallons per day;
 - (v) Reclaimed water utilization systems with reclaimed water utilization being the sole disposal option with a proposed permitted capacity not exceeding 200,000 gallons per day;
 - (vi) New reclaimed water utilization sites with a proposed permitted capacity not to exceed 500,000 gallons per day when the reclaimed water utilization system is required for compliance with any other wastewater disposal permit;

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- (vii) New reclaimed water utilization sites with a proposed permitted capacity not to exceed 1,000,000 gallons per day when the reclaimed water utilization system is not required for compliance with any other wastewater disposal permit;
 - (viii) New reclaimed water utilization distribution lines;
 - (ix) New permits or modification to existing permits for land application of residuals utilization, where less than 10 acres not previously permitted is prior converted within three years or will be converted from a non-plantation forested area to application area;
 - (x) New or expanding surface disposal sites disposing less than 3000 dry tons of residuals per year;
 - (xi) Gravity sewer extensions with less than three miles of new lines or lines of less than 18 inches in diameter; and
 - (xii) New or expanding individual pump stations and associated force mains with a proposed permitted capacity of less than 1750 gallons per minute.
- (b) The following activities related to potable water systems.
- (i) Improvements to water treatment plants that involve less than 1,000,000 gallons per day added capacity and total design withdrawal less than one-fifth of the 7-day, 10-year low flow of the contributing stream;
 - (ii) Improvements not intended to add capacity to the facility;
 - (iii) Installation of appurtenances in existing rights-of-way for streets or utilities, or water lines and appurtenances less than five miles in length and having only directional bore stream crossings or no stream crossings; and
 - (iv) Construction of water tanks, or booster pumping or secondary or remote disinfection stations.
- (c) Groundwater withdrawals of less than 1,000,000 gallons per day where such withdrawals are not expected to cause alterations in established land use patterns, or degradation of groundwater or surface water quality.
- (d) The following activities related to solid waste disposal:
- (i) Construction of solid waste management facilities, other than landfills exempt pursuant to G.S. 130A-294 (a)(4), which store, treat, process incinerate, or dispose of less than 350 tons per day (averaged over one year) of solid waste; and
 - (ii) Disposal of solid waste by land application on 100 total acres or less, where less than 10 percent of the total land application area is converted from a non-plantation forested area.
- (e) Development requiring a Coastal Area Management Act (CAMA) permit or State Dredge and Fill Law permit that does not involve:
- (i) Construction of a new marina, or a 25% or greater expansion in the number of slips at existing and operating marinas;
 - (ii) Excavation of a new navigation channel. Maintenance activities associated with maintaining the traditional and established use of a channel and new excavation activities located entirely within 100 feet of the shoreline, or within 50 feet from the waterward edge of any existing or authorized docking facility and involving the excavation of less than 5,000 square feet of public trust bottom do not constitute excavation of a new navigation channel for purposes of these rules.
 - (iii) Excavation of materials from aquatic environments for use for beach nourishment or other purposes not directly related to approved navigation projects;
 - (iv) A large scale beach nourishment or spoil deposition project. A project

- shall be considered large scale when it places more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline;
- (v) The salvaging of cut logs from public trust waters for commercial use, unless the salvage operation complies with any departmentally-approved best management practices developed for such activities;
 - (vi) The construction over state owned submerged lands of private bridges to privately owned islands, unless the length of the bridge is less than 50 feet; and
 - (vii) The excavation, dredging or other hydrodynamic manipulation of an inlet, inlet channel(s) or inlet shoal(s) for non-navigational purposes.
- (f) Construction of a minor source or modification of a minor source of air emissions as defined in 15A NCAC 02D .0530, that are less than 100 tons per year or 250 tons per year as defined therein.
 - (g) Construction relating to the reclamation of underground storage tanks and restoration of groundwater quality.
 - (h) The construction, repair or removal of dams less than 25 feet in height and having less than 50 acre-feet of effective storage capacity.
 - (i) Any new construction for a building which involves all of the following:
 - (i) A footprint of less than 10,000 square feet;
 - (ii) A location that is not a National Register Archaeological site; and
 - (iii) The building's purpose is not for storage of hazardous waste.
 - (j) Demolition of or additions, rehabilitation or renovations to a structure not listed in the National Register of Historic places or less than 50 years of age.
 - (k) Routine grounds construction and landscaping of sidewalks, trails, walls, gates and related facilities, including outdoor exhibits.
 - (l) Installation of on-farm Best Management Practices that meet the standards of the North Carolina Soil and Water Conservation Commission and the federal Natural Resources Conservation Service.
 - (m) Construction or remodeling of swimming pools.
 - (n) Construction of a new two-lane road in accordance with DOT accepted design practices and DOT standards and specifications involving less than a total of 25 cumulative acres of ground surface limited to a single project, and not contiguous to any other project making use of this provision.
 - (o) Expansion of a two-lane road in accordance with DOT accepted design practices and DOT standards and specifications involving less than a total of 10 cumulative acres of ground surface limited to a single project, and not contiguous to any other project making use of this provision.

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0409 MANAGEMENT ACTIVITIES

Management activities do not require the filing of environmental documents. These activities include but are not limited to the following:

- (1) Replenishment of shellfish beds through the placement of seed oysters, seed clams or shellfish cultch on marine or estuarine habitats.
- (2) Creation and enhancement of marine fisheries habitat through the establishment of artificial reefs in accordance with the Division of Marine Fisheries' Artificial Reef Master Plan.
- (3) Placement of fish attractors and shelter in public waters managed by the N.C. Wildlife Resources Commission.
- (4) Translocation and stocking of native or naturalized fish and wildlife in accordance with appropriate DENR agency species management plans, watershed management plans, or other state agency approved resource management plans.
- (5) Reintroduction of native endangered or threatened species in accordance with state or federal guidelines or recovery plans.
- (6) Production of native and agricultural plant species to create or enhance fish or wildlife habitat and forest resources, including fertilization, planting, mowing, and burning in accordance with fisheries, wildlife, or forestry management plans.

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| (7) Forest products harvest in accordance with the forestry Best Management Practices (BMPs) and the performance standards in the Forest Practice Guidelines (FPGs) Related to Water Quality (15A NCAC 01I .0201 - .0209) and the United States Forest Service or the N.C. Division of Forest Resources forest management plans. | (17) Scooping or dipping water from streams, lakes, or sounds with aircraft or helicopters for the purpose of suppressing wild land (brush, grass, or woodland) fires. |
| (8) Reforestation of woodlands in accordance with the United States Forest Service or the N.C. Division of Forest Resources forest management plans. | (18) Drainage projects where the mean seasonal water table elevation will be lowered less than one foot over an area of one square mile or less, and riparian and wetland areas will not be affected. |
| (9) Use of forestry best management practices to meet the performance standards in Forest Practice Guidelines Related to Water Quality codified as 15A NCAC 01I. | (19) Manipulation of water levels in reservoirs or impoundments in accordance with approved management plans, for the purpose of providing for water supply storage, flood control, recreation, hydroelectric power, fish and wildlife, downstream water quality and aquatic weed control. |
| (10) The control of forest or agricultural insects and disease outbreaks by biological treatments, mechanical treatments, or the lawful application of labeled pesticides by licensed applicators, or any combination of those practices, on areas of no more than 100 acres. | (20) Installation of on-farm Best Management Practices that meet the standards of the North Carolina Soil and Water Conservation Commission and the federal Natural Resources Conservation Service. |
| (11) Control of species composition on managed forestlands as prescribed by approved forest management plans by the lawful application of labeled herbicides by licensed applicators, on areas no more than 100 acres. | (21) Continuation of previously permitted activities where no increase in quantity or decrease in quality are proposed. |
| (12) Control of aquatic weeds in stream channels, canals and other water bodies, by the lawful application of labeled herbicides by licensed applicators, on areas of no more than two acres or 25 percent of surface area, whichever is less, except in Primary Nursery Areas designated by the Marine Fisheries Commission, Inland Primary Nursery Areas designated by the Wildlife Resources Commission, and Anadromous Fish Spawning Areas designated by the Marine Fisheries Commission or the Wildlife Resources Commission. | (22) Acquisition or acceptance of real property to be retained in a totally natural condition for its environmental benefits. |
| (13) Removal of logs, stumps, trees, and other debris from stream channels where there is no channel excavation, and activities are carried out in accordance with "Best Management Practices (BMPs) for Selective Clearing and Snagging," Appendix B in Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat, US Army Corps of Engineers Technical Report EL-92-35, Smith et al, 1992, or other guidelines approved through the Intergovernmental Review process as set out at 1 NCAC 25 .0211. | (23) Acquisition or acceptance of real property to be managed in accordance with plans for which environmental documents have been approved. |
| (14) Dredging of existing navigation channels and basins to originally approved specifications, provided that the spoil is placed in existing and approved high ground disposal areas. | (24) Care of all trees, plants, and groundcovers on public lands. |
| (15) Controlled or prescribed burning for wildlife, timber enhancement, and hazard reduction in accordance with applicable management plans. | (25) Care, including medical treatment, of all animals maintained for public display. |
| (16) Plowing fire lines with tractor plow units, or other mechanized equipment, for the purpose | (26) Activities authorized for control of mosquitoes such as the following:
(a) Mosquito control water management work in freshwater streams performed in accordance with "Best Management Practices (BMPs) for Selective Clearing and Snagging" Appendix B in Incremental Effects of Large Woody Debris Removal on Physical Aquatic Habitat, US Army Corps of Engineers Technical Report EL-92-35, Smith et al, 1992, or other guidelines reviewed through the Intergovernmental Review process as set out at 1 NCAC 25 .0211;
(b) Mosquito control water management work in salt marsh environments performed under Open Marsh Water Management guidelines reviewed through the Intergovernmental Review process as set out at 1 NCAC 25 .0211;
(c) Lawful application of chemicals approved for mosquito control by the |

- (d) United States Environmental Protection Agency and the State when performed under the supervision of licensed operators; and Lawful use of established species to control mosquitoes.

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0410 PRIVATE USE OF PUBLIC LANDS

Activities related to the private use of public lands, when conducted in accordance with permit requirements, do not require the filing of environmental documents. These activities include but are not limited to the following:

- (1) Use of pound nets.
- (2) Shellfish relaying and transplanting.
- (3) Harvest of shellfish during closed season.
- (4) Special fisheries management activities under 15A NCAC 3I .0012.
- (5) Aquaculture operations within coastal waters.
- (6) Scientific collecting within coastal waters.
- (7) Introduction and transfer of marine and estuarine organisms.
- (8) Development requiring a Coastal Area Management Act (CAMA) or a State Dredge and Fill Law permit that does not involve:
 - (a) Construction of a new marina, or a 25% or greater expansion in the number of slips at existing and operating marinas;
 - (b) Excavation of a new navigation channel. Maintenance activities associated with maintaining the traditional and established use of a channel and new excavation activities located entirely within 100 feet of the shoreline, or within 50 feet from the waterward edge of any existing or authorized docking facility and involving the excavation of less than 5,000 square feet of public trust bottom do not constitute excavation of a new navigation channel for purposes of these rules.
 - (c) Excavation of materials from aquatic environments for use for beach nourishment or other purposes not directly

- (d) related to approved navigation projects; A large scale beach nourishment or spoil deposition project. A project shall be considered large scale when it places more than a total volume of 200,000 cubic yards of sand at an average ratio of more than 50 cubic yards of sand per linear foot of shoreline;
- (e) The salvaging of cut logs from public trust waters for commercial use, unless the salvage operation complies with any Departmentally approved best management practices developed for such activities;
- (f) The construction over state owned submerged lands or private bridges to privately owned islands, unless the length of the bridge is less than 50 feet; and
- (g) The excavation, dredging or other hydrodynamic manipulation of an inlet, inlet channel(s) or inlet shoal(s) for non-navigational purposes.
- (9) Construction of piers and boat docks on all State Lakes when conducted in accordance with 15A NCAC 12C .0300.

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10; Eff. April 1, 2003.

15A NCAC 01C .0411 REMEDIATION ACTIVITIES

Activities that seek to clean up, remove, remediate, abate, contain or otherwise protect public health or the environment from the effect of contamination released to the environment do not require the filing of environmental documentation.

History Note: Authority G.S. 113A-4; 113A-6; 113A-9; 113A-10; 113A-11; 113A-12; 143B-10; Eff. April 1, 2003.

15A NCAC 02B .0208 STANDARDS FOR TOXIC SUBSTANCES AND TEMPERATURE

(a) Toxic Substances. The concentration of toxic substances, either alone or in combination with other wastes, in surface waters shall not render waters injurious to aquatic life or wildlife, recreational activities, public health, or impair the waters for any designated uses. Specific standards for toxic substances to protect freshwater and tidal saltwater uses are listed in Rules .0211 and .0220 of this Section, respectively. Procedures for interpreting the narrative standard for toxic

substances and numerical standards applicable to all waters are as follows:

- (1) Aquatic life standards. The concentration of toxic substances shall not result in chronic toxicity. Any levels in excess of the chronic value will be considered to result in chronic toxicity. In the absence of direct measurements of chronic toxicity, the concentration of toxic substances shall not exceed the concentration specified by the fraction of the lowest LC50 value that predicts a no effect chronic level (as determined by the use of acceptable acute/chronic ratios). If an acceptable acute/chronic ratio is not available, then that toxic substance shall not exceed one-one hundredth (0.01) of the lowest LC50 or if it is affirmatively demonstrated that a toxic substance has a half-life of less than 96 hours the maximum concentration shall not exceed one-twentieth (0.05) of the lowest LC50.
- (2) Human health standards. The concentration of toxic substances shall not exceed the level necessary to protect human health through exposure routes of fish (or shellfish) tissue consumption, water consumption, or other route identified as appropriate for the water body.

(A) For non-carcinogens, these concentrations shall be determined using a Reference Dose (RfD) as published by the U.S. Environmental Protection Agency pursuant to Section 304(a) of the Federal Water Pollution Control Act as amended or a RfD issued by the U.S. Environmental Protection Agency as listed in the Integrated Risk Information System (IRIS) file or a RfD approved by the Director after consultation with the State Health director. Water quality standards or criteria used to calculate water quality based effluent limitations to protect human health through the different exposure routes are determined as follows:

- (i) Fish tissue consumption:

$$WQS = (RfD-DT) \times \text{Body Weight} / (FCR \times BCF)$$
 where:

WQS = water quality standard or criteria;
 RfD = reference dose;
 DT = estimated non-fish dietary intake (when available);

- (ii) Water consumption (including a correction for fish consumption):

$$WQS = (RfD-DT) \times \text{Body Weight} / [WCR + (FCR \times BCF)]$$
 where:

FCR = fish consumption rate (assumed to be 6.5 gm/person-day);
 BCF = bioconcentration factor, or bioaccumulation factor (BAF), as appropriate.

BCF or BAF values are based on U.S. Environmental Protection Agency publications pursuant to Section 304(a) of the Federal Water Pollution Control Act as amended, literature values, or site specific bioconcentration data approved by the Commission or its designee; FCR values are average consumption rates for a 70 Kg adult for the lifetime of the population; alternative FCR values may be used when it is considered necessary to protect localized populations that may be consuming fish at a higher rate;

WQS = water quality standard or criteria;
 RfD = reference dose;
 DT = estimated non-fish dietary intake (when available);
 FCR = fish consumption rate (assumed to be 6.5 gm/person-day);
 BCF = bioconcentration factor, or bioaccumulation factor (BAF), as appropriate;
 WCR = water consumption rate (assumed to be two

liters per day for adults).

To protect sensitive groups, exposure may be based on a 10 Kg child drinking one liter of water per day. Standards may also be based on drinking water standards based on the requirements of the Federal Safe Drinking Water Act [42 U.S.C. 300(f)(g)-1]. For non-carcinogens, specific numerical water quality standards have not been included in this Rule because water quality standards to protect aquatic life for all toxic substances for which standards have been considered are more stringent than numerical standards to protect human health from non-carcinogens through consumption of fish; standards to protect human health from non-carcinogens through water consumption are listed under the water supply classification standards in Rule .0211 of this Section; the equations listed in this Subparagraph shall be used to develop water quality based effluent limitations on a case-by-case basis for toxic substances that are not presently included in the water quality standards. Alternative FCR values may be used when it is considered necessary to protect localized populations that may be consuming fish at a higher rate;

- (B) For carcinogens, the concentrations of toxic substances shall not result in unacceptable health risks and shall be based on a Carcinogenic Potency Factor (CPF). An unacceptable health risk for cancer shall be considered to be more than one case of cancer per one million people exposed (10⁻⁶ risk level). The CPF is a measure of the cancer-causing potency of a substance estimated by the upper 95 percent confidence limit of the slope of a straight line calculated by the Linearized Multistage Model or other appropriate model according to U.S. Environmental Protection Agency Guidelines [FR 51 (185): 33992-34003; and FR 45 (231 Part V): 79318-79379]. Water quality standards or criteria for water quality based effluent limitations are calculated using the procedures given in Subparagraphs (A) and (B) of this Rule. Standards to protect human

health from carcinogens through water consumption are listed under the water supply classification standards in Rules .0212, .0214, .0215, .0216, and .0218 of this Section; standards to protect human health from carcinogens through the consumption of fish (and shellfish) only are applicable to all waters as follows:

- (i) Aldrin: 0.136 ng/l;
- (ii) Arsenic: 10 ug/l;
- (iii) Benzene: 71.4 ug/l;
- (iv) Beryllium: 117 ng/l;
- (v) Carbon tetrachloride: 4.42 ug/l;
- (vi) Chlordane: 0.588 ng/l;
- (vii) DDT: 0.591 ng/l;
- (viii) Dieldrin: 0.144 ng/l;
- (ix) Dioxin: 0.000014 ng/l;
- (x) Heptachlor: 0.214 ng/l;
- (xi) Hexachlorobutadiene: 49.7 ug/l;
- (xii) Polychlorinated biphenyls: 0.079 ng/l;
- (xiii) Polynuclear aromatic hydrocarbons: 31.1 ng/l;
- (xiv) Tetrachloroethane (1,1,2,2): 10.8 ug/l;
- (xv) Trichloroethylene: 92.4 ug/l;
- (xvi) Vinyl chloride: 525 ug/l.

The values listed in Subparts (i) through (xvi) in Part (B) of Subparagraph (2) of this Rule may be adjusted by the Commission or its designee on a case-by-case basis to account for site-specific or chemical-specific information pertaining to the assumed BCF, FCR or CPF values or other data.

- (b) Temperature. The Commission may establish a water quality standard for temperature for specific water bodies other than the standards specified in Rules .0211 and .0220 of this Section, upon a case-by-case determination that thermal discharges to these waters, that serve or may serve as a source or receptor of industrial cooling water provide for the maintenance of the designated best use throughout a reasonable portion of the water body. Such revisions of the temperature standard must be consistent with the provisions of Section 316(a) of the Federal Water Pollution Control Act as amended and shall be noted in Rule .0218 of this Section.

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. April 1, 2003; February 1, 1993; October 1, 1989; January 1, 1985; September 9, 1979.

15A NCAC 02B .0212 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-I WATERS

APPROVED RULES

The following water quality standards apply to surface waters within water supply watersheds that are classified WS-I. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section also apply to Class WS-I waters.

- (1) The best usage of WS-I waters are as follows: a source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection of their water supplies, waters located on land in public ownership, and any best usage specified for Class C waters.
- (2) The conditions related to the best usage are as follows: waters of this class are protected water supplies within essentially natural and undeveloped watersheds in public ownership with no permitted point source dischargers except those specified in Rule .0104 of this Subchapter; waters within this class must be relatively unimpacted by nonpoint sources of pollution; land use management programs are required to protect waters from nonpoint source pollution; the waters, following treatment required by the Division of Environmental Health, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard. The Class WS-I classification may be used to protect portions of Class WS-II, WS-III and WS-IV water supplies. For reclassifications occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.
- (3) Quality standards applicable to Class WS-I Waters are as follows:
 - (a) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;
 - (b) Nonpoint Source Pollution: none that would adversely impact the waters for use as a water supply or any other designated use;
 - (c) Organisms of coliform group: total coliforms not to exceed 50/100 ml

- (MF count) as a monthly geometric mean value in watersheds serving as unfiltered water supplies;
- (d) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
- (e) Sewage, industrial wastes: none except those specified in Subparagraph (2) of this Paragraph or Rule .0104 of this Subchapter;
- (f) Solids, total dissolved: not greater than 500 mg/l;
- (g) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (h) Toxic and other deleterious substances:
 - (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-I waters:
 - (A) Barium: 1.0 mg/l;
 - (B) Chloride: 250 mg/l;
 - (C) Manganese: 200 ug/l;
 - (D) Nickel: 25 ug/l;
 - (E) Nitrate nitrogen: 10.0 mg/l;
 - (F) 2,4-D: 100 ug/l;
 - (G) 2,4,5-TP (Silvex): 10 ug/l;
 - (H) Sulfates: 250 mg/l;
 - (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-I waters:
 - (A) Aldrin: 0.127 ng/l;
 - (B) Arsenic: 10 ug/l;
 - (C) Benzene: 1.19 ug/l;
 - (D) Beryllium: 6.8 ng/l;
 - (E) Carbon tetrachloride: 0.254 ug/l;
 - (F) Chlordane: 0.575 ng/l;
 - (G) Chlorinated benzenes: 488 ug/l;
 - (H) DDT: 0.588 ng/l;
 - (I) Dieldrin: 0.135 ng/l;

- (J) Dioxin: 0.000013 ng/l;
- (K) Heptachlor: 0.208 ng/l;
- (L) Hexachlorobutadiene: 0.445 ug/l;
- (M) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (N) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (O) Tetrachloroethylene : 0.8 ug/l;
- (P) Trichloroethylene: 3.08 ug/l;
- (Q) Vinyl Chloride: 2 ug/l.

Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard. The Class WS-II classification may be used to protect portions of Class WS-III and WS-IV water supplies. For reclassifications of these portions of Class WS-III and WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

(3) Quality standards applicable to Class WS-II Waters are as follows:

- (a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none except for those specified in either Item (2) of this Rule and Rule .0104 of this Subchapter; and none which shall have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment and Natural Resources; any discharger may be required upon request by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water quality; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;
- (b) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as a water supply or any other designated use;
 - (i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed:
 - (A) Low Density Option: Development density must be

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. February 1, 1976; Amended Eff. April 1, 2003; October 1, 1995; February 1, 1993; March 1, 1991; October 1, 1989.

15A NCAC 02B .0214 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-II WATERS

The following water quality standards apply to surface waters within water supply watersheds that are classified WS-II. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section also apply to Class WS-II waters.

- (1) The best usage of WS-II waters are as follows: a source of water supply for drinking, culinary, or food-processing purposes for those users desiring maximum protection for their water supplies where a WS-I classification is not feasible and any best usage specified for Class C waters.
- (2) The conditions related to the best usage are as follows: waters of this class are protected as water supplies which are in predominantly undeveloped watersheds and meet average watershed development density levels as specified in Sub-Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges which qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events and other stormwater discharges are allowed in the entire watershed; new domestic and industrial discharges of treated wastewater are not allowed in the entire watershed; the waters, following treatment required by the Division of Environmental Health, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, and food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public

- limited to either no more than one dwelling unit per acre of single family detached residential development (or 40,000 square foot lot excluding roadway right-of-way) or 12 percent built-upon area for all other residential and non-residential development in the watershed outside of the critical area; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (B) High Density Option: If new development exceeds the low density option requirements as stated in Sub-Item (3)(b)(i)(A) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 30 percent built-upon area;
- (C) Land within the watershed shall be deemed compliant with the density requirements if the following condition is met: The density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire watershed area at the time of classification;
- (D) Cluster development is allowed on a project-by-project basis as follows:
- (I) overall density of the project meets associated density or stormwater control requirements of this Rule;
- (II) buffers meet the minimum statewide water supply watershed protection requirements;
- (III) built-upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrated stormwater flow, maximize the use of sheet flow through vegetated areas; and maximize the flow length through vegetated areas;

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- (IV) areas of concentrated development are located in upland areas and away, to the maximum extent practicable, from surface waters and drainageways;
- (V) remainder of tract to remain in vegetated or natural state;
- (VI) area in the vegetated or natural state may be conveyed to a property owners association; a local government for preservation as a park or greenway; a conservation organization; or placed in a permanent conservation or farmland preservation easement;
- (VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds; and
- (VIII) cluster development that meets the applicable low density requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;
- (E) A maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new development projects and expansions of existing development of up to 70 percent built-upon surface area in addition to the new development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(i)(B) of this Rule. For expansions to existing development, the existing built-upon surface area is not

counted toward the allowed 70 percent built-upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10 percent/70 percent land area to another local government within the watershed upon submittal of a joint resolution and review by the Commission.

When the water supply watershed is composed of public lands, such as National Forest land, local governments may count the public land acreage within the watershed outside of the critical area in calculating the acreage allowed under this provision. For local governments that do not choose to use the high density option in that WS-II watershed, each project must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts; if the local government selects the high density development option within that WS-II watershed, then engineered

- (F) stormwater controls must be employed for the new development; If local governments choose the high density development option which requires stormwater controls, then they shall assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;
- (G) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option requirements as specified in Sub-Items (3)(b)(i)(A) and Sub-Item (3)(b)(ii)(A) of this Rule; otherwise a minimum 30 foot vegetative buffer for development activities is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Rule shall stand as a bar to artificial streambank or shoreline stabilization;
- (H) No new development is allowed in the buffer; water dependent structures, or other

- structures such as flag poles, signs and security lights, which result in only diminimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, direct runoff away from the surface waters and maximize the utilization of BMPs;
- (I) No NPDES permits shall be issued for landfills that discharge treated leachate;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (A) Low Density Option: New development is limited to either no more than one dwelling unit of single family detached residential development per two acres (or 80,000 square foot lot excluding roadway right-of-way) or six percent built-upon area for all other residential and non-residential development; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (B) High Density Option: If new development density exceeds the low density requirements specified in Sub-Item (3)(b)(ii)(A) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of rainfall; new residential and non-residential development density not to exceed 24 percent built-upon area;
- (C) No new permitted sites for land application of residuals or petroleum contaminated soils are allowed;
- (D) No new landfills are allowed;
- (c) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;
- (d) Odor producing substances contained in sewage or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as will not cause taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (e) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;
- (f) Total hardness: not greater than 100 mg/l as calcium carbonate;
- (g) Total dissolved solids: not greater than 500 mg/l;
- (h) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for

- non-carcinogens in Class WS-II waters:
- (A) Barium: 1.0 mg/l;
- (B) Chloride: 250 mg/l;
- (C) Manganese: 200 ug/l;
- (D) Nickel: 25 ug/l;
- (E) Nitrate nitrogen: 10 mg/l;
- (F) 2,4-D: 100 ug/l;
- (G) 2,4,5-TP: 10 ug/l;
- (H) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-II waters:
- (A) Aldrin: 0.127 ng/l;
- (B) Arsenic: 10 ug/l;
- (C) Benzene: 1.19 ug/l;
- (D) Beryllium: 6.8 ng/l;
- (E) Carbon tetrachloride: 0.254 ug/l;
- (F) Chlordane: 0.575 ng/l;
- (G) Chlorinated benzenes: 488 ug/l;
- (H) DDT: 0.588 ng/l;
- (I) Dieldrin: 0.135 ng/l;
- (J) Dioxin: 0.000013 ng/l;
- (K) Heptachlor: 0.208 ng/l;
- (L) Hexachlorobutadiene: 0.445 ug/l;
- (M) Polynuclear aromatic hydrocarbons: 2.8 ng/l;
- (N) Tetrachloroethane (1,1,2,2): 0.172 ug/l;
- (O) Tetrachloroethylene: 0.8 ug/l;
- (P) Trichloroethylene: 3.08 ug/l;
- (Q) Vinyl Chloride: 2 ug/l.

QUALITY STANDARDS FOR CLASS WS-III WATERS

The following water quality standards apply to surface water supply waters that are classified WS-III. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section also apply to Class WS-III waters.

- (1) The best usage of WS-III waters are as follows: a source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I or WS-II classification is not feasible and any other best usage specified for Class C waters.
- (2) The conditions related to the best usage are as follows: waters of this class are protected as water supplies which are generally in low to moderately developed watersheds and meet average watershed development density levels as specified in Sub-Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule; discharges that qualify for a General Permit pursuant to 15A NCAC 2H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events, and other stormwater discharges are allowed in the entire watershed; treated domestic wastewater discharges are allowed in the entire watershed but no new domestic wastewater discharges are allowed in the critical area; no new industrial wastewater discharges except non-process industrial discharges are allowed in the entire watershed; the waters, following treatment required by the Division of Environmental Health, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard; the Class WS-III classification may be used to protect portions of Class WS-IV water supplies. For reclassifications of these portions of WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.
- (3) Quality standards applicable to Class WS-III Waters are as follows:
 - (a) Sewage, industrial wastes, non-process industrial wastes, or

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. May 10, 1979; Amended Eff. April 1, 2003; January 1, 1996; October 1, 1995.

15A NCAC 02B .0215 FRESH SURFACE WATER

other wastes: none except for those specified in Item (2) of this Rule and Rule .0104 of this Subchapter; and none which shall have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment and Natural Resources; any discharger may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water quality; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;

(b) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;

(i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed:

(A) Low Density Option: Development density must be limited to either no more than two dwelling units of single family detached residential development per acre (or 20,000 square foot lot excluding roadway right-of-way) or 24 percent built-upon area for all other residential and non-residential development in watershed outside of the critical area; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;

(B) High Density Option: If new development density exceeds the low density option requirements specified in Sub-Item (3)(b)(i)(A) of this Rule then development must control runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 50 percent built-upon area;

(C) Land within the watershed shall be deemed compliant with the density requirements if the following condition is met: The density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire watershed area;

(D) Cluster development is allowed on a project-by-project basis as follows:

(I) overall density of the project meets associated density or stormwater control requirements of this Rule;

(II) buffers meet the minimum statewide water supply watershed

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- (E) A maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1993 may be developed with new development projects and expansions of existing development of up to 70 percent built-upon surface area in addition to the new development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(i)(B) of this Rule. For expansions to existing development, the existing built-upon surface area is not counted toward the allowed 70 percent built-upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10 percent/70 percent land area to another local government within the watershed upon submittal of a joint resolution and review by the Commission. When the water supply watershed is composed of public lands, such as National Forest land, local governments may count the public land acreage within the watershed
- outside of the critical area in figuring the acreage allowed under this provision. For local governments that do not choose to use the high density option in that WS-III watershed, each project must, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters, and incorporate best management practices to minimize water quality impacts; if the local government selects the high density development option within that WS-III watershed, then engineered stormwater controls must be employed for the new development;
- (F) If local governments choose the high density development option which requires engineered stormwater controls, then they shall assume ultimate responsibility for operation and maintenance of the required controls as outlined in Rule .0104 of this Subchapter;
- (G) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density

- requirements as specified in Sub-Item (3)(b)(i)(A) and Sub-Item (3)(b)(ii)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development is required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies; nothing in this Rule shall stand as a bar to artificial streambank or shoreline stabilization;
- (H) No new development is allowed in the buffer; water dependent structures, or other structures such as flag poles, signs and security lights, which result in only diminimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, direct runoff away from surface waters and maximize the utilization of BMPs;
- (I) No NPDES permits shall be issued for landfills that discharge treated leachate;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (A) Low Density Option: New development limited to either no more than one dwelling unit of single family detached residential development per acre (or 40,000 square foot lot excluding roadway right-of-way) or 12 percent built-upon area for all other residential and non-residential development; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (B) High Density Option: If new development exceeds the low density requirements specified in Sub-Item (3)(b)(ii)(A) of this Rule, then engineered stormwater controls must be used to control runoff from the first inch of rainfall; development shall not exceed 30 percent built-upon area;
- (C) No new permitted sites for land application of residuals or petroleum contaminated soils are allowed;
- (D) No new landfills are allowed;
- (c) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities

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| <p>(d) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or wastes, as shall not cause taste and odor difficulties in water supplies which cannot be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;</p> <p>(e) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems from chlorinated phenols;</p> <p>(f) Total hardness: not greater than 100 mg/l as calcium carbonate;</p> <p>(g) Total dissolved solids: not greater than 500 mg/l;</p> <p>(h) Toxic and other deleterious substances:</p> <p>(i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-III waters:</p> <p>(A) Barium: 1.0 mg/l;</p> <p>(B) Chloride: 250 mg/l;</p> <p>(C) Manganese: 200 ug/l;</p> <p>(D) Nickel: 25 ug/l;</p> <p>(E) Nitrate nitrogen: 10 mg/l;</p> <p>(F) 2,4-D: 100 ug/l;</p> <p>(G) 2,4,5-TP (Silvex): 10 ug/l;</p> <p>(H) Sulfates: 250 mg/l;</p> <p>(ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-III waters:</p> <p>(A) Aldrin: 0.127 ng/l;</p> <p>(B) Arsenic: 10 ug/l;</p> <p>(C) Benzene: 1.19 ug/l;</p> <p>(D) Beryllium: 6.8 ng/l;</p> <p>(E) Carbon tetrachloride: 0.254 ug/l;</p> <p>(F) Chlordane: 0.575 ng/l;</p> | <p>(G) Chlorinated benzenes: 488 ug/l;</p> <p>(H) DDT: 0.588 ng/l;</p> <p>(I) Dieldrin: 0.135 ng/l;</p> <p>(J) Dioxin: 0.000013 ng/l;</p> <p>(K) Heptachlor: 0.208 ng/l;</p> <p>(L) Hexachlorobutadiene: 0.445 ug/l;</p> <p>(M) Polynuclear aromatic hydrocarbons: 2.8 ng/l;</p> <p>(N) Tetrachloroethane (1,1,2,2): 0.172 ug/l;</p> <p>(O) Tetrachloroethylene: 0.8 ug/l;</p> <p>(P) Trichloroethylene: 3.08 ug/l;</p> <p>(Q) Vinyl Chloride: 2 ug/l.</p> |
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History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. September 9, 1979; Amended Eff. April 1, 2003; January 1, 1996; October 1, 1995; October 1, 1989.

15A NCAC 02B .0216 FRESH SURFACE WATER QUALITY STANDARDS FOR WS-IV WATERS

The following water quality standards apply to surface water supply waters that are classified WS-IV. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section also apply to Class WS-IV waters.

- (1) The best usage of WS-IV waters are as follows: a source of water supply for drinking, culinary, or food-processing purposes for those users where a more protective WS-I, WS-II or WS-III classification is not feasible and any other best usage specified for Class C waters.
- (2) The conditions related to the best usage are as follows: waters of this class are protected as water supplies which are generally in moderately to highly developed watersheds or protected areas and meet average watershed development density levels as specified in Sub-Items (3)(b)(i)(A), (3)(b)(i)(B), (3)(b)(ii)(A) and (3)(b)(ii)(B) of this Rule. Discharges which qualify for a General Permit pursuant to 15A NCAC 02H .0127, trout farm discharges, recycle (closed loop) systems that only discharge in response to 10-year storm events, other stormwater discharges and domestic wastewater discharges shall be allowed in the protected and critical areas. Treated industrial wastewater discharges are allowed in the protected and critical areas; however, new industrial wastewater discharges in the critical area shall be required to meet the

provisions of 15A NCAC 02B .0224(1)(b)(iv), (v) and (vii), and 15A NCAC 02B .0203. New industrial connections and expansions to existing municipal discharges with a pretreatment program pursuant to 15A NCAC 02H .0904 are allowed. The waters, following treatment required by the Division of Environmental Health, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500. Sources of water pollution which preclude any of these uses on either a short-term or long-term basis shall be considered to be violating a water quality standard. The Class WS-II or WS-III classifications may be used to protect portions of Class WS-IV water supplies. For reclassifications of these portions of WS-IV water supplies occurring after the July 1, 1992 statewide reclassification, the more protective classification requested by local governments shall be considered by the Commission when all local governments having jurisdiction in the affected area(s) have adopted a resolution and the appropriate ordinances to protect the watershed or the Commission acts to protect a watershed when one or more local governments has failed to adopt necessary protection measures.

(3) Quality standards applicable to Class WS-IV Waters are as follows:

(a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none shall be allowed except for those specified in Item (2) of this Rule and Rule .0104 of this Subchapter and none shall be allowed which shall have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment and Natural Resources. Any discharges or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies. These facilities may be required to have spill and treatment failure control plans as well as

perform special monitoring for toxic substances;

(b) Nonpoint Source and Stormwater Pollution: none shall be allowed that would adversely impact the waters for use as water supply or any other designated use.

(i) Nonpoint Source and Stormwater Pollution Control Criteria For Entire Watershed or Protected Area:

(A) Low Density Option: Development activities which require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission shall be limited to no more than either: two dwelling units of single family detached development per acre (or 20,000 square foot lot excluding roadway right-of-way) or 24 percent built-upon area for all other residential and non-residential development; or three dwelling units per acre or 36 percent built-upon area for projects without curb and gutter street systems in the protected area outside of the critical area; Stormwater runoff from the development shall

- (B) be transported by vegetated conveyances to the maximum extent practicable; High Density Option: If new development activities which require a Sedimentation/Erosion Control Plan exceed the low density requirements of Sub-Item (3)(b)(i)(A) of this Rule then development shall control the runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 70 percent built-upon area;
- (C) Land within the critical and protected area shall be deemed compliant with the density requirements if the following condition is met: The density of all existing development at the time of reclassification does not exceed the density requirement when densities are averaged throughout the entire area;
- (D) Cluster development shall be allowed on a project-by-project basis as follows:
- (I) overall density of the project meets associated density or stormwater control
 - (II) requireme nts of this Rule; buffers meet the minimum statewide water supply watershed protection requireme nts;
 - (III) built-upon areas are designed and located to minimize stormwater runoff impact to the receiving waters, minimize concentrat ed stormwater flow, maximize the use of sheet flow through vegetated areas, and maximize the flow length through vegetated areas;
 - (IV) areas of concentrat ed developme nt are located in upland areas and away, to the maximum extent practicable , from surface waters and drainagew ays;

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| <p>(V) remainder of tract to remain in vegetated or natural state;</p> | <p>(VI) area in the vegetated or natural state may be conveyed to a property owners association; a local government for preservation as a park or greenway; a conservation organization; or placed in a permanent conservation or farmland preservation easement;</p> | <p>(F) Minimum 100 foot vegetative buffer is required for all new development activities that exceed the low density option requirements as specified in Sub-Item (3)(b)(i)(A) or Sub-Item (3)(b)(ii)(A) of this Rule, otherwise a minimum 30 foot vegetative buffer for development shall be required along all perennial waters indicated on the most recent versions of U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps or as determined by local government studies;</p> |
| <p>(VII) a maintenance agreement for the vegetated or natural area shall be filed with the Register of Deeds, and;</p> | <p>(VIII) cluster development that meets the applicable low density option requirements shall transport stormwater runoff from the development by vegetated conveyances to the maximum extent practicable;</p> | <p>(G) No new development shall be allowed in the buffer; water dependent structures, or other structures, such as flag poles, signs and security lights, which result in only diminimus increases in impervious area and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon surface area, divert runoff away from surface waters and maximize the utilization of BMPs;</p> |
| <p>(E) If local governments choose the high density development option which requires engineered stormwater controls, then they shall assume ultimate responsibility for operation and</p> | | |

- (H) For local governments that do not use the high density option, a maximum of 10 percent of each jurisdiction's portion of the watershed outside of the critical area as delineated on July 1, 1995 may be developed with new development projects and expansions to existing development of up to 70 percent built-upon surface area in addition to the new development approved in compliance with the appropriate requirements of Sub-Item (3)(b)(i)(A) of this Rule. For expansions to existing development, the existing built-upon surface area shall not be counted toward the allowed 70 percent built-upon surface area. A local government having jurisdiction within the watershed may transfer, in whole or in part, its right to the 10 percent/70 percent land area to another local government within the watershed upon submittal of a joint resolution for review by the Commission. When the designated water supply watershed area is composed of public land, such as National Forest land, local governments may count the public land acreage within the designated watershed area outside of the critical area in figuring the acreage allowed under this provision. Each project shall, to the maximum extent practicable, minimize built-upon surface area, direct stormwater runoff away from surface waters and incorporate best management practices to minimize water quality impacts;
- (ii) Critical Area Nonpoint Source and Stormwater Pollution Control Criteria:
- (A) Low Density Option: New development activities which require a Sedimentation/Erosion Control Plan in accordance with 15A NCAC 4 established by the North Carolina Sedimentation Control Commission or approved local government programs as delegated by the Sedimentation Control Commission shall be limited to no more than two dwelling units of single family detached development per acre (or 20,000 square foot lot excluding roadway right-of-way) or 24 percent built-upon area for all other residential and non-

- residential development; Stormwater runoff from the development shall be transported by vegetated conveyances to the maximum extent practicable;
- (B) High Density Option: If new development density exceeds the low density requirements specified in Sub-Item (3)(b)(ii)(A) of this Rule engineered stormwater controls shall be used to control runoff from the first inch of rainfall; new residential and non-residential development shall not exceed 50 percent built-upon area;
- (C) No new permitted sites for land application of residuals or petroleum contaminated soils shall be allowed;
- (D) No new landfills shall be allowed;
- (c) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;
- (d) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;
- (e) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols shall be allowed. Specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;
- (f) Total hardness shall not exceed 100 mg/l as calcium carbonate;
- (g) Total dissolved solids shall not exceed 500 mg/l;
- (h) Toxic and other deleterious substances:
- (i) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-IV waters shall be allowed as follows:
- (A) Barium: 1.0 mg/l;
 - (B) Chloride: 250 mg/l;
 - (C) Manganese: 200 ug/l;
 - (D) Nickel: 25 ug/l;
 - (E) Nitrate nitrogen: 10.0 mg/l;
 - (F) 2,4-D: 100 ug/l;
 - (G) 2,4,5-TP (Silvex): 10 ug/l;
 - (H) Sulfates: 250 mg/l;
- (ii) Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-IV waters shall be allowed as follows:
- (R) Aldrin: 0.127 ng/l;
 - (S) Arsenic: 10 ug/l;
 - (T) Benzene: 1.19 ug/l;
 - (U) Beryllium: 6.8 ng/l;
 - (V) Carbon tetrachloride: 0.254 ug/l;
 - (W) Chlordane: 0.575 ng/l;
 - (X) Chlorinated benzenes: 488 ug/l;
 - (Y) DDT: 0.588 ng/l;
 - (Z) Dieldrin: 0.135 ng/l;
 - (AA) Dioxin: 0.000013 ng/l;
 - (BB) Heptachlor: 0.208 ng/l;
 - (CC) Hexachlorobutadiene: 0.445 ug/l;

<p>(DD) Polynuclear aromatic hydrocarbons: 2.8 ng/l;</p> <p>(EE) Tetrachloroethane (1,1,2,2): 0.172 ug/l;</p> <p>(FF) Tetrachloroethylene : 0.8 ug/l;</p> <p>(GG) Trichloroethylene: 3.08 ug/l;</p> <p>(HH) Vinyl Chloride: 2 ug/l.</p>	<p>(3) shall be considered to be violating a water quality standard.</p> <p>Quality standards applicable to Class WS-V Waters are as follows:</p> <p>(a) Sewage, industrial wastes, non-process industrial wastes, or other wastes: none which shall have an adverse effect on human health or which are not effectively treated to the satisfaction of the Commission and in accordance with the requirements of the Division of Environmental Health, North Carolina Department of Environment and Natural Resources; any discharges or industrial users subject to pretreatment standards may be required by the Commission to disclose all chemical constituents present or potentially present in their wastes and chemicals which could be spilled or be present in runoff from their facility which may have an adverse impact on downstream water supplies; these facilities may be required to have spill and treatment failure control plans as well as perform special monitoring for toxic substances;</p> <p>(b) MBAS (Methylene-Blue Active Substances): not greater than 0.5 mg/l to protect the aesthetic qualities of water supplies and to prevent foaming;</p> <p>(c) Nonpoint Source and Stormwater Pollution: none that would adversely impact the waters for use as water supply or any other designated use;</p> <p>(d) Odor producing substances contained in sewage, industrial wastes, or other wastes: only such amounts, whether alone or in combination with other substances or waste, as will not cause taste and odor difficulties in water supplies which can not be corrected by treatment, impair the palatability of fish, or have a deleterious effect upon any best usage established for waters of this class;</p> <p>(e) Phenolic compounds: not greater than 1.0 ug/l (phenols) to protect water supplies from taste and odor problems due to chlorinated phenols; specific phenolic compounds may be given a different limit if it is demonstrated not to cause taste and odor problems and not to be detrimental to other best usage;</p> <p>(f) Total hardness: not greater than 100 mg/l as calcium carbonate;</p>
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History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. February 1, 1986; Amended Eff. April 1, 2003; June 1, 1996; October 1, 1995; August 1, 1995; June 1, 1994.

15A NCAC 02B .0218 FRESH SURFACE WATER QUALITY STANDARDS FOR CLASS WS-V WATERS

The following water quality standards apply to surface water supply waters that are classified WS-V. Water quality standards applicable to Class C waters as described in Rule .0211 of this Section also apply to Class WS-V waters.

- (1) The best usage of WS-V waters are as follows: waters that are protected as water supplies which are generally upstream and draining to Class WS-IV waters or waters previously used for drinking water supply purposes or waters used by industry to supply their employees, but not municipalities or counties, with a raw drinking water supply source, although this type of use is not restricted to WS-V classification. Class WS-V waters are suitable for all Class C uses. The Commission may consider a more protective classification for the water supply if a resolution requesting a more protective classification is submitted from all local governments having land use jurisdiction within the affected watershed; no categorical restrictions on watershed development or wastewater discharges are required, however, the Commission or its designee may apply appropriate management requirements as deemed necessary for the protection of waters downstream of receiving waters (15A NCAC 2B .0203).
- (2) The conditions related to the best usage are as follows: waters of this class are protected water supplies; the waters, following treatment required by the Division of Environmental Health, shall meet the Maximum Contaminant Level concentrations considered safe for drinking, culinary, or food-processing purposes which are specified in the national drinking water regulations and in the North Carolina Rules Governing Public Water Supplies, 15A NCAC 18C .1500; sources of water pollution which preclude any of these uses on either a short-term or long-term basis

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| (g) | Total dissolved solids: not greater than 500 mg/l; | (XX) | Trichloroethylene: 3.08 ug/l; |
| (h) | Toxic and other deleterious substances: | (YY) | Vinyl Chloride: 2 ug/l. |
| (i) | Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for non-carcinogens in Class WS-V waters: | | |
| | (A) Barium: 1.0 mg/l; | | |
| | (B) Chloride: 250 mg/l; | | |
| | (C) Manganese: 200 ug/l; | | |
| | (D) Nickel: 25 ug/l; | | |
| | (E) Nitrate nitrogen: 10.0 mg/l; | | |
| | (F) 2,4-D: 100 ug/l; | | |
| | (G) 2,4,5-TP (Silvex): 10 ug/l; | | |
| | (H) Sulfates: 250 mg/l. | | |
| (ii) | Water quality standards (maximum permissible concentrations) to protect human health through water consumption and fish tissue consumption for carcinogens in Class WS-V waters: | | |
| | (II) Aldrin: 0.127 ng/l; | | |
| | (JJ) Arsenic: 10 ug/l; | | |
| | (KK) Benzene: 1.19 ug/l; | | |
| | (LL) Beryllium: 6.8 ng/l; | | |
| | (MM) Carbon tetrachloride: 0.254 ug/l; | | |
| | (NN) Chlordane: 0.575 ng/l; | | |
| | (OO) Chlorinated benzenes: 488 ug/l; | | |
| | (PP) DDT: 0.588 ng/l; | | |
| | (QQ) Dieldrin: 0.135 ng/l; | | |
| | (RR) Dioxin: 0.000013 ng/l; | | |
| | (SS) Heptachlor: 0.208 ng/l; | | |
| | (TT) Hexachlorobutadiene: 0.445 ug/l; | | |
| | (UU) Polynuclear aromatic hydrocarbons: 2.8 ng/l; | | |
| | (VV) Tetrachloroethane (1,1,2,2): 0.172 ug/l; | | |
| | (WW) Tetrachloroethylene : 0.8 ug/l; | | |

History Note: Authority G.S. 143-214.1; 143-215.3(a)(1); Eff. October 1, 1989; Amended Eff. April 1, 2003; October 1, 1995.

15A NCAC 02D .0521 CONTROL OF VISBLE EMISSIONS

(a) Purpose. The intent of this Rule is to prevent, abate and control emissions generated from fuel burning operations and industrial processes where an emission can be reasonably expected to occur, except during startup, shutdowns, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section.

(b) Scope. This Rule shall apply to all fuel burning sources and to other processes that may have a visible emission. However, sources subject to a visible emission standard in Rules.0506, .0508, .0524, .1110, .1111, .1205, .1206, or .1210 of this Subchapter shall meet that standard instead of the standard contained in this Rule. This Rule does not apply to engine maintenance, rebuild, and testing activities where controls are infeasible, except it does apply to the testing of peak shaving and emergency generators. (In deciding if controls are infeasible, the Director shall consider emissions, capital cost of compliance, annual incremental compliance cost, and environmental and health impacts.)

(c) For sources manufactured as of July 1, 1971, visible emissions shall not be more than 40 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 40 percent opacity if:

- (1) No six-minute period exceeds 90 percent opacity;
- (2) No more than one six-minute period exceeds 40 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 40 percent opacity in any 24-hour period.

(d) For sources manufactured after July 1, 1971, visible emissions shall not be more than 20 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 20 percent opacity if:

- (1) No six-minute period exceeds 87 percent opacity;
- (2) No more than one six-minute period exceeds 20 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 20 percent opacity in any 24-hour period.

(e) Where the presence of uncombined water is the only reason for failure of an emission to meet the limitations of Paragraph (c) or (d) of this Rule, those requirements shall not apply.

(f) Exception from Opacity Standard in Paragraph (d) of this Rule. Sources subject to Paragraph (d) of this Rule may be allowed to comply with Paragraph (c) of this Rule if:

- (1) The owner or operator of the source demonstrates compliance with applicable particulate mass emissions standards; and

- (2) The owner or operator of the source submits data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not violate any national ambient air quality standard.

The burden of proving these conditions shall be on the owner or operator of the source and shall be approached in the following manner. The owner or operator of a source seeking an exception shall apply to the Director requesting this modification in its permit. The applicant shall submit the results of a source test within 90 days of application. Source testing shall be by the appropriate procedure as designated by rules in this Subchapter. During this 90-day period the applicant shall submit data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not contravene ambient air quality standards. This evidence shall include, as a minimum, an inventory of past and projected emissions from the facility. In its review of ambient air quality, the Division may require additional information that it considers necessary to assess the resulting ambient air quality. If the applicant can thus show that it will be in compliance both with particulate mass emissions standards and ambient air quality standards, the Director shall modify the permit to allow emissions up to those allowed by Paragraph (c) of this Rule.

(g) For sources required to install, operate, and maintain continuous opacity monitoring systems (COMS), compliance with the numerical opacity limits in this Rule shall be determined as follows excluding startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section:

- (1) No more than 10 six-minute periods shall exceed the opacity standard in any one day; and
- (2) The percent of excess emissions (defined as the percentage of monitored operating time in a calendar quarter above the opacity limit) shall not exceed 0.8 percent of the total operating hours. If a source operates less than 500 hours during a calendar quarter, the percent of excess emissions shall be calculated by including hours operated immediately previous to this quarter until 500 operational hours are obtained.

In no instance shall excess emissions exempted under this Paragraph cause or contribute to a violation of any emission standard in this Subchapter or 40 CFR Part 60, 61, or 63 or any ambient air quality standard in Section 15A NCAC 02D .0400 or 40 CFR Part 50.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. February 1, 1976; Amended Eff. April 1, 2003; April 1, 2001; July 1, 1998; July 1, 1996; December 1, 1992; August 1, 1987; January 1, 1985; May 30, 1978.

15A NCAC 02D .0608 OTHER LARGE COAL OR RESIDUAL OIL BURNERS

(a) The owner or operator of any fuel burning unit shall determine sulfur dioxide emissions into the ambient air if the unit:

- (1) burns coal or residual oil;
- (2) is not required to monitor sulfur dioxide emissions by Rules .0524 or .0606 of this Subchapter.
- (3) has a total heat input of more than 250 million BTU per hour from coal and residual oil; and
- (4) has an annual average capacity factor greater than 30 percent as determined from the three most recent calendar year reports to the Federal Power Commission or as otherwise demonstrated to the Director by the owner or operator. (If the unit has not been in existence for three calendar years, its three-calendar-year average capacity factor shall be determined by estimating its annual capacity factors for enough future years to allow a three-calendar-year average capacity factor to be computed. If this three-calendar-year average capacity factor exceeds 30 percent, the unit shall be monitored. If this three-calendar-year average capacity factor does not exceed 30 percent, the unit need not be monitored.)

(b) Once the unit is being monitored in accordance with Paragraph (a) of this Rule, it shall continue to be monitored until its most recent three-calendar-year average capacity factor does not exceed 25 percent. Once the unit is not being monitored in accordance with Subparagraph (a) of this Rule, it need not be monitored until its most recent three-calendar-year average capacity factor exceeds 35 percent.

(c) If units required to be monitored have a common exhaust or if units required to be monitored have a common exhaust with units not required to be monitored, then the common exhaust may be monitored, and the sulfur dioxide emissions need not be apportioned among the units with the common exhaust.

(d) The owner or operator of the source shall determine sulfur dioxide emissions by:

- (1) an instrument for continuous monitoring and recording of sulfur dioxide emissions; or
- (2) analyses of representative samples of fuels to determine BTU value and percent sulfur content.

(e) The owner or operators of any sources subject to this Rule that are required to monitor emissions of sulfur dioxide under any other state or federal rule with continuous emission monitoring systems shall monitor compliance with the sulfur dioxide emission standard in Rule .0516 of this Subchapter with a continuous emission monitoring system. Compliance with sulfur dioxide emission standards shall be determined by averaging hourly continuous emission monitoring system values over a 24-hour block period beginning at midnight. To compute the 24-hour block average, the average hourly values shall be summed, and the sum shall be divided by 24. A minimum of four data points, equally spaced, is required to determine a valid hour value unless the continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75. If a continuous emission monitoring system is installed to meet the provisions of 40 CFR Part 75, the minimum number of data points shall be determined by 40 CFR Part 75.

(f) For emissions of sulfur dioxide, fuel analysis may be used in place of a continuous emissions monitoring system if the source is not required to monitor emissions of sulfur dioxide using a continuous emissions monitoring system under another state or federal rule. If fuel analysis is used as an alternative method to determine emissions of sulfur dioxide, then:

(1) for coal, the test methods described in Rule 2D .0501(c)(4)(A) of this Subchapter shall be used except that gross or composite samples, gross caloric value, moisture content, and sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross caloric value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel sample shall be taken every four hours. These four-hour samples shall be composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in Parts (c)(4)(A) and (B) of Rule .0501 of this Subchapter. The sulfur dioxide emission rate shall also be determined using fuel analysis data. Sulfur retention credit shall be granted and used for computing sulfur dioxide emission rates if a source, on a case-by-case basis, quantitatively and empirically demonstrates the sulfur retention.

(2) for residual oil, the test methods described in Rule .0501(c)(4)(B) of this Subchapter shall be used except that sulfur content shall be determined per shipment. Alternatively, gross or composite samples, gross caloric value, moisture content, and sulfur content may be determined sampling the fuel as fired if the owner or operator demonstrates to the Director that sampling as fired provides a more accurate estimation of sulfur dioxide emissions than sampling each shipment. If sulfur dioxide emissions are determined sampling fuel as fired, then a fuel sample shall be taken every four hours. These four-hour samples shall be composited into a daily sample, and the daily sample shall be composited into a weekly sample. This weekly sample shall be analyzed using the procedures in Parts (c)(4)(A) and (B) of Rule .0501 of this Subchapter. Residual oil shall be collected in accordance with ASTM D4177 or D4057.

(g) The owner or operator of the source shall report to the Director no later than 30 days following the end of the quarter the following information:

(1) for fuel analysis per shipment:
 (A) the quantity and type of fuels burned,
 (B) the BTU value,

(C) the sulfur content in percent by weight, and
 (D) the calculated sulfur dioxide emission rates expressed in the same units as the applicable standard.

(2) for continuous monitoring of emissions:
 (A) the daily calculated sulfur dioxide emission rates expressed in the same units as the applicable standard for each day, and
 (B) other information required under Appendix P of 40 CFR Part 51.

(h) The owner or operator of the source shall conduct a daily zero and span check of the continuous emission monitoring system following the manufacturer's recommendations and shall comply with the requirements of Rule .0613 of this Section.

(i) If emission testing for compliance with the sulfur dioxide emission standard is required, the testing shall be done according to 40 CFR Part 60, Appendix A, Method 6.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.66; 143-215.107(a)(4); Eff. June 18, 1976; Amended Eff. April 1, 2003; April 1, 1999; July 1, 1996; July 1, 1988; July 1, 1984.

15A NCAC 02D .0927 BULK GASOLINE TERMINALS

(a) For the purpose of this Rule, the following definitions apply:

- (1) "Bulk gasoline terminal" means:
 (A) breakout tanks of an interstate oil pipeline facility; or
 (B) a gasoline storage facility that usually receives gasoline from refineries primarily by pipeline, ship, or barge; delivers gasoline to bulk gasoline plants or to commercial or retail accounts primarily by tank truck; and has an average daily throughput of more than 20,000 gallons of gasoline.
- (2) "Breakout tank" means a tank used to:
 (A) relieve surges in a hazardous liquid pipeline system, or
 (B) receive and store hazardous liquids transported by pipeline for reinjection and continued transport by pipeline.
- (3) "Gasoline" means a petroleum distillate having a Reid vapor pressure of four psia or greater.
- (4) "Contact deck" means a deck in an internal floating roof tank that rises and falls with the liquid level and floats in direct contact with the liquid surface.
- (5) "Degassing" means the process by which a tank's interior vapor space is decreased to below the lower explosive limit for the purpose of cleaning, inspection, or repair.
- (6) "Liquid balancing" means a process used to degas floating roof gasoline storage tanks with a liquid whose vapor pressure is below 1.52 psia. This is done by removing as much gasoline as possible without landing the roof on its internal supports, pumping in the

replacement fluid, allowing mixing, remove as much mixture as possible without landing the roof, and repeating these steps until the vapor pressure of the mixture is below 1.52 psia.

- (7) "Liquid displacement" means a process by which gasoline vapors, remaining in an empty tank, are displaced by a liquid with a vapor pressure below 1.52 psia.

(b) This Rule applies to bulk gasoline terminals and the appurtenant equipment necessary to load the tank truck or trailer compartments.

(c) Gasoline shall not be loaded into any tank trucks or trailers from any bulk gasoline terminal unless:

- (1) The bulk gasoline terminal is equipped with a vapor control system that prevents the emissions of volatile organic compounds from exceeding 35 milligrams per liter. The owner or operator shall obtain from the manufacturer and maintain in his records a pre-installation certification stating the vapor control efficiency of the system in use;
- (2) Displaced vapors and gases are vented only to the vapor control system or to a flare;
- (3) A means is provided to prevent liquid drainage from the loading device when it is not in use or to accomplish complete drainage before the loading device is disconnected; and
- (4) All loading and vapor lines are equipped with fittings that make vapor-tight connections and that are automatically and immediately closed upon disconnection.

(d) Sources regulated by Paragraph (b) of this Rule shall not:

- (1) allow gasoline to be discarded in sewers or stored in open containers or handled in any manner that would result in evaporation, or
- (2) allow the pressure in the vapor collection system to exceed the tank truck or trailer pressure relief settings.

(e) The owner or operator of a bulk gasoline terminal shall paint all tanks used for gasoline storage white or silver at the next scheduled painting or by December 1, 2002, whichever occurs first.

(f) The owner or operator of a bulk gasoline terminal shall install on each external floating roof tank with an inside diameter of 100 feet or less used to store gasoline a self-supporting roof, such as a geodesic dome, at the next time that the tank is taken out of service or by December 1, 2002, whichever occurs first.

(g) The following equipment shall be required on all tanks storing gasoline at a bulk gasoline terminal:

- (1) rim-mounted secondary seals on all external and internal floating roof tanks,
- (2) gaskets on deck fittings, and
- (3) floats in the slotted guide poles with a gasket around the cover of the poles.

(h) Decks shall be required on all above ground tanks with a capacity greater than 19,800 gallons storing gasoline at a bulk gasoline terminal. All decks installed after June 30, 1998 shall comply with the following requirements:

- (1) deck seams shall be welded, bolted or riveted; and

- (2) seams on bolted contact decks and on riveted contact decks shall be gasketed.

(i) If, upon facility or operational modification of a bulk gasoline terminal that existed before December 1, 1992, an increase in benzene emissions results such that:

- (1) emissions of volatile organic compounds increase by more than 25 tons cumulative at any time during the five years following modifications; and
- (2) annual emissions of benzene from the cluster where the bulk gasoline terminal is located (including the pipeline and marketing terminals served by the pipeline) exceed benzene emissions from that cluster based upon calendar year 1991 gasoline throughput and application of the requirements of this Subchapter,

the annual increase in benzene emissions due to the modification shall be offset within the cluster by reduction in benzene emissions beyond that otherwise achieved from compliance with this Rule, in the ratio of at least 1.3 to 1.

(j) The owner or operators of a bulk gasoline terminal that has received an air permit before December 1, 1992, to emit toxic air pollutants under 15A NCAC 02Q .0700 to comply with Section .1100 of this Subchapter shall continue to follow all terms and conditions of the permit issued under 15A NCAC 02Q .0700 and to bring the terminal into compliance with Section .1100 of this Subchapter according to the terms and conditions of the permit, in which case the bulk gasoline terminal shall continue to need a permit to emit toxic air pollutants and shall be exempted from Paragraphs (e) through (i) of this Rule.

(k) The owner or operator of a bulk gasoline terminal shall not load, or allow to be loaded, gasoline into any truck tank or trailer unless the truck tank or trailer has been certified leak tight according to Rule .0932 of this Section within the last 12 months.

(l) The owner or operator of a bulk gasoline terminal shall have on file at the terminal a copy of the certification test conducted according to Rule .0932 of this Section for each gasoline tank truck loaded at the terminal.

(m) Emissions of gasoline from degassing of external or internal floating roof tanks at a bulk gasoline terminal shall be collected and controlled by at least 90 percent by weight. Liquid balancing shall not be used to degas gasoline storage tanks at bulk gasoline terminals. Bulk gasoline storage tanks containing not more than 138 gallons of liquid gasoline or the equivalent of gasoline vapor and gasoline liquid are exempted from the degassing requirements if gasoline vapors are vented for at least 24-hours. Documentation of degassing external or internal floating roof tanks shall be made according to 15 NCAC 02D .0903.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);

Eff. July 1, 1979;

Amended Eff. April 1, 2003; August 1, 2002; July 1, 1998;

July 1, 1996; July 1, 1994; December 1, 1992;

December 1, 1989; January 1, 1985.

15A NCAC 09C .1202 DEFINITIONS OF TERMS

Whenever used in this Subchapter:

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

History Note: Authority G.S. 113-35; Temporary Adoption Eff. December 21, 2001; Eff. April 1, 2003.

15A NCAC 09C .1205 BATHING OR SWIMMING

- (a) A person shall not dive or jump from any falls or rocks or overhangs into any body of water.
- (b) A person may wade, bathe or swim in any body of water in the Forest at his or her own risk, except in designated non-swimming areas.
- (c) Public Nudity
 - (1) Public nudity, including public nude bathing, is prohibited in all of DuPont State Forest lands or waters. This Rule does not apply to the enclosed portions of bathhouses, restrooms, tents and recreational vehicles.
 - (2) Children under the age of five are exempt from this restriction.

History Note: Authority G.S. 14-190.9; 113-35; Temporary Adoption Eff. December 21, 2001; Eff. April 1, 2003.

15A NCAC 09C .1206 HUNTING

- (a) A person may hunt on the State Forest provided that the person obeys all state hunting laws, rules, and regulations currently in effect for the DuPont State Forest Game Land.
- (b) Tree Stands. Hunters shall not erect or occupy any tree stand attached to any tree, unless they use a portable stand that leaves no metal in the tree.

History Note: Authority G.S. 113-8; 113-34; 113-35; 113-264(a); Temporary Adoption Eff. December 21, 2001;

Eff. April 1, 2003.

15A NCAC 09C .1207 FISHING

A person may fish in any waters in DuPont State Forest provided that the person obeys all state fishing laws and rules.

History Note: Authority G.S. 113-8; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001; Eff. April 1, 2003.

15A NCAC 09C .1208 ANIMALS AT LARGE

- (a) Except in designated areas, no person shall have any dog, cat or other pet upon DuPont State Forest unless the animal is on a leash and under the control of the owner or some other person. Hunting dogs used in accordance with NC Wildlife Commission Game Lands Rules pertaining to DuPont State Forest are exempt from this Rule.
- (b) No dog, cat or other pet shall be allowed to enter any public building on DuPont State Forest except assistance animals for persons with disabilities.

History Note: Authority G.S. 113-22; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001; Eff. April 1, 2003.

15A NCAC 09C .1212 HORSES

- (a) No person shall use, ride or drive a horse except to, from, or along a bridle path or multi-use trail.
- (b) Each user shall remove from designated parking areas all residues (including manure) generated by his/her horse.
- (c) When dismounted, horses shall be tied in such a manner as to prevent damage to trees or any other plants.
- (d) When crossing rivers or streams, horse use shall be confined to bridges or culverts if available.
- (e) Users shall possess valid Coggins papers for each horse and make them available for inspection upon request.

History Note: Authority G.S. 113-22; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001; Eff. April 1, 2003.

15A NCAC 09C .1213 BICYCLES

- (a) No person shall use or ride a bicycle except on a road or trail authorized for use by motor vehicles or specifically designated as a bicycle or multi-use trail.
- (b) When crossing rivers or streams, bicycle use shall be confined to bridges or culverts if available.

History Note: Authority G.S. 113-22; 113-34; 113-35; Temporary Adoption Eff. December 21, 2001; Eff. April 1, 2003.

15A NCAC 09C .1215 FIREARMS

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

*History Note: Authority G.S. 113-22; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001;
Eff. April 1, 2003.*

15A NCAC 09C .1216 FIRES

No person shall build or start a fire in any area unless that area is designed for such purpose. This Rule does not apply to liquid fueled grills or cooking stoves. Fires ignited for forest management purposes under the provisions of a burning plan, approved by the Forest Supervisor or his designee, are exempt from this Rule.

*History Note: Authority G.S. 113-22; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001;
Eff. April 1, 2003.*

15A NCAC 09C .1217 DISORDERLY CONDUCT

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

*History Note: Authority G.S. 113-22; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001;
Eff. April 1, 2003.*

15A NCAC 09C .1218 INTOXICATING BEVERAGES AND DRUGS

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

*History Note: Authority G.S. 113-22; 113-34; 113-35;
Temporary Adoption Eff. December 21, 2001;
Eff. April 1, 2003.*

15A NCAC 09C .1222 ALMS AND CONTRIBUTIONS

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

*History Note: Authority G.S. 113-35;
Temporary Adoption Eff. December 21, 2001;
Eff. April 1, 2003.*

15A NCAC 09C .1223 AVIATION

(a) Except as noted in Paragraphs (b) and (c) of this Rule, a person shall not voluntarily bring, land or cause to descend or alight, ascend or take off within or upon any DuPont State Forest area, any airplane, flying machine, balloon, parachute, glider, hang glider, or other apparatus for aviation. Voluntarily in this connection shall mean anything other than a forced landing.
(b) In forest areas where aviation activities are part of the planned forest activities, a special use permit shall be required. Application for permits may be made as provided by Rule .1203 of this Section.

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

*History Note: Authority G.S. 113-35;
Temporary Adoption Eff. December 21, 2001;
Eff. April 1, 2003.*

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

A person shall not drive a motorized vehicle in the forest within or upon a safety zone, hiking trail, bridle trail, fire trail, service road, or any part of the forest not designated for such purposes. Motor bikes, mini-bikes, all terrain vehicles, and unlicensed motor vehicles are prohibited within the forest. Vehicles used in conjunction with emergency operations, such as search and rescue, law enforcement, or fire fighting, are exempt from this Rule.

*History Note: Authority G.S. 113-35;
Temporary Adoption Eff. December 21, 2001;
Eff. April 1, 2003.*

15A NCAC 10F .0327 MONTGOMERY COUNTY

(a) Regulated Areas. This Rule applies to the waters and portions of waters described as follows:

- (1) Badin Lake:
 - (A) Lakeshore Drive Cove as delineated by appropriate markers.
 - (B) Entrance to fueling site and marina west of the main channel of Lake Forest Drive Cove.
- (2) Lake Tillery:
 - (A) Woodrun Cove as delineated by appropriate markers.
 - (B) Carolina Forest Cove as delineated by appropriate markers.
- (3) Tuckertown Reservoir.

(b) Speed Limit Near Shore Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any marked boat launching area, dock, pier, bridge, marina, boat storage structure, or boat service area on the waters of the regulated areas described in Paragraph (a) of this Rule.

(c) Speed Limit. No person shall operate a vessel at greater than no-wake speed within any regulated area described in Paragraph (a) of this Rule.

(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Wildlife Resources Commission on the waters of the regulated areas described in Paragraph (a) of this Rule.

(e) Placement and Maintenance of Markers. The Board of Commissioners of Montgomery County is hereby designated a suitable agency for placement and maintenance of the markers implementing this Rule in accordance with the Uniform System.

*History Note: Authority G.S. 75A-3; 75A-15;
Eff. November 1, 1977;
Amended Eff. December 1, 1990; May 1, 1989; March 25, 1978;
Temporary Amendment Eff. June 1, 1998;
Amended Eff. April 1, 1999; July 1, 1998;
Temporary Amendment Eff. July 1, 2002;*

Amended Eff. April 1, 2003.

15A NCAC 10I.0102 PROTECTION OF ENDANGERED/THREATENED/SPECIAL CONCERN

(a) No Open Season. There shall be no open season for taking any of the species listed as endangered in Rule .0103, threatened in Rule .0104 or, unless otherwise provided, as special concern in Rule .0105 of this Subchapter. Except as provided in Paragraphs (b), (c) and (e) of this Rule, it is unlawful to take or possess any of such species at any time.

(b) Permits. The executive director may issue permits to take or possess an endangered, threatened, or special concern species as follows:

- (1) To an individual or institution with experience and training in handling, and caring for the wildlife and in conducting a scientific study, for the purpose of scientific investigation relevant to perpetuation or restoration of said species or as a part of a scientifically valid study or restoration effort.
- (2) To a public or private educator or exhibitor who demonstrates that he or she has lawfully obtained the specimen or specimens in his or her possession, and that he or she possesses the requisite equipment and expertise to care for such specimen or specimens.
- (3) To a person who lawfully possessed any such species for more than 90 days immediately prior to the date that such species was listed, provided however, that no permit shall be issued more than ninety days after the effective date of the initial listing for that species.

(c) Taking Without a Permit:

- (1) An individual may take an endangered, threatened, or special concern species in defense of his own life or the lives of others.
- (2) A state or federal conservation officer or employee who is designated by his agency to do so may, when acting in the course of his official duties, take, possess, and transport endangered, threatened, or special concern species if the action is necessary to:
 - (A) aid a sick, injured, diseased or orphaned specimen;
 - (B) dispose of a dead specimen;
 - (C) salvage a dead specimen which may be useful for scientific study; or
 - (D) remove specimens which constitute a demonstrable but nonimmediate threat to human safety, provided the taking is done in a humane and noninjurious manner; the taking may involve injuring or killing endangered, threatened, or special concern species only if it is not reasonably possible to eliminate the threat by live-capturing and releasing the specimen unharmed, in a habitat that is suitable for the survival of that species.

(d) Reporting. Any taking or possession of an endangered, threatened, or special concern species under Paragraphs (b) and (c) of this Rule is subject to applicable reporting requirements of federal law and regulations and the reporting requirements of the permit issued by the Executive Director or of 15A NCAC 10B .0106(e).

(e) Exception.

- (1) Notwithstanding any other provisions of this Rule, processed meat and other parts of American alligators, which have been lawfully taken in a state in which there is an open season for harvesting alligators, may be possessed, bought and sold when such products are marketed in packages or containers which are distinctly labeled to indicate the state in which they were taken and the identity, location, and lawful authority of the processor or distributor.
- (2) Raptors listed as special concern species in Rule .0105 of this Subchapter may be taken from the wild for falconry purposes and for falconry propagation, provided that a valid North Carolina endangered species permit has been obtained as required in Paragraph (b) of this Rule.
- (3) Captive-bred raptors listed as special concern species may be bought, sold, bartered or traded as provided in 50 C.F.R. 21.30 when marked as required under those regulations.
- (4) Importation, possession, sales, transportation and exportation of species listed as special concern species in Rule .0105 of this Subchapter shall be allowed under permit by retail and wholesale establishments whose primary function is providing scientific supplies for research; provided that the specimens were lawfully obtained from captive or wild populations outside of North Carolina; and that they must be possessed in indoor facilities; and that all transportation of specimens provides safeguards adequate to prevent accidental escape; and that importation, possession and sale or transfer is permitted only as listed in Subparts (e)(4)(A) and (B) of this Rule.
 - (A) A written application to the Commission is required for a permit to authorize importation, and possession for the purpose of retail or wholesale sale. The application shall identify the source of the specimens, and provide documentation of lawful acquisition. Applications for permits shall include plans for holding, transportation, advertisement, and sale in such detail as to allow a determination of the safeguards provided against accidental escape and sales to unauthorized individuals.
 - (B) Purchase, importation, and possession of special concern species within

North Carolina shall be allowed under permit to state and federal governmental agencies, corporate research entities, and research institutions; provided that sales are permitted to out of state consumers; and, provided that they must be possessed in indoor facilities and that all transportation of specimens provides safeguards adequate to prevent accidental escape; and that the agency's or institution's Animal Use and Care Committee has approved the research protocol for this species; and, further provided that no specimens may be stocked or released in the public or private waters or lands of North Carolina and may not be transferred to any private individual.

- (3) .0101 or be certified by a state or province that meets and or exceeds the requirements set out in 15 NCAC 10K .0101;
- (4) Complete the North Carolina Hunter Safety Instructors Application;
- (5) Complete the 12 hour Hunter Safety Instructors Course, and score 75 percent or higher on the written examination. Teachers certified by the North Carolina Department of Public Instruction and persons who have been certified as hunter safety instructors by another state may take an abbreviated course that is less than 12-hours;
- (6) Submit to a background investigation including a records check which reveals no disqualifying convictions. Disqualifying convictions are listed as follows:
 - (a) a felony; or
 - (b) a crime or unlawful act defined as a "Class 1" misdemeanor within the five year period prior to the date of application; or
 - (c) any conviction of the game and fish law which would require a mandatory suspension and or revocation of a license as indicated in G.S. 113-276.3 within the three year period prior to the date of application.

History Note: Authority G.S. 113-134; 113-291.2; 113-291.3; 113-292; 113-333; Eff. June 11, 1977; Amended Eff. April 1, 2003; April 1, 2001; April 1, 1997; February 1, 1994; September 1, 1989; March 1, 1981; March 17, 1978.

15A NCAC 10K .0102 ISSUANCE OF CERTIFICATE OF COMPETENCY

- (a) Upon the conclusion of a hunter safety course, the instructor shall complete a card for each participant who successfully completed the course in accordance with 15A NCAC 10K .0101 and forward the card to the North Carolina Wildlife Resources Commission for processing.
- (b) After receiving the completed card referred to in Paragraph (a) of this Rule, the Commission shall issue a Certificate of Competency to each participant who successfully completes the course. This certificate shall include:
 - (1) a certification number;
 - (2) the participant's name, address, and date of birth;
 - (3) the hunter safety course instructor's name; and
 - (4) course completion date.
- (c) The Commission shall maintain permanent files of all successful participants in hunter safety courses who were issued a certificate of competency. Duplicate certificates may be obtained from the Commission.

History Note: Authority G.S. 113-134; 113-270.1A; Eff. May 1, 1996; Amended Eff. April 1, 2003.

15A NCAC 19A .0102 METHOD OF REPORTING

- (a) When a report of a disease or condition is required to be made pursuant to G.S. 130A-135 through 139 and 15A NCAC 19A .0101, with the exception of laboratories, which shall proceed as in Subparagraph (d), the report shall be made to the local health director as follows:
 - (1) For diseases and conditions required to be reported within 24 hours, the initial report shall be made by telephone, and the report required by Subparagraph (2) of this Paragraph shall be made within seven days.
 - (2) In addition to the requirements of Subparagraph (1) of this Paragraph, the report shall be made on the communicable disease report card or in an electronic format provided by the Division of Public Health and shall include the name and address of the patient, the name and address of the parent or guardian if the patient is a minor, and epidemiologic information.
 - (3) In addition to the requirements of Subparagraphs (1) and (2) of this Paragraph, forms or electronic formats provided by the Division of Public Health for collection of information necessary for disease control and documentation of clinical and epidemiologic information about the cases shall be completed and submitted for the following reportable

15A NCAC 10K .0103 INSTRUCTOR CERTIFICATION

- To be eligible for Hunter Safety Instructor Certification an individual must:
- (1) Be 21 years of age upon application;
 - (2) Be a graduate of a Basic Hunter Safety Course approved by the Wildlife Resources Commission. Approved courses must satisfy the requirements set out in 15A NCAC 10K

diseases and conditions identified in 15A NCAC 19A .0101(a) acquired immune deficiency syndrome (AIDS); brucellosis; cholera; cryptosporidiosis; cyclosporiasis; E. coli 0157:H7 infection; ehrlichiosis; Haemophilus influenzae, invasive disease; Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura; hepatitis A; hepatitis B; hepatitis B carriage; hepatitis C; human immunodeficiency virus (HIV) confirmed; legionellosis; leptospirosis; Lyme disease; malaria; measles (rubeola); meningitis, pneumococcal; meningococcal disease; mumps; paralytic poliomyelitis; psittacosis; Rocky Mountain spotted fever; rubella; rubella congenital syndrome; tetanus; toxic shock syndrome; trichinosis; tuberculosis; tularemia; typhoid; typhoid carriage (Salmonella typhi); vibrio infection (other than cholera); and whooping cough.

- (4) Communicable disease report cards, surveillance forms, and electronic formats are available from the General Communicable Disease Control Branch Surveillance Unit, 1902 Mail Service Center, Raleigh, NC 27699-1902, (919) 733-3419, and from local health departments.

(b) Notwithstanding the time frames established in 15A NCAC 19A .0101 a restaurant or other food or drink establishment shall report all outbreaks or suspected outbreaks of foodborne illness in its customers or employees and all suspected cases of foodborne disease or foodborne condition in food-handlers at the establishment by telephone to the local health department within 24 hours in accordance with Subparagraph (a)(1) of this Rule. However, the establishment is not required to submit a report card or surveillance form pursuant to Subparagraphs (a)(2) and (a)(4) of this Rule.

(c) For the purposes of reporting by restaurants and other food or drink establishments pursuant to G.S.130A-138, the following diseases and conditions listed in 15A NCAC 19A .0101(a) shall be reported: anthrax; botulism; brucellosis; campylobacter infection; cholera; cryptosporidiosis; cyclosporiasis; E. coli 0157:H7 infection; hepatitis A; salmonellosis; shigellosis; streptococcal infection, Group A, invasive disease; trichinosis; tularemia; typhoid; typhoid carriage (Salmonella typhi); and vibrio infection (other than cholera).

(d) Laboratories required to report test results pursuant to G.S. 130A-139 and 15A NCAC 19A .0101(c) shall report as follows:

- (1) The results of the specified tests for syphilis, chlamydia and gonorrhea shall be reported to the local health department by the first and fifteenth of each month. Reports of the results of the specified tests for gonorrhea, chlamydia and syphilis shall include the specimen collection date, the patient's age, race, and sex, and the submitting physician's name, address, and telephone numbers.
- (2) Positive darkfield examinations for syphilis, all reactive prenatal and delivery STS titers, all reactive STS titers on infants less than one year old and STS titers of 1:8 and above shall

be reported within 24 hours by telephone to the HIV/STD Prevention and Care Branch at (919) 733-7301, or the HIV/STD Prevention and Care Branch Regional Office where the laboratory is located.

- (3) With the exception of positive laboratory tests for human immunodeficiency virus, positive laboratory tests as defined in G.S. 130A-139(1) and 15A NCAC 19A .0101(c) shall be reported to the General Communicable Disease Control Branch electronically, by mail, by secure telefax or by telephone within the time periods specified for each reportable disease or condition in 15A NCAC 19A .0101(a). Confirmed positive laboratory tests for human immunodeficiency virus as defined in 15A NCAC 19A .0101(b) shall be reported to the HIV/STD Prevention and Care Branch within seven days of obtaining reportable test results. Reports shall include as much of the following information as the laboratory possesses: the specific name of the test performed; the source of the specimen; the collection date(s); the patient's name, age, race, sex, address, and county; and the submitting physician's name, address, and telephone number.

History Note: Authority G.S. 130A-134; 130A-135; 130A-138; 130A-139; 130A-141; Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Amended Eff. October 1, 1994; February 3, 1992; December 1, 1991; May 1, 1991; Temporary Amendment Eff. December 16, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Temporary Amendment Expired June 16, 1995; Amended Eff. April 1, 2003; August 1, 1998.

15A NCAC 19A .0201 CONTROL MEASURES – GENERAL

(a) Except as provided in Rules .0202 - .0209 of this Section, the recommendations and guidelines for testing, diagnosis, treatment, follow-up, and prevention of transmission for each disease and condition specified by the American Public Health Association in its publication, Control of Communicable Diseases Manual shall be the required control measures. Control of Communicable Diseases Manual is hereby incorporated by reference including subsequent amendments and editions. Guidelines and recommended actions published by the Centers for Disease Control and Prevention shall supercede those contained in the Control of Communicable Disease Manual and are likewise incorporated by reference, including subsequent amendments and editions. Copies of the Control of Communicable Diseases Manual may be purchased from the American Public Health Association, Publication Sales Department, Post Office Box 753, Waldora, MD 20604 for a cost of twenty-two dollars (\$22.00) each plus five dollars (\$5.00) shipping and handling. Copies of Centers for Disease Control

and Prevention guidelines contained in the Morbidity and Mortality Weekly Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 for a total cost of three dollars and fifty cents (\$3.50) each. Copies of both publications are available for inspection in the General Communicable Disease Control Branch, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, North Carolina 27603-1382.

(b) In interpreting and implementing the specific control measures adopted in Paragraph (a) of this Rule, and in devising control measures for outbreaks designated by the State Health Director and for communicable diseases and conditions for which a specific control measure is not provided by this Rule, the following principles shall be used:

- (1) control measures shall be those which can reasonably be expected to decrease the risk of transmission and which are consistent with recent scientific and public health information;
- (2) for diseases or conditions transmitted by the airborne route, the control measures shall require physical isolation for the duration of infectivity;
- (3) for diseases or conditions transmitted by the fecal-oral route, the control measures shall require exclusions from situations in which transmission can be reasonably expected to occur, such as work as a paid or voluntary food handler or attendance or work in a day care center for the duration of infectivity;
- (4) for diseases or conditions transmitted by sexual or the blood-borne route, control measures shall require prohibition of donation of blood, tissue, organs, or semen, needle-sharing, and sexual contact in a manner likely to result in transmission for the duration of infectivity.

(c) Persons with congenital rubella syndrome, tuberculosis, and carriers of Salmonella typhi and hepatitis B who change residence to a different local health department jurisdiction shall notify the local health director in both jurisdictions.

(d) Isolation and quarantine orders for communicable diseases and communicable conditions for which control measures have been established shall require compliance with applicable control measures and shall state penalties for failure to comply. These isolation and quarantine orders may be no more restrictive than the applicable control measures.

(e) An individual enrolled in an epidemiologic or clinical study shall not be required to meet the provisions of 15A NCAC 19A .0201 - .0209 which conflict with the study protocol if:

- (1) the protocol is approved for this purpose by the State Health Director because of the scientific and public health value of the study, and
- (2) the individual fully participates in and completes the study.

(f) A determination of significant risk of transmission under this Subchapter shall be made only after consideration of the following factors, if known:

- (1) The type of body fluid or tissue;
- (2) The volume of body fluid or tissue;
- (3) The concentration of pathogen;

- (4) The virulence of the pathogen; and
 - (5) The type of exposure, ranging from intact skin to non-intact skin, or mucous membrane.
- (g) The term "household contacts" as used in this Subchapter means any person residing in the same domicile as the infected person.

History Note: Authority G.S. 130A-135; 130A-144; Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Amended Eff. February 1, 1990; November 1, 1989; August 1, 1988; Recodified Paragraphs (d), (e) to Rule .0202; Paragraph (i) to Rule .0203 Eff. June 11, 1991; Amended Eff. April 1, 2003; August 1, 1998; October 1, 1992; December 1, 1991.

15A NCAC 19A .0202 CONTROL MEASURES – HIV

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

- (1) Infected persons shall:
 - (a) refrain from sexual intercourse unless condoms are used; exercise caution when using condoms due to possible condom failure;
 - (b) not share needles or syringes, or any other drug-related equipment, paraphernalia, or works that may be contaminated with blood through previous use;
 - (c) not donate or sell blood, plasma, platelets, other blood products, semen, ova, tissues, organs, or breast milk;
 - (d) have a skin test for tuberculosis;
 - (e) notify future sexual intercourse partners of the infection; if the time of initial infection is known, notify persons who have been sexual intercourse and needle partners since the date of infection; and, if the date of initial infection is unknown, notify persons who have been sexual intercourse and needle partners for the previous year.
- (2) The attending physician shall:
 - (a) give the control measures in Item (1) of this Rule to infected patients, in accordance with 15A NCAC 19A .0210;
 - (b) If the attending physician knows the identity of the spouse of an HIV-infected patient and has not, with the consent of the infected patient, notified and counseled the spouse, the physician shall list the spouse on a form provided by the Division of Epidemiology and shall mail the form to the Division; the Division shall undertake to counsel the spouse; the

- the infection status of the source.
- (ii) The attending physician of the exposed person shall inform the exposed person about the infection status of the source, offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred, and, if the source person was HIV infected, give the exposed person the control measures listed in Sub-Items (1)(a) through (c) of this Rule. The attending physician of the exposed person shall instruct the exposed person regarding the necessity for protecting confidentiality.
- (b) When the source person is unknown, the attending physician of the exposed persons shall inform the exposed person of the risk of transmission and offer testing for HIV infection as soon as possible after exposure and at reasonable intervals up to one year to determine whether transmission occurred.
- (c) A health care facility may release the name of the attending physician of a source person upon request of the attending physician of an exposed person.
- (5) The attending physician shall notify the local health director when the physician, in good faith, has reasonable cause to suspect a patient infected with HIV is not following or cannot follow control measures and is thereby causing a significant risk of transmission. Any other person may notify the local health director when the person, in good faith, has reasonable cause to suspect a person infected with HIV is not following control measures and is thereby causing a significant risk of transmission.
- (6) When the local health director is notified pursuant to Item (5) of this Rule, of a person who is mentally ill or mentally retarded, the local health director shall confer with the attending mental health physician or mental health authority and the physician, if any, who notified the local health director to develop a plan to prevent transmission.
- (7) The Director of Health Services of the North Carolina Department of Correction and the prison facility administrator shall be notified when any person confined in a state prison is determined to be infected with HIV. If the prison facility administrator, in consultation with the Director of Health Services, determines that a confined HIV infected person is not following or cannot follow prescribed control measures, thereby presenting a significant risk of HIV transmission, the administrator and the Director shall develop and implement jointly a plan to prevent transmission, including making recommendations to the unit housing classification committee.
- (8) The local health director shall ensure that the health plan for local jails include education of jail staff and prisoners about HIV, how it is transmitted, and how to avoid acquiring or transmitting this infection.
- (9) Local health departments shall provide testing for HIV infection with pre- and post-test counseling at no charge to the patient. Third party payors may be billed for HIV counseling and testing when such services are provided and the patient provides written consent.
- (10) Counseling for HIV testing shall include risk assessment, risk reduction guidelines, referrals for medical and psychosocial services, and, when the person tested is found to be infected with HIV, control measures. Pre-test counseling may be done in a group or individually, as long as each individual is provided the opportunity to ask questions in private. Post-test counseling must be individualized.
- (11) A local health department or the Department may release information regarding an infected person pursuant to G.S. 130A-143(3) only when the local health department or the Department has provided direct medical care to the infected person and refers the person to or consults with the health care provider to whom the information is released.
- (12) Notwithstanding Rule .0201(d) of this Section, a local or state health director may require, as a part of an isolation order issued in accordance with G.S. 130A-145, compliance with a plan to assist the individual to comply with control measures. The plan shall be designed to meet the specific needs of the individual and may include one or more of the following available and appropriate services:
- (a) substance abuse counseling and treatment;
 - (b) mental health counseling and treatment; and
 - (c) education and counseling sessions about HIV, HIV transmission, and behavior change required to prevent transmission.
- (13) The Division of Epidemiology shall conduct a partner notification program to assist in the notification and counseling of partners of HIV infected persons. All partner identifying

information obtained as a part of the partner notification program shall be destroyed within two years.

- (14) Every pregnant woman shall be given HIV pre-test counseling, as described in 15A NCAC 19A .0202(10), by her attending physician as early in the pregnancy as possible. At the time this counseling is provided, and after informed consent is obtained, the attending physician shall test the pregnant woman for HIV infection, unless the pregnant woman refuses the HIV test.

History Note: Authority G.S. 130A-133; 130A-135; 130A-144; 130A-145; 130A-148(h); Temporary Rule Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Eff. March 1, 1988; Amended Eff. February 1, 1990; November 1, 1989; June 1, 1989; Temporary Amendment Eff. January 7, 1991 for a period of 180 days to expire on July 6, 1991; Amended Eff. May 1, 1991; Recodified from 15A NCAC 19A .0201 (d) and (e) Eff. June 11, 1991; Amended Eff. August 1, 1995; October 1, 1994; January 4, 1994; October 1, 1992; Temporary Amendment Eff. June 1, 2001; Temporary Amendment Eff. February 18, 2002; Amended Eff. April 1, 2003.

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

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

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

- (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
- (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required control measures for testing, treatment, and follow-up for gonorrhea, chlamydia, nongonococcal urethritis, and mucopurulent cervicitis, and are incorporated by reference including subsequent amendments and editions. A copy of this publication is on file for public viewing with the HIV/STD Control Branch located at 225 N. McDowell Street, Cooper Building, Raleigh, N.C. 27611-7687 or a copy may be obtained free of charge by writing the

HIV/STD Control Branch, P.O. Box 27687, Raleigh, N.C. 27611-7687, and requesting a copy. However, urethral Gram stains may be used for diagnosis of males rather than gonorrhea cultures unless treatment has failed;

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

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

- (1) Refrain from sexual intercourse until examined and diagnosed and treatment is completed, and all lesions are healed;
- (2) Be tested, treated, and re-evaluated in accordance with the STD Treatment Guidelines published by the U.S. Public Health Service. The recommendations contained in the STD Treatment Guidelines shall be the required control measures for testing, treatment, and follow-up for syphilis, lymphogranuloma venereum, granuloma inguinale, and chancroid, except that chancroid cultures shall not be required;
- (3) Give names to a disease intervention specialist employed by the local health department or by the HIV/STD Control Branch for contact tracing of all sexual partners and others as listed in this Rule:
 - (A) for syphilis:
 - (i) congenital - parents and siblings;
 - (ii) primary - all partners from three months before the onset of symptoms to completion of therapy and healing of lesions;
 - (iii) secondary - all partners from six months before the onset of symptoms to completion of therapy and healing of lesions; and
 - (iv) latent - all partners from 12 months before the onset of symptoms to completion of therapy and healing of lesions and, in addition, for women with late latent, spouses and children;
 - (B) for lymphogranuloma venereum:
 - (i) if there is a primary lesion and no buboes, all partners from 30 days before the onset of symptoms to completion of therapy and healing of lesions; and
 - (ii) if there are buboes all partners from six months before the onset of symptoms to completion of

therapy and healing of lesions;

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

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

(e) All pregnant women shall be tested for syphilis, chlamydia and gonorrhea at the first prenatal visit. All pregnant women shall be tested for syphilis between 28 and 30 weeks of gestation. Pregnant women at increased risk for exposure to syphilis shall be tested for syphilis again at the time of delivery. All pregnant women shall be tested for gonorrhea in the third trimester. Pregnant women at increased risk for exposure to gonorrhea shall be tested for gonorrhea again at the time of delivery. Pregnant women less than 25 years of age and women who are at increased risk of exposure to chlamydia, i.e., women who have a new partner or more than one partner or whose partner has other partners, shall be tested for chlamydia in the third trimester. For purposes of this Rule, a pregnant woman at increased risk is one who has had multiple sexual partners or who has a sexual partner that has multiple sexual partners.

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

History Note: Authority G. S. 130A-135; 130A-144; Eff. December 1, 1991; Amended Eff. April 1, 2003; July 1, 1993.

15A NCAC 19A .0205 CONTROL MEASURES – TUBERCULOSIS

(a) The local health director shall promptly investigate all cases of tuberculosis disease and their contacts in accordance with the provisions of Control of Communicable Diseases Manual. Control of Communicable Diseases Manual is hereby incorporated by reference including subsequent amendments and editions. Copies of this publication may be purchased from the American Public Health Association, Publication Sales Department, Post Office Box 753, Waldora, MD 20604 for a cost of twenty-two dollars (\$22.00) each plus five dollars (\$5.00) shipping and handling. A copy is available for inspection in the General Communicable Disease Control Branch, Cooper Memorial Health Building, 225 N. McDowell Street, Raleigh, North Carolina 27603-1382.

(b) The following persons shall be skin tested for tuberculosis and given appropriate clinical, microbiologic and x-ray examination in accordance with the "Diagnostic Standards and Classification of Tuberculosis," published by the American Thoracic Society. The recommendations contained in this

reference shall be the required control measures for evaluation, testing, and diagnosis for tuberculosis patients, contacts and suspects, except as otherwise provided in this Rule and are incorporated by reference including subsequent amendments and editions:

- (1) Household and other close contacts of active cases of pulmonary and laryngeal tuberculosis. For purposes of this Rule, a close contact is a person who shared the same indoor room air as the case for more than one hour. If the initial skin test is negative (0-4mm), and the case is confirmed by culture, a repeat skin test shall be performed three months after the exposure has ended;
- (2) Persons reasonably suspected of having tuberculosis disease;
- (3) Inmates in the custody of, and staff with direct inmate contact in, the Department of Corrections upon incarceration or employment, and annually thereafter;
- (4) Patients and staff in long term care facilities upon admission or employment. The two-step skin test method shall be used if the individual has not had a documented tuberculin skin test within the preceding 12 months;
- (5) Staff in adult day care centers providing care for persons with HIV infection or AIDS upon employment. The two-step skin test method shall be used if the individual has not had a documented tuberculin skin test within the preceding 12 months; and
- (6) Persons with HIV infection or AIDS.

A copy of "Diagnostic Standards and Classification of Tuberculosis" is available by contacting the Department of Health and Human Services, Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, North Carolina 27699-1902.

(c) Treatment and follow-up for tuberculosis infection or disease shall be in accordance with "Treatment of Tuberculosis and Tuberculosis Infection in Adults and Children," published by the American Thoracic Society. The recommendations contained in this reference shall be the required control measures for testing, treatment, and follow-up for tuberculosis patients, contacts and suspects, except as otherwise provided in this Rule and are incorporated by reference including subsequent amendments and editions. Copies of this publication are available by contacting the Department of Health and Human Services, Tuberculosis Control Program, 1902 Mail Service Center, Raleigh, North Carolina 27699-1902.

(d) The attending physician or designee shall instruct all patients treated for tuberculosis regarding the potential side effects of the medications prescribed and to promptly notify the physician or designee if side effects occur.

(e) Persons with active tuberculosis disease shall complete a standard drug regimen from "Treatment of Tuberculosis and Tuberculosis Infections in Adults and Children."

(f) Persons with suspected or known active pulmonary or laryngeal tuberculosis are considered infectious and shall be managed using airborne precautions, including respiratory isolation, or quarantined in their home, with no new persons exposed, if:

- (1) They have sputum smears which are positive for acid fast bacilli; and
- (2) They have not received tuberculosis drug therapy or have just started therapy; and
- (3) They have no evidence of clinical response or have poor clinical response to therapy.

(g) Persons with suspected or known active pulmonary or laryngeal tuberculosis are considered noninfectious and use of airborne precautions, including respiratory isolation, or quarantine in their home may be discontinued when:

- (1) They have three consecutive daily sputum smears which are negative; or
- (2) They have been compliant on tuberculosis medications to which the organism is judged to be susceptible, there is evidence of clinical improvement on the therapy, and the environment to which they are being released is such that transmission of tuberculosis organisms is unlikely.

History Note: Authority G.S. 130A-135; 130A-144; Eff. March 1, 1992; Amended Eff. April 1, 2003; August 1, 1998; October 1, 1994.

15A NCAC 19A .0207 HIV AND HEPATITIS B INFECTED HEALTH CARE WORKERS

(a) The following definitions shall apply throughout this Rule:

- (1) "Surgical or obstetrical procedures" means vaginal deliveries or surgical entry into tissues, cavities, or organs. The term does not include phlebotomy; administration of intramuscular, intradermal, or subcutaneous injections; needle biopsies; needle aspirations; lumbar punctures; angiographic procedures; endoscopic and bronchoscopic procedures; or placing or maintaining peripheral or central intravascular lines.
- (2) "Dental procedure" means any dental procedure involving manipulation, cutting, or removal of oral or perioral tissues, including tooth structure during which bleeding occurs or the potential for bleeding exists. The term does not include the brushing of teeth.

(b) All health care workers who perform surgical or obstetrical procedures or dental procedures and who know themselves to be infected with HIV or hepatitis B shall notify the State Health Director. Health care workers who assist in these procedures in a manner that may result in exposure of patients to their blood and who know themselves to be infected with HIV or hepatitis B shall also notify the State Health Director. The notification shall be made in writing to the Head, General Communicable Disease Control Branch, 1902 Mail Service Center, Raleigh, N.C. 27699-1902.

(c) The State Health Director shall investigate the practice of any infected health care worker and the risk of transmission to patients. The investigation may include review of medical and work records and consultation with health care professionals who may have information necessary to evaluate the clinical condition or practice of the infected health care worker. The attending physician of the infected health care worker shall be consulted. The State Health Director shall protect the

confidentiality of the infected health care worker and may disclose the worker's infection status only when essential to the conduct of the investigation or periodic reviews pursuant to Paragraph (h) of this Rule. When the health care worker's infection status is disclosed, the State Health Director shall give instructions regarding the requirement for protecting confidentiality.

(d) If the State Health Director determines that there may be a significant risk of transmission of HIV or hepatitis B to patients, the State Health Director shall appoint an expert panel to evaluate the risk of transmission to patients, and review the practice, skills, and clinical condition of the infected health care worker, as well as the nature of the surgical or obstetrical procedures or dental procedures performed and operative and infection control techniques used. Each expert panel shall include an infectious disease specialist, an infection control expert, a person who practices the same occupational specialty as the infected health care worker and, if the health care worker is a licensed professional, a representative of the appropriate licensure board. The panel may include other experts. The State Health Director shall consider for appointment recommendations from health care organizations and local societies of health care professionals.

(e) The expert panel shall review information collected by the State Health Director and may request that the State Health Director obtain additional information as needed. The State Health Director shall not reveal to the panel the identity of the infected health care worker. The infected health care worker and the health care worker's attending physician shall be given an opportunity to present information to the panel. The panel shall make recommendations to the State Health Director that address the following:

- (1) Restrictions that are necessary to prevent transmission from the infected health care worker to patients;
- (2) Identification of patients that have been exposed to a significant risk of transmission of HIV or hepatitis B; and
- (3) Periodic review of the clinical condition and practice of the infected health care worker.

(f) If, prior to receipt of the recommendations of the expert panel, the State Health Director determines that immediate practice restrictions are necessary to prevent an imminent threat to the public health, the State Health Director shall issue an isolation order pursuant to G.S. 130A-145. The isolation order shall require cessation or modification of some or all surgical or obstetrical procedures or dental procedures to the extent necessary to prevent an imminent threat to the public health. This isolation order shall remain in effect until an isolation order is issued pursuant to Paragraph (g) of this Rule or until the State Health Director determines the imminent threat to the public health no longer exists.

(g) After consideration of the recommendations of the expert panel, the State Health Director shall issue an isolation order pursuant to G.S. 130A-145. The isolation order shall require any health care worker who is allowed to continue performing surgical or obstetrical procedures or dental procedures to, within a time period specified by the State Health Director, successfully complete a course in infection control procedures approved by the Department of Health and Human Services, General Communicable Disease Control Branch, in accordance with 15A

NCAC 19A .0206(e). The isolation order shall require practice restrictions, such as cessation or modification of some or all surgical or obstetrical procedures or dental procedures, to the extent necessary to prevent a significant risk of transmission of HIV or hepatitis B to patients. The isolation order shall prohibit the performance of procedures that cannot be modified to avoid a significant risk of transmission. If the State Health Director determines that there has been a significant risk of transmission of HIV or hepatitis B to a patient, the State Health Director shall notify the patient or assist the health care worker to notify the patient.

(h) The State Health Director shall request the assistance of one or more health care professionals to obtain information needed to periodically review the clinical condition and practice of the infected health care worker who performs or assists in surgical or obstetrical procedures or dental procedures.

(i) An infected health care worker who has been evaluated by the State Health Director shall notify the State Health Director prior to a change in practice involving surgical or obstetrical procedures or dental procedures. The infected health care worker shall not make the proposed change without approval from the State Health Director. If the State Health Director makes a determination in accordance with Paragraph (c) of this Rule that there is a significant risk of transmission of HIV or hepatitis B to patients, the State Health Director shall appoint an expert panel in accordance with Paragraph (d) of this Rule. Otherwise, the State Health Director shall notify the health care worker that he or she may make the proposed change in practice.

(j) If practice restrictions are imposed on a licensed health care worker, a copy of the isolation order shall be provided to the appropriate licensure board. The State Health Director shall report violations of the isolation order to the appropriate licensure board. The licensure board shall report to the State Health Director any information about the infected health care worker that may be relevant to the risk of transmission of HIV or hepatitis B to patients.

History Note: Authority G.S. 130A-144; 130A-145; Eff. October 1, 1992; Amended Eff. April 1, 2003.

15A NCAC 19A .0209 LABORATORY TESTING

All laboratories shall do the following:

- (1) When *Neisseria meningitidis* is isolated from a normally sterile site, test the organism for specific serogroup or send the isolate to the State Public Health Laboratory for serogrouping;
- (2) When a stool culture is requested on a specimen from a person with bloody diarrhea, culture the stool for shiga-toxin producing *Escherichia coli* or send the specimen to the State Public Health Laboratory; and
- (3) When *Haemophilus influenzae* is isolated, test the organism for specific serogroup or send the isolate to the State Public Health Laboratory for serogrouping.

History Note: Authority G.S. 130A-139; Eff. October 1, 1994; Temporary Amendment Eff. February 18, 2002;

Amended Eff. April 1, 2003.

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

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

- (1) Diphtheria, tetanus, and whooping cough vaccine -- five doses: three doses by age seven months and two booster doses, one by age 19 months and the second on or after the fourth birthday and before enrolling in school (K-1) for the first time. However:
 - (A) An individual who has attained his or her seventh birthday without having been immunized against whooping cough shall not be required to be immunized with a vaccine preparation containing whooping cough antigen;
 - (B) Individuals who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday shall not be required to have a second booster dose;
 - (C) Individuals attending school, college or university or who began their tetanus/diphtheria toxoid series on or after the age of seven years shall be required to have three doses of tetanus/diphtheria toxoid of which one must have been within the last 10 years;
 - (D) The requirements for booster doses of diphtheria, tetanus, and whooping cough vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.
- (2) Poliomyelitis vaccine--four doses: two doses of trivalent type by age five months; a third dose of trivalent type before age 19 months, and a booster dose of trivalent type on or after the fourth birthday and before enrolling in school (K-1) for the first time. However:
 - (A) An individual attending school who has attained his or her 18th birthday shall not be required to receive polio vaccine;
 - (B) Individuals who receive the third dose of poliomyelitis vaccine on or after the fourth birthday shall not be required to receive a fourth dose;
 - (C) The requirements for booster doses of poliomyelitis vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.

- (3) Measles (rubeola) vaccine--two doses of live, attenuated vaccine administered at least 28 days apart: one dose on or after age 12 months and before age 16 months and a second dose before enrolling in school (K-1) for the first time. However:
- (A) An individual who has been documented by serological testing to have a protective antibody titer against measles shall not be required to receive measles vaccine;
 - (B) An individual who has been diagnosed prior to January 1, 1994, by a physician licensed to practice medicine as having measles (rubeola) disease shall not be required to receive measles vaccine;
 - (C) An individual born prior to 1957 shall not be required to receive measles vaccine;
 - (D) The requirement for a second dose of measles vaccine shall not apply to individuals who enroll in school (K-1) or in college or university for the first time before July 1, 1994.
- (4) Rubella vaccine--one dose of live, attenuated vaccine on or after age 12 months and before age 16 months. However:
- (A) An individual who has been documented by serologic testing to have a protective antibody titer against rubella shall not be required to receive rubella vaccine;
 - (B) An individual who has attained his or her fiftieth birthday shall not be required to receive rubella vaccine except in outbreak situations;
 - (C) An individual who entered a college or university after his or her thirtieth birthday and before February 1, 1989 shall not be required to meet the requirement for rubella vaccine except in outbreak situations.
- (5) Mumps vaccine--one dose of live, attenuated vaccine administered on or after age 12 months and before age 16 months. However:
- (A) An individual born prior to 1957 shall not be required to receive mumps vaccine;
 - (B) The requirements for mumps vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987 or in college or university before July 1, 1994.
 - (C) An individual who has been documented by serological testing to have a protective antibody titer against mumps shall not be required to receive mumps vaccine.
- (6) Haemophilus influenzae, b, conjugate vaccine--three doses of HbOC or PRP-T or two doses of PRP-OMP before age seven months and a booster dose of any type on or after age 12 months and by age 16 months. However:
- (A) Individuals born before October 1, 1988 shall not be required to be vaccinated against Haemophilus influenzae, b;
 - (B) Individuals who receive the first dose of Haemophilus influenzae, b, vaccine on or after 12 months of age and before 15 months of age shall be required to have only two doses of HbOC, PRP-T or PRP-OMP;
 - (C) Individuals who receive the first dose of Haemophilus influenzae, b, vaccine on or after 15 months of age shall be required to have only one dose of any of the Haemophilus influenzae conjugate vaccines, including PRP-D;
 - (D) No individual who has passed his fifth birthday shall be required to be vaccinated against Haemophilus influenzae, b.
- (7) Hepatitis B vaccine--three doses: one dose by age three months, a second dose before age five months and a third dose by age 19 months. However:
- (A) The third dose of hepatitis B vaccine shall not be administered prior to 6 months of age;
 - (B) Individuals born before July 1, 1994 shall not be required to be vaccinated against hepatitis B.
- (8) Varicella vaccine--1 dose administered on or after age 12 months and before age 19 months. However:
- (A) An individual with a laboratory test indicating immunity or with a history of varicella disease, documented by a health care provider, parent, guardian or person in loco parentis shall not be required to receive varicella vaccine. Serologic proof of immunity or documentation of previous illness must be presented whenever a certificate of immunization is required by North Carolina General Statute. The documentation shall include the name of the individual with a history of varicella disease and the approximate date or age of infection. Previous illness shall be documented by:
 - (i) a written statement from a health care provider documented on or attached to the lifetime immunization

- card or certificate of immunization; or
- (ii) a written statement from the individual's parent, guardian or person in loco parentis attached to the lifetime immunization card or certificate of immunization.
- (B) An individual born prior to April 1, 2001 shall not be required to receive varicella vaccine.
- (9) The healthcare provider shall administer immunizations in accordance with this rule. However, if a healthcare provider administers vaccine up to and including the fourth day prior to the minimum age requirements for immunization as established in Paragraph (a)(8) of this Rule, the individual dose shall not be required to be repeated. Doses administered more than four days prior to the minimum age requirements for immunization as established in Paragraph (a)(8) of this Rule are considered invalid doses and shall be repeated.

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

History Note: Authority G.S. 130A-152(c); 130A-155.1; Eff. February 1, 1976; Amended Eff. July 1, 1977; Readopted Eff. December 5, 1977; Temporary Amendment Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Amended Eff. October 1, 1995; October 1, 1994; January 1, 1994; January 4, 1993; Temporary Amendment Eff. February 23, 2000; May 21, 1999; August 20, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. May 17, 2002; April 1, 2002; February 18, 2002; August 1, 2001; Amended Eff. April 1, 2003.

15A NCAC 21A .0815 GENERAL

- (a) The Teen Pregnancy Prevention Initiatives shall be administered by the Division of Public Health, North Carolina Department of Health and Human Services, Mail Service Center 1929, Raleigh, North Carolina, 27699-1929, (919) 733-7791.
- (b) The Division of Public Health shall take the following actions prior to the end of State Fiscal Year 2001-2002: All currently funded Teen Pregnancy Prevention Projects shall be notified that they have been assigned to one of four groups,

based upon the date that their Teen Pregnancy Prevention funding was initiated. This grouping shall allow the Division to phase out, in an orderly manner, those projects funded under the former rules of operation. These projects shall be grouped as follows:

- (1) Group one shall be informed that they have one year of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2002 for grants beginning on July 1, 2003.
- (2) Group two shall be informed that they have two years of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2003 for grants beginning on July 1, 2004.
- (3) Group three shall be informed that they have three years of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2004 for grants beginning on July 1, 2005.
- (4) Group four shall be informed that they have four years of funding remaining. Projects in this group may file competitive applications for re-funding in the fall of 2005 for grants beginning on July 1, 2006.

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

History Note: Authority G.S. 130A-124; S.L. 1989, c. 752, s. 136; 130A-131.15A; Eff. August 1, 1990; Temporary Amendment Eff. December 1, 2001; Temporary Amendment Expired September 13, 2002; Amended Eff. April 1, 2003.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 12A .0101 OPERATIONS OF VEHICLES EXCLUDED FROM REPORTS

Every motor carrier must report the operations of all qualified vehicles in its fleet when calculating fuel used in North Carolina pursuant to G.S. 105-449.44 for purposes of filing the report required by G.S. 105-449.45. This requirement does not apply to vehicles that operate exclusively intrastate and do not display an IFTA decal.

History Note: Authority G.S. 105-262; 105-449.37; 105-449.44; 105-449.45; Eff. January 1, 1983; Amended Eff. August 1, 1998; January 1, 1994;

January 1, 1992; February 1, 1990; March 1, 1987;
Recodified from 17 NCAC 09I .0102 Eff. November 1, 2002;
Amended Eff. August 1, 2003.

17 NCAC 12A .0201 NC RETAIL FUEL PURCHASE INVOICES

(a) North Carolina retail fuel purchase invoices must contain the following information:

- (1) Date of purchase;
- (2) Name and address of the seller;
- (3) Number of gallons purchased;
- (4) Type of fuel purchased;
- (5) Price per gallon;
- (6) Either the company unit number of the vehicle into which the fuel was placed or the vehicle's license plate designation and the state that issued the plate; and
- (7) Purchaser's name. In the case of a leased vehicle, either the lessee or the lessor can submit receipts as the purchaser if the person who submits the receipts can establish a legal connection to the person required to file a report.

(b) In order for the motor carrier to obtain credit for retail tax paid purchases, a receipt or invoice, a credit card receipt, a microfilm/microfiche copy, or a computer image of the receipt or invoice must be retained by the motor carrier establishing the purchases and payment of the tax.

(c) Invoices must be maintained for a period of at least three years for possible audit by an agent of the North Carolina Department of Revenue.

History Note: Authority G.S. 105-262; 105-449.39;
Eff. January 1, 1983;
Amended Eff. October 1, 1991; February 1, 1990;
Recodified from 17 NCAC 09I .0201 Eff. November 1, 2002;
Amended Eff. August 1, 2003.

17 NCAC 12A .0301 REFUNDS

The Secretary may make refunds without prior audit or without having been furnished a bond if the motor carrier has complied with the motor fuel tax laws and rules. All credits of at least three dollars (\$3.00) are automatically refunded and all refunds of credits under three dollars (\$3.00) must be requested in writing.

History Note: Authority G.S. 105-262; 105-266; 105-449.39;
105-449.40;
Eff. January 1, 1983;
Amended Eff. January 1, 1994; February 1, 1990;
Recodified from 17 NCAC 09I .0302 Eff. November 1, 2002;
Amended Eff. August 1, 2003.

17 NCAC 12B .0102 EXPORTER'S LICENSE

An exporter of motor fuel from North Carolina that is not licensed as a distributor must have an exporter's license. An applicant for an exporter's license must meet the same licensing requirements as an applicant for a distributor's license, except the requirement of filing a bond.

History Note: Authority G.S. 105-262; 105-449.65(a)(5);

105-449.72;
Eff. August 1, 2003.

17 NCAC 12B .0106 TYPES OF ACCEPTABLE BONDS

A surety bond is acceptable to the Motor Fuels Tax Division if it is filed on Form Gas-1212 and executed by a surety company licensed to do business in this State. A bond secured by collateral is acceptable to the Division if it meets the requirements of 17 NCAC 12A .0303. When a financial institution provides the Division with the necessary data for a bond secured by collateral, the Division prepares a Pledge of Collateral and gives this document to the applicant for execution.

History Note: Authority G.S. 105-262; 105-449.72;
Temporary Adoption Eff. January 1, 1996;
Eff. March 1, 1996;
Amended Eff. August 1, 1998;
Recodified from 17 NCAC 09K .0205 Eff. November 1, 2002;
Amended Eff. August 1, 2003.

17 NCAC 12B .0201 RACING FUEL

Racing fuel that meets all of the following requirements is not considered gasoline under G.S. 105-449.60 and is not subject to the per gallon excise tax:

- (1) Has an octane rating of 110 or higher;
- (2) Contains lead;
- (3) Does not contain detergent additives;
- (4) Does not conform to the Reid Vapor Pressure standards for reformulated or oxygenated gasoline; and
- (5) Does not meet ASTM specifications for gasoline.

History Note: Authority G.S. 105-262; 105-449.60;
Eff. August 1, 2003.

17 NCAC 12B .0301 REPORTING INFORMATION IN THE PROPER REPORTING PERIOD

All motor fuel transactions must be reported on the tax return for the month or other filing period in which the transaction occurred and may not be carried over to a return for a subsequent period. If, after filing a return, a person discovers information that affects the return, the person must file an amended return for the affected period and must pay any tax, penalty, and interest due with the amended return.

History Note: Authority G.S. 105-262; 105-449.90;
Temporary Adoption Eff. January 1, 1996;
Eff. March 1, 1996;
Recodified from 17 NCAC 09K .0301 Eff. November 1, 2002;
Amended Eff. August 1, 2003.

17 NCAC 12B .0401 DOCUMENTING SALES TO EXEMPT ENTITIES

A distributor or another vendor that sells motor fuel to an exempt entity may document the sales using third-party vendor lists or computer runs if the lists or runs are in a format the distributor cannot alter. A person that uses vendor lists or

computer runs to document sales must keep copies of sales invoices to support the exempt sales.

History Note: Authority G.S. 105-262; 105-449.105; Temporary Adoption Eff. January 1, 1996; Eff. March 1, 1996; Recodified from 17 NCAC 09K .0501 Eff. November 1, 2002; Amended Eff. August 1, 2003.

17 NCAC 12B .0402 CLAIM FOR REFUND FOR SALES TO EXEMPT ENTITIES

Part 1 of Form Gas-1206 applies to a distributor or another vendor that sells tax-paid motor fuel to an exempt entity at a price that does not include the per gallon excise tax. Part 2 of Form Gas-1206 applies to a credit card company that issues a credit card to an exempt entity that allows the entity to purchase tax-paid motor fuel at a price that does not include the per gallon excise tax. Part 3 of Form Gas-1206 applies to an exempt entity that purchases motor fuel at a price that includes the per gallon excise tax. A person who submits Form Gas-1206 must complete the applicable Part of the form and submit copies of sales or purchase invoices, as appropriate, with the form.

History Note: Authority G.S. 105-262; 105-449.105; Temporary Adoption Eff. January 1, 1996; Eff. March 1, 1996; Recodified from 17 NCAC 09K .0502 Eff. November 1, 2002; Amended Eff. August 1, 2003.

17 NCAC 12B .0404 OFF-HIGHWAY REFUND INVOICE REQUIREMENTS

An invoice for each purchase of motor fuel must be submitted with the claim for refund for purchases made for off-highway use during the refund period. Invoices must show the date of purchase, the name of both the purchaser and seller, the address of the seller, the number of gallons purchased, the price per gallon, and the amount paid. A daily, weekly, or monthly statement of purchases of motor fuel is acceptable provided it is prepared by the seller and shows all of the information on each purchase of motor fuel that is required on an individual invoice. Invoices and statements showing alterations or erasures are not acceptable. If no claim for refund was filed for the preceding refund period, an invoice or statement must be attached to substantiate inventory at the beginning of the refund period.

History Note: Authority G.S. 105-262; 105-449.107; Temporary Adoption Eff. January 1, 1996; Eff. March 1, 1996; Recodified from 17 NCAC 09K .0504 Eff. November 1, 2002; Amended Eff. August 1, 2003.

17 NCAC 12B .0405 OFF-HIGHWAY USERS WITH COMMON STORAGE FACILITIES

No refund is due on motor fuel used to operate the engine of a motor vehicle licensed to travel on the streets and highways, unless otherwise provided by law. If motor fuel is used from the same storage tank from which both licensed motor vehicles and off-highway equipment are serviced, a daily use record must be kept to substantiate the amount withdrawn for licensed motor vehicles and non-licensed equipment. These records must be

kept for three calendar years from the date the claim for refund was due to be filed.

History Note: Authority G.S. 105-262; 105-449.107; Temporary Adoption Eff. January 1, 1996; Eff. March 1, 1996; Recodified from 17 NCAC 09K .0505 effective November 1, 2002; Amended Eff. August 1, 2003.

17 NCAC 12B .0406 STATIONARY ENGINE MOUNTED ON A LICENSED MOTOR VEHICLE

No refund is due on motor fuel used to operate a stationary engine mounted on a licensed motor vehicle, except as identified in G.S. 105-449.107, if the motor fuel is used from the same storage tank mounted on the vehicle for the purpose of operating both the stationary engine and the engine used to operate a licensed motor vehicle over the streets and highways.

History Note: Authority G.S. 105-262; 105-449.107; Temporary Adoption Eff. January 1, 1996; Eff. March 1, 1996; Recodified from 17 NCAC 09K .0506 effective November 1, 2002; Amended Eff. August 1, 2003.

17 NCAC 12B .0411 MUNICIPAL CORPORATION AND CITY TRANSIT SYSTEM

(a) Municipal Corporation. -- A municipal corporation exempt under G.S. 105-449.88 is an entity identified by statute as a municipal corporation or an entity that meets the definition of "municipality" in G.S. 105-273.

(b) City Transit System. -- The Department determines the area that is included within a city transit system in accordance with Rule R2-69 of the North Carolina Utilities Commission. This Rule is incorporated by reference and the incorporation includes any future changes to the rule. The rule can be obtained free of charge from the Chief Clerk at the Utilities Commission, (919) 733-7328.

History Note: Authority G.S. 105-262; 105-449.88; 105-449.106; Eff. March 1, 1996; Amended Eff. August 1, 1998; Recodified from 17 NCAC 09K .0511 Eff. November 1, 2002; Amended Eff. August 1, 2003.

17 NCAC 12B .0413 OFF-HIGHWAY AND TAXICAB REFUNDS

(a) In order to obtain a refund of tax paid on motor fuel, the following claims for refund must be filed:

- (1) Persons using tax paid motor fuel, in other than licensed vehicles, must file Form Gas-1201; or
- (2) Volunteer fire departments, volunteer rescue squads, "sheltered workshop" organizations recognized by the Department of Human Resources, city transit systems, and private non-profit organizations transporting passengers under contract with or at the

- (3) express designation of units of local government must file Form Gas-1200; or Operators of taxicabs must file Form Gas-1200B to obtain a refund for tax paid motor fuel used in transporting fare-paying passengers.

(b) The claims for refund require an accounting of tax paid motor fuel purchased and used. Invoices for tax paid motor fuel must be submitted with the claim for refund.

History Note: Authority G.S. 105-262; 105-449.106; 105-449.107; Temporary Adoption Eff. January 1, 1996; Eff. March 1, 1996; Recodified from 17 NCAC 09K .0513 Eff. November 1, 2002; Amended Eff. August 1, 2003.

17 NCAC 12B .0414 ELIGIBILITY FOR REFUNDS

To enable the Secretary or a person designated by the Secretary to prepare audits, bulk-end users, retailers, and users of motor fuel must maintain the following records for a period of three years:

- (1) Users:
 - (a) All fuel receipts, highway and non-tax-paid;
 - (b) Quarterly odometer readings, regardless of weight classification;
 - (c) Purchase and disposition dates of fleet vehicles with beginning and ending odometer readings;
 - (d) List of current vehicles by registered gross weight; and
 - (e) List of motor carrier decals received, indicating the decals applied to vehicles and those still on hand.
- (2) Bulk-End Users:
 - (a) All fuel receipts, highway and non-tax-paid;
 - (b) Withdrawal statements of highway and non-highway fuel from bulk storage facilities;
 - (c) Quarterly odometer readings, regardless of weight classification;
 - (d) Purchase and disposition dates of fleet vehicles with beginning and ending odometer readings;
 - (e) List of current vehicles by registered gross weight;
 - (f) Quarterly beginning and ending inventory of highway and non-highway fuel; and
 - (g) List of motor carrier decals received, indicating the decals applied to vehicles and those still on hand.
- (3) Retailers:
 - (a) All fuel receipts and bills of lading;
 - (b) Quarterly totalizer meter readings;
 - (c) Fuel availability schedules;
 - (d) Intrastate mileage records; and

- (e) Quarterly beginning and ending inventory of highway and non-highway fuel.

History Note: Authority G.S. 105-262; 105-449.121; Temporary Adoption Eff. January 1, 1996; Eff. March 1, 1996; Recodified from 17 NCAC 09K .0514 Eff. November 1, 2002; Amended Eff. August 1, 2003.

17 NCAC 12B .0503 LICENSED VEHICLES USING DYED DIESEL FUEL

The penalties set out in G.S. 105-449.117 for using dyed diesel fuel in a highway vehicle that is licensed or required to be licensed may be assessed whenever the presence of dye is detected in a sample taken from the fuel tank of the vehicle.

History Note: Authority G.S. 105-262; 105-449.117; Eff. August 1, 2003.

17 NCAC 12D .0102 AMOUNT OF BOND REQUIRED

The amount of bond required of a kerosene distributor or a kerosene supplier licensed under G.S. 119-16.2 is based on the kerosene distributor's or supplier's average monthly taxable sales and use of kerosene in North Carolina, as follows:

From 1 to 60,000 gallons per month	\$ 500
From 60,001 to 100,000 gallons per month	1,000
From 100,001 to 300,000 gallons per month	2,500
From 300,001 to 600,000 gallons per month	5,000
From 600,001 to 900,000 gallons per month	7,500
From 900,001 to 1,200,000 gallons per month	10,000
From 1,200,001 to 1,500,000 gallons per month	12,500
From 1,500,001 to 1,800,000 gallons per month	15,000
From 1,800,001 to 2,000,000 gallons per month	17,500
From 2,000,001 and over gallons per month	20,000

History Note: Authority G.S. 105-262; 119-16.2; Eff. January 1, 1983; Amended Eff. August 1, 2003.

17 NCAC 12D .0103 ACCEPTANCE OF BONDS AND LETTERS OF CREDIT

The Motor Fuels Tax Division accepts a surety bond, a bond secured by collateral, or an irrevocable letter of credit from a kerosene distributor or supplier in the same circumstances under which it accepts one of these from a distributor licensed under G.S. 105, Article 36C.

History Note: Authority G.S. 105-262; 119-16.2; Eff. January 1, 1983; Amended Eff. August 1, 2003; August 1, 1998; January 1, 1992; October 1, 1992; March 1, 1987.

TITLE 18 – DEPARTMENT OF SECRETARY OF STATE

18 NCAC 06 .1104 DEFINITIONS

As used in this Chapter, the following terms mean:

- (1) "Act" shall mean the North Carolina Securities Act, Chapter 78A of the North Carolina General Statutes, as same has been or may be from time to time amended.

- (2) "Commercial Paper," as referred to in G.S. 78A-16(10), shall mean any note, draft, bill of exchange or bankers acceptance which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which has a maturity at the time of issuance not exceeding nine months, exclusive of days of grace, or any renewal thereof, the maturity of which is likewise limited or any guarantee of such paper or of any such renewal. Commercial paper shall also exemplify the following characteristics:
- (a) prime quality negotiable paper of a type not ordinarily purchased by the general public;
 - (b) issued to facilitate well recognized types of current operational business requirements; and
 - (c) of a type eligible for discounting by Federal Reserve Banks.

The Division hereby incorporates by reference the concepts of "commercial paper" found in SEC Release No. 33-4412, September 20, 1961, (1961 WL 61632).

- (3) "Direct Participation Program" shall mean a program which provides for flow-through tax consequences regardless of the structure of the legal entity or vehicle for distribution including, but not limited to, oil and gas programs, real estate programs, agricultural programs, cattle programs, condominium securities, and all other programs of a similar nature, regardless of the industry represented by the program, or any combination thereof. A program may be composed of one or more legal entities or programs but when used in these Rules the term shall include each of the separate entities or programs making up the overall program and the overall program itself. Excluded from this definition are viatical settlement contracts as defined in G.S. 78A-2(13), Subchapter S corporate offerings, real estate investment trusts, tax qualified pension and profit sharing plans pursuant to Sections 401 and 403 (a) of the Internal Revenue Code and individual retirement plans under Section 408 of that Code, and any company registered pursuant to the Investment Company Act of 1940.
- (4) "SEC" shall mean the Securities and Exchange Commission.
- (5) "NASD" shall mean the National Association of Securities Dealers, Inc.
- (6) "NASAA" shall mean the North American Securities Administrators Association, Inc.
- (7) "CRD" shall mean the Central Registration Depository.
- (8) "Investment Contract" as used in G.S. 78A-2(11) includes:
- (a) Any investment in a common enterprise with the expectation of

profit to be derived through the essential managerial efforts of someone other than the investor. In this Subparagraph a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of a third party; and

- (b) Any investment by which an offeree furnishes initial value to an offeror, and a portion of this initial value is subjected to the risks of the enterprise, and the furnishing of this initial value is induced by the offeror's promises or representations which give rise to a reasonable understanding that a valuable benefit of some kind over and above the initial value will accrue to the offeree as a result of the operation of the enterprise, and the offeree does not receive the right to exercise practical and actual control over the managerial decisions of the enterprise.

- (9) "Recognized Securities Manual" shall mean a publication which contains the information required by G.S. 78A-17(2)a. and which has been designated, pursuant to G.S. 78A-49 and Rule .1202 of this Chapter, as a "recognized securities manual" by the administrator.

- (10) "Form D" shall mean the document adopted by the Securities and Exchange Commission, in effect on September 1, 1996 and as may be amended by the SEC from time to time, entitled "FORM D; Notice of Sale of Securities pursuant to Regulation D, Section 4(6), and/or Uniform Limited Offering Exemption," including Part E and the Appendix.

History Note: Authority G.S. 78A-49(a); Eff. April 1, 1981; Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984; Temporary Amendment Eff. October 1, 1997; Amended Eff. August 1, 1999; Temporary Amendment Eff. April 1, 2002; Amended Eff. April 1, 2003.

18 NCAC 06 .1205 LIMITED OFFERINGS PURSUANT TO G.S. 78A-17(9)

- (a) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a security made in reliance upon Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.505 (1982) (and as subsequently amended) shall comply with the provisions of Rules .1206, .1207 and .1208 of this Section; provided that such

compliance shall not be required if the security is offered and sold only to persons who will be actively engaged, on a regular basis, in the management of the issuer's business; and provided further, that compliance with provisions of Paragraphs (a), (b), and (c) of Rule .1208 of this Section shall not be required, except in the case of the offer and sale of a viatical settlement contract, if the security is offered to not more than five individuals who reside in this State.

(b) Any issuer relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a direct participation program security made solely in reliance upon an exemption from registration contained in Section 4(2) or Section 3(a)(11) of the Securities Act of 1933 as amended, or made solely in reliance upon Rule 504 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, 17 C.F.R. 230.504 (1982), (and as subsequently amended), or any person relying upon the exemption provided by G.S. 78A-17(9) in connection with an offering of a viatical settlement contract, shall comply with the following conditions and limitations:

- (1) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of the security sold to a resident of this State unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.
- (2) In all sales of direct participation program securities, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities shall be applicable. In all sales of viatical settlement contracts, the provisions of Rule .1320 shall be applicable.
- (3) Any prospectus or disclosure document used in offering the securities in this state shall disclose the legend(s) as required by the provisions of Rule .1316 of this Chapter.
- (4) Not less than 10 business days prior to any sale of the securities to a resident of this State which shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser, the issuer shall file with the administrator, or cause to be so filed:
 - (A) A statement signed by the issuer and acknowledged before a notary public or other similar officer:
 - (i) identifying the issuer (including name, form of organization, address and telephone number);
 - (ii) identifying the person(s) who will be selling the securities in this State (and in the case of such persons other than the issuer and its

officers, partners and employees, describing their relationship with the issuer in connection with the transaction and the basis of their compliance with or exemption from the requirements of G.S. 78A-36) and describing any commissions, discounts, fees or other remuneration or compensation to be paid to such persons;

- (iii) containing a summary of the proposed offering including:
 - (I) a description of the securities to be sold;
 - (II) the name(s) of all general partners of an issuer which is a partnership and, with respect to a corporate issuer or any corporate general partner(s) of any issuer which is a partnership, the date and place of incorporation and the names of the directors and executive officers of such corporation(s);
 - (III) the anticipated aggregate dollar amount of the offering;
 - (IV) the anticipated required minimum investment, if any, by each purchaser of the securities to be offered;
 - (V) a brief description of the issuer's business and the anticipated use of the proceeds of the offering; and
 - (VI) a list of the states in which the securities are proposed to be sold;
- (iv) containing an undertaking to furnish to the administrator, upon written request, evidence of compliance with Subparagraphs (1), (2), and (3) of this Paragraph (b);

(v) in the case of a direct participation program security, containing an undertaking to furnish to the administrator, upon written request, a copy of any written document or materials used or proposed to be used in connection with the offer and sale of the securities; and

(vi) in the case of a viatical settlement contract, the filing shall include a copy of all written documents or materials, including advertising, used or proposed to be used in connection with the offer and sale of the securities.

(B) A consent to service of process naming the North Carolina Secretary of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or other similar officer; and accompanied by a properly executed Corporate Resolution (Form U-2A), if applicable;

(C) A non-refundable filing fee in the amount of twenty-five dollars (\$25.00), payable to the North Carolina Secretary of State.

(5) In the case of offers of viatical settlement contracts, the persons offering the security shall deliver to the offeree written materials complying with G.S. 78A-13. Additionally, any materials used in the offering of the security shall comply with G.S. 78A-14 and shall provide each offeree written notice of his or her rights under G.S. 78A-56 and under Rule .1501 of this Chapter.

(6) Compliance with the provisions of Subparagraph (4) of this Rule shall not be required if the security is offered to not more than five individuals who reside in this State, except in the case of the offer and sale of a viatical settlement contract.

(c) Neither the issuer nor any person acting on the issuer's behalf shall offer, offer to sell, offer for sale or sell the securities claimed to be exempt under G.S. 78A-17(9) by any means or any form of general solicitation or general advertising.

History Note: Authority G.S. 78A-13; 78A-17(9); 78A-49(a); Eff. January 1, 1984; Temporary Rule Eff. October 1, 1983, for a period of 120 days to expire on January 29, 1984; Amended Eff. October 1, 1988; Temporary Amendment Eff. October 1, 1997; Amended Eff. August 1, 1998;

Temporary Amendment Eff. November 1, 2002; April 1, 2002; Amended Eff. April 1, 2003.

18 NCAC 06 .1206 LIMITED OFFERING EXEMPTION PURSUANT TO G.S. 78A-17(17)

(a) Transactions made in reliance upon Rule 505 of Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933, as amended, and 17 C.F.R. 230.505 (1982) (as subsequently amended), including any offer or sale made exempt by application of Rule 508(a), as made effective in Release No. 33-6389 and as amended in Release Nos. 33-6437, 33-6663, 33-6758, and 33-6825, shall be exempt from the requirements of G.S. 78A-24, provided there is compliance with the conditions and limitations of this Rule .1206 and Rules .1207 and .1208 of this Section.

(b) No exemption under this Rule is available for the offer or sale of securities if the issuer or any other person or entity to which Rule .1206 applies is disqualified pursuant to Rule .1207 of this Section unless the administrator, upon application and a showing of good cause by the issuer, or such other person or entity, modifies or waives the disqualification. For purposes of this Rule, "good cause" means a substantial reason amounting in law to a legal excuse for noncompliance with a restriction imposed by Rule .1207, and shall be relevant to considerations of the public interest, the protection of the investing public, the age and nature of the particular disqualifying event, the business experience, qualifications, and disciplinary history of the disqualified person, the need for full disclosure of information relevant to investment decisions, and the burden and cost of compliance with regulatory requirements applicable to the transaction in the absence of the availability of the exemption.

(c) No commission, discount, finder's fee or other similar remuneration or compensation shall be paid, directly or indirectly, to any person for soliciting any prospective purchaser of any security sold to a resident of this State in reliance upon the exemption provided by this Rule unless such person is either registered pursuant to G.S. 78A-36 or exempt from registration thereunder or the issuer reasonably believes that such person is so registered or exempt therefrom.

(d) In all sales to those accredited investors defined in 17 C.F.R. 230.501(a)(5) who reside in this State (except sales to such accredited investors made by or through a dealer registered under G.S. 78A-36) and in all sales to nonaccredited investors who reside in this State the issuer and any person acting on its behalf shall have reasonable grounds to believe and after making reasonable inquiry shall believe that the following conditions are satisfied:

(1) In the case of a security other than a viatical settlement contract:

(A) The investment is suitable for the purchaser upon the basis of the facts, if any, disclosed by the purchaser as to his/her other security holdings and as to his/her financial situation and needs. For the purpose of this condition only, it may be presumed that if the investment does not exceed 10 percent of the investor's net worth, it is suitable; or

(B) The purchaser, either alone or with his/her purchaser representative(s),

has such knowledge and experience in financial and business matters that he/she is or they are capable of evaluating the merits and risks of the prospective investments.

(2) In the case of a viatical settlement contract, the requirements of Rule .1320 of this Chapter.

(e) In all sales of direct participation programs securities pursuant to the exemption provided by this Rule, the provisions of Rule .1313 of this Chapter regarding registered offerings of direct participation program securities shall be applicable. In all sales pursuant to the exemption provided by this Rule of viatical settlement contracts, the provisions of Rule .1320 of this Chapter shall be applicable.

(f) Any prospectus or disclosure document used in this state in connection with an offer or sale of securities made in reliance upon the exemption provided by this Rule shall disclose conspicuously the legend(s) required by the provisions of Rule .1316 of this Chapter and, in the case of a viatical settlement contract, shall set forth the purchaser's right of rescission pursuant to both G.S. 78A-56 and Rule .1501 of this Chapter.

(g) Nothing in the exemption provided by this Rule is intended to or shall be construed as in any way relieving the issuer or any person acting on behalf of the issuer from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the Act.

(h) Transactions which are exempt under this Rule may not be combined with offers or sales exempt under any other rule or section of this Act; however, nothing in this limitation shall act as an election. Should for any reason, an offer and sale of securities made in reliance upon the exemption provided by this Rule fail to comply with all of the conditions hereof, the issuer may claim the availability of any other applicable exemption.

(i) A failure to comply with a term, condition or requirement of Paragraphs (c) and (d) of this Rule will not result in loss of the exemption from the requirements of G.S. 78A-24 for any offer or sale to a particular individual or entity if the person relying on the exemption shows:

- (1) the failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular individual or entity; and
- (2) the failure to comply was insignificant with respect to the offering as a whole; and
- (3) a good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of Paragraphs (c) and (d) of this Rule.

Where an exemption is established only through reliance upon this Paragraph (i) of this Rule, the failure to comply shall nonetheless be actionable by the administrator under G.S. 78A-47.

(j) In any proceeding involving this Rule, the burden of proving the exemption or an exception from a definition or condition is upon the person claiming it.

(k) In view of the objective of this Rule and the purpose and policies underlying the Act, this exemption is not available to any issuer with respect to any transaction which, although in technical compliance with this Rule, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in this Rule or Rules .1207 and .1208 of this Section. The

administrator may, by order, waive any condition of or limitation upon the availability of the exemption provided by this Rule.

(l) In determining whether to waive a condition of or limitation on the availability of the exemption provided by this Rule, the Administrator shall consider matters and information relevant to the public policy intended by G.S. 78A, which is the protection of the investing public from persons effecting securities transactions by employing devices, schemes, or artifices to defraud, making untrue statements of material fact or misleading omission of material fact, and engaging in acts, practices, or courses of business which operate or would operate as a fraud or deceit upon any person. Such considerations shall include, but not be limited to the following:

- (1) the need for full and adequate disclosure of information relevant to investment decisions;
- (2) the business history, qualifications, and disciplinary history of the person or persons effecting the securities transactions;
- (3) the experience, suitability, character, expertise, and financial strength of the offerers in the particular transaction;
- (4) the costs of compliance with applicable regulatory requirements;
- (5) the benefits to the particular investors and to the general investing public of compliance with applicable regulatory requirements;
- (6) the terms, conditions, and provisions of the particular securities transaction; and
- (7) any other factors which are relevant to the protection of the investing public.

(m) The exemption provided by this Rule shall be known and may be cited as the "North Carolina Limited Offering Exemption."

History Note: Authority G.S. 78A-17(17); 78A-49(a); 78A-56;

Eff. January 1, 1984;

Temporary Rule Eff. October 1, 1983, for a period of 120 days to expire on January 29, 1984;

Amended Eff. September 1, 1990; October 1, 1988;

Temporary Amendment Eff. October 1, 1997;

Amended Eff. October 1, 2000; August 1, 1998;

Temporary Amendment Eff. April 1, 2002;

Amended Eff. April 1, 2003.

18 NCAC 06 .1208 TRANSACTIONS EXEMPT UNDER RULE .1206: FILING REQUIREMENTS

(a) Not less than 10 business days prior to any sale of a security sold in reliance upon the exemption provided by Rule .1206 of this Section, which sale shall include but not be limited to the receipt by the issuer, or any person acting on the issuer's behalf of a signed subscription agreement of, or the receipt of consideration from, a purchaser, the issuer shall file with the administrator, or cause to be so filed, the following:

- (1) A Form D (Notice of Sales of Securities Pursuant to Regulation D...and/or Uniform Limited Offering Exemption). All parts of this form, including the Appendix, shall be completed. The Form D shall be signed by a person with express written authorization to do so by the issuer, and shall be attached to a

statement containing the supplemental information required by Paragraph (c) of this Rule.

- (2) A copy of any written document or materials proposed to be used in connection with the offer and sale of the securities to be sold; provided, however, if any such documents or materials are not available to be filed 10 business days prior to any sale of the securities to a person who resides in this State, they shall be filed when available, but, in any event, no later than 5 business days before any such sale. Supplements or amendments to any such written document or materials shall be filed within five business days after delivery to any prospective purchaser of the securities. Notwithstanding the foregoing, any written materials, disclosures required by G.S. 78A-13, and advertising subject to G.S. 78A-14 proposed to be used in connection with the offer and sale of viatical settlement contracts shall be filed with the Administrator not later than 10 days before the first sale of such securities in this State, and any supplements to such materials shall be filed with the Administrator not later than 5 days prior to their delivery to any prospective purchaser.
- (3) A consent to service of process naming the North Carolina Secretary of State as service agent using the Uniform Consent to Service of Process (Form U-2) signed by the issuer and acknowledged before a notary public or similar officer; and accompanied by a properly executed Corporate Resolution (Form U2A), if applicable.
- (4) A non-refundable filing fee as established by G.S. 78 A-17(17), payable to the North Carolina Secretary of State.

(b) The issuer shall file or caused to be filed with the administrator any amended Form D filed with the U.S. Securities and Exchange Commission in connection with the transaction, not later than five business days after such filing with the SEC.

(c) To comply with Subparagraph (a)(1) of this Rule, the issuer shall file with the administrator a statement signed by a person with express written authorization to execute such statement on its behalf containing the following representations:

- (1) that the securities will be sold in reliance upon an exemption from the registration requirements of Section five of the Securities Act of 1933, as amended;
- (2) that, to the best of the issuer's knowledge, the issuer is not disqualified by the provisions of Rule .1207 of this Section from relying upon the exemption provided by Rule .1206 of this Section;
- (3) that the issuer will furnish to the administrator, upon written request, evidence of compliance with Rule .1206 of this Section;
- (4) that all persons who will be selling the securities in this state are in compliance with

or exempt from the requirements of G.S. 78A-36; and

- (5) that the issuer will notify the administrator in writing of the names and titles of all officers, directors, partners, or employees of the issuer who will be engaged in the offer or sale of the securities in this state. Such notice to the administrator shall be made prior to any offer of securities in this state.

(d) Any filing pursuant to this Rule shall be amended by filing with the administrator such information and changes as may be necessary to correct any material misstatement or omission in the filing.

(e) The provisions of this Rule shall not apply to offers or sales of a security made pursuant to Rule .1206 of this Section if the security is offered to not more than five individuals who reside in this State, except for offers or sales of viatical settlement contracts .

History Note: Authority G. S. 78A-17(17); 78A-49(a); Eff. January 1, 1984; Temporary Rule Eff. October 1, 1983, for a Period of 120 Days to Expire on January 29, 1984; Amended Eff. September 1, 1990; October 1, 1988; Temporary Amendment Eff. November 1, 2002; April 1, 2002; Amended Eff. April 1, 2003.

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

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

- (1) Suitability Standards. Sales of viatical settlement contracts may be made only to purchasers meeting the requirements of Rule .1320 of this Chapter.
- (2) Purchase Not for Resale. Each purchaser must represent in writing that the purchaser is purchasing for investment and for the purchaser's own account or trust account, if the purchaser is a trustee, and not with a view to or for sale in connection with a distribution of the security.
- (3) Required Disclosures. The information set forth in G.S. 78A-13 and in Rule .1319 shall be disclosed in accordance with that section.
- (4) Rescission by Purchaser. Each purchaser shall be provided with written notice of his or her rights of rescission as set forth in G.S. 78A-56 and in Rule .1501 of this Chapter.
- (5) Exemption Filing and Fee. A notice of the issuer's intent to sell securities in reliance on G.S. 78A-17(19), signed by the issuer or by an authorized officer of the issuer and notarized, together with a nonrefundable filing fee of five hundred dollars (\$500.00), payable to the Secretary of State, shall be filed with the Administrator not later than ten business days before any offers or sales of securities are

made pursuant to G.S. 78A-17(19). Such notice shall include:

- (a) The issuer's name, the issuer's type of business organization, the state in which the issuer is organized, the date the issuer intends to begin selling securities within or from this state, and the issuer's principal business;
 - (b) A consent to service of process naming the Secretary of State as agent for service of process;
 - (c) Such financial statements as may be required to be disclosed under G.S. 78A-13;
 - (d) the names and CRD numbers, if any, of all persons who will be offering the securities for sale in or from the State of North Carolina; and
 - (e) an undertaking to notify the Administrator in writing of any material change or material omission in the information filed with the Administrator pursuant to this Rule not later than five business days following the change or discovery of the omission.
- (6) No Commissions to Unregistered Sellers. No commission or remuneration is paid directly or indirectly for soliciting any prospective purchaser, except to a registered salesman of a registered dealer.
- (7) Filing of Advertising Materials. At least 10 days before use within this state, the issuer files with the Administrator all advertising and sales materials that will be published, exhibited, broadcast, or otherwise used, directly or indirectly, in the offer or sale of a viatical settlement contract in this state, including the written disclosures required by G.S. 78A-13 and by Rule .1319 of this Chapter.
- (8) Legends Required. Any prospectus or disclosure document used in this state in connection with an offer and sale of securities made in reliance upon the exemption provided by this Rule shall disclose conspicuously the appropriate legends:
- (a) THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE;

- (b) IN MAKING AN INVESTMENT DECISION INVESTORS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE; and
- (c) THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. INVESTORS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

History Note: Authority G.S. 78A-13, 78A-14, 78A-17(19), 78A-49, 78A-56;

*Temporary Adoption Eff. April 1, 2002;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. April 1, 2003.*

18 NCAC 06 .1320 VIATICAL SETTLEMENT CONTRACT SUITABILITY REQUIREMENTS

- (a) Suitability Standards. Sales of viatical settlement contracts may be made only to either accredited investors as defined in 17 C.F.R. 230.501(a), (and as subsequently amended) or to qualified institutional buyers as defined in 17 C.F.R. 230. 144A, (and as subsequently amended).
- (b) Limit on Size of Investment. The amount of the investment of any purchaser may not exceed five percent of the net worth of that purchaser.
- (c) The administrator may require higher investor suitability standards with respect to a particular security offering or transaction where necessary for the protection of investors.

*History Note: Authority G.S. 78A-49;
Temporary Adoption Eff. April 1, 2002;*

Eff. April 1, 2003.

18 NCAC 06 .1501 RESCISSION OFFERS

(a) All rescission offers under G.S. 78A-56(g) shall be typed or printed and shall be captioned in bold print or type "Rescission Offer." Offers must set forth in bold type the name of the security with respect to which the offer is made and the date of the transaction involved. Offers must be signed by the offeror or its authorized officer.

(b) Every rescission offer to a purchaser under G.S. 78A-56(g)(1) shall set forth with particularity the facts out of which liability under G.S. 78A-56 may have arisen and, in the event of a violation of G.S. 78A-56(a)(2), the correct, true, or omitted facts. It shall advise the purchaser of his potential rights under G.S. 78A-56 if a violation of that section were found and state the effect on those rights of the purchaser's failure to accept the offer within 30 days from its receipt. The offer shall include a form for the purchaser's written acceptance of the offer addressed to the offeror or the depository to which it is to be sent. The offer must expire by its own terms at midnight of the 30th day following its receipt by the purchaser and must provide, by its terms, that acceptance is effective if the purchaser either delivers his written acceptance to the address specified in the offer or mails that acceptance, postage prepaid, with a postmark not later than midnight of the thirtieth day following his receipt of the offer. The offer shall not require that the purchaser return the security with his acceptance; the offer may, however, require that the purchaser deliver any security he still holds and a verified statement of the transactions in which he disposed of any security to the offeror or to a depository specified in the offer within a period of not less than 45 days from the receipt of the offer in order to receive payment thereunder. The offer may provide that any offeree who delivers a timely written acceptance but fails to deliver any security held by him and the statement of the transactions in which he disposed of any security within the time specified in the offer shall be deemed to have failed to accept such an offer in writing within a specified period as required by G.S. 78A-56(g)(1).

(c) Every rescission offer to a seller pursuant to G.S. 78A-56(g)(2) shall set forth with particularity the facts out of which liability under G.S. 78A-56 may have arisen and, in the event of a violation of G.S. 78A-56(a)(2), the correct, true, or omitted facts. It shall advise the seller of his rights under G.S. 78A-56 if a violation of that section is found and state the effect on those rights of the seller's failure to accept the offer within 30 days from the receipt. The offer shall include a form for the seller's written acceptance of the offer addressed to the offeror or the depository to which it is to be sent. The offer must expire by its own terms at midnight of the 30th day following its receipt by the seller and may provide, by its terms, that acceptance is effective if the seller either delivers his written acceptance to the address specified in the offer or mails that acceptance, postage prepaid, with a postmark not later than midnight of the thirtieth day following his receipt of the offer. The offeror is not required to return the security with the offer; the offer may require that the seller deliver the sum necessary to rescind to the offeror or to a depository specified in the offer within a period of not less than 45 days from the receipt of the offer in order to receive the security. The offer may provide that any offeree who delivers a timely written acceptance but fails to deliver the sum necessary to rescind the transaction specified in the offer shall be deemed

to have failed to accept such an offer in writing within a specified period as required by G.S. 78A-56(g)(2).

(d) The person making the rescission offer shall file a copy of the rescission offer with the Administrator at least 10 days before delivering the offer to the offeree. The copy filed with the Administrator shall be addressed to: Rescission Offers, North Carolina Securities Division, 300 N. Salisbury Street, Suite 100, Raleigh, N.C. 27603-5909.

(e) A seller who makes a rescission offer pursuant to G.S. 78A-56(l) shall include in that rescission offer an undertaking by the seller to refund all the purchaser's money, without deductions, within seven business days after the date of receipt by the seller of the purchaser's notice of rescission or cancellation. The rescission offer shall be transmitted by the seller to the purchaser by certified mail, return receipt requested.

History Note: Authority G.S. 78A-56; Eff. April 1, 1981.

Temporary Amendment Eff. April 1, 2002; January 14, 2002; Amended Eff. April 1, 2003.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

19A NCAC 02D .0643 ESCORT VEHICLE DRIVER CERTIFICATION

On or after July 1, 2003, when an escort vehicle is required, escort vehicle drivers shall be certified in accordance with 19A NCAC 02D .0644. Certification credentials shall be carried in the vehicle and shall be readily available for inspection by law enforcement officials with jurisdiction.

History Note: Authority G.S. 20-119; Temporary Adoption Eff. March 11, 2002; Eff. April 1, 2003.

19A NCAC 02D .0644 OVERSIZE-OVERWEIGHT LOAD ESCORT VEHICLE OPERATOR CERTIFICATION PROGRAM

(a) The Secretary of Transportation or his designee shall administer an Oversize-Overweight Load Escort Vehicle Operator Certification Program as required by G.S. 20-119.

(b) The escort vehicle operator certification program shall include the following:

- (1) Instruction on safe and effective escort skills.
- (2) Examination that documents course comprehension.
- (3) Recognition of escort vehicle operator certification.
- (4) Recognition of escort vehicle operator certification from other states which have certification programs.

(c) The department shall issue a certificate which provides recognition of satisfactory completion of the instruction.

- (1) The certificate shall be effective for four years from issue date.
- (2) The certificate shall be reissued upon satisfactory completion of a current certification examination administered by North Carolina Department of Transportation (NCDOT) training providers.

(d) Any operator authorized to escort a permitted oversize-overweight load in North Carolina shall make application to NCDOT and be qualified as follows:

- (1) An escort certified by another state's approved program;
- (2) A North Carolina law enforcement officer; or
- (3) A person who:
 - (A) Meets one of the following requirements:
 - (i) Is at least 21 years of age;
 - (ii) Is at least 18 years of age with a Class A commercial driver's license; or
 - (iii) Is at least 18 years of age, has been employed as an escort driver for at least one year, is being sponsored by his employer for entry into the certification program, and completes all certification requirements prior to July 1, 2003;
 - (B) Possesses a valid driver's license without restrictions other than for use of corrective lens and has demonstrated evidence of operating a motor vehicle safely which includes not operating in a reckless manner or driving while impaired in the previous 12 months. The driving record shall be documented by a certified copy of Division of Motor Vehicles (DMV) Driver's Record accompanying the application;
 - (C) Possesses and provides with application documentation of completion of a defensive driving course approved by the National Safety Council or an equivalent course; and
 - (D) Has successfully completed the eight classroom-hour North Carolina Department of Transportation Oversize-Overweight Load Escort Vehicle Operator Certification Program offered by the North Carolina Community College System with a certification examination score of at least 75% correct and has received escort certification by the Department.

(e) Certification shall be revoked during its effective period for the following:

- (1) Failure to maintain a valid driver's license without restrictions other than for corrective lens; or
- (2) Failure to operate a motor vehicle safely. Conviction of operating in a reckless manner or driving while impaired shall constitute prima facie evidence of not operating a motor vehicle in a safe manner; or

(3) Evidence of performing the duties of an escort driver in a manner with the potential to cause an accident, personal injury, or damage to property.

(f) If certification is revoked under this Section, subsequent certification as an Escort Vehicle Operator shall require reapplication, satisfaction of program prerequisites, and requalification through the certification program.

(g) An individual who has had his or her certificate revoked may, within 15 days following notification of the adverse action, make written appeal to the Secretary of Transportation for review of the revocation. The Secretary may affirm or set aside the revocation based on a review of the written appeal, the revocation decision, as well as any available documents, exhibits or other evidence bearing on the appeal. The individual appealing will be advised of the final disposition of the action within 21 days following receipt of the appeal.

(h) The Secretary of Transportation or his designee shall recognize certificates of other states whose programs meet the objectives of North Carolina's program.

(i) Escort Vehicle Operator certification and a valid driver's license shall be available in the escort vehicle for inspection whenever the operator is performing the role of escort.

(j) Failure to conform to the escort requirements of this Rule shall result in penalties imposed in G.S. 20-119(d).

History Note: Authority G.S. 20-119; Temporary Adoption Eff. March 11, 2002; Eff. April 1, 2003.

19A NCAC 03G .0205 ISSUING OF ORIGINAL CERTIFICATE

Any applicant for certification as a school bus driver shall meet the following minimum requirements:

- (1) Legal:
 - (a) Shall be at least 18 years of age with at least six months driving experience as a licensed operator of a motor vehicle, and shall possess a valid North Carolina driver license of Class A, B, or C. In the event a prospective driver shall have his place of residence in another state, he may be certified as a school bus driver if he submits a copy of his driving record from the state in which he is licensed before his initial certification. Also, he must notify both his employer and the N.C. School Bus and Traffic Safety Section within 30 days of a conviction of any moving violation no matter what type of vehicle he was driving.
 - (b) Shall within a period of one year (12 months) immediately preceding certification have on his driving record:
 - (i) No more than one conviction of any moving violation;
 - (ii) No conviction whatever of:
 - (A) Reckless driving;

- (B) Speeding in excess of 15 mph above the posted limit; or
- (C) Passing a stopped school bus;
- (iii) No conviction of a moving violation which was the proximate cause of an accident.
- (c) Shall within a period of two years (24 months) immediately preceding certification have on his driving record no suspension or revocation of the driving privilege other than for such status offenses as:
 - (i) Lapsed liability insurance;
 - (ii) Failure to appear in court;
 - (iii) Failure to comply with out-of-state citation; or
 - (iv) A 30 day revocation not accompanied by a subsequent conviction of driving while impaired.
- (d) Shall within a period of five years (60 months) immediately preceding certification have on his driving record:
 - (i) No more than three convictions of moving violations of any kind;
 - (ii) No more than two convictions of moving violations which were the proximate causes of accidents;
 - (iii) No conviction of driving while impaired;
 - (iv) No suspension or revocation of the driving privilege other than for:
 - (A) Those status offenses enumerated in Paragraph (c) of this Rule,
 - (B) Those offenses enumerated in G.S. 20-16(a), subsections (9) and (10).
- (e) Shall have on his driving record no more than one conviction of driving while impaired.
- (f) Shall have no "STOP" entry appearing on his driving record at the time of certification.
- (g) Shall have no record of any conviction of a violation of the criminal code greater than a misdemeanor for a period of at least five years immediately preceding

- certification. Further, shall never have had in any jurisdiction a conviction of an offense against the public morals, including but not limited to rape and child molestation.
- (h) Shall have a driving record which in its overall character arouses no serious question about the reliability, judgment, or emotional stability of the applicant.
- (i) Shall successfully complete the training course for school bus drivers.
- (2) Physical Standards for School Bus Drivers. Every school bus driver shall meet the physical standards set forth in The North Carolina Physician's Guide To Driver Medical Evaluation, published in June 1995 by the Division of Epidemiology, North Carolina Department of Health and Human Services, which is available without charge from the School Bus & Traffic Safety Section of the Division of Motor Vehicles including any subsequent amendments and editions.

History Note: Authority G.S. 20-39(b); 20-218; Eff. April 1, 1989; Amended Eff. August 1, 2000; January 1, 1994; Temporary Amendment Eff. May 18, 2001; Amended Eff. April 1, 2003; August 1, 2002.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 4 - COMMISSION FOR AUCTIONEERS

21 NCAC 04B .0603 SALE PROCEEDS, ACCOUNTING AND ESCROW ACCOUNTS

- (a) Each payment made payable to the auctioneer/firm in which any portion belongs to others, and which are not disbursed to the seller on auction day, must be deposited in an escrow account for the benefit of the owner or seller of such property within three business days after receipt of same.
- (b) Any licensee who disburses any funds on auction day shall prepare a receipt or settlement statement in compliance with G.S. 85B-7.1(a) and maintain records in compliance with G.S. 85B-7.1(b).
- (c) Every auctioneer/firm that does not disburse all funds to the seller on auction day shall establish and maintain a separate bank account designated as "Custodial Account for Sellers Proceeds" or some similar identifying designation, to disclose that the depositor is acting as a fiduciary and that the funds in the account are trust funds.
- (d) Such custodial accounts for sellers proceeds must be established and maintained in banks or savings and loan associations located in the State of North Carolina whose deposits are insured by the Federal Deposit Insurance Corporation, or comparable state recognized insurance agency or program.
- (e) The Custodial Account for Sellers shall be drawn on only for payment of:

- (1) the net proceeds to the seller, or to any person that the auctioneer/firm knows is entitled to payment;
- (2) to pay lawful charges against the property which the auctioneer/firm shall in its capacity as agent, be required to pay; and
- (3) to obtain any sums due the auctioneer/firm as compensation for its services.

(f) In the event of a dispute between the seller and buyer of goods or property or between the licensee and any person in whose name trust or escrow funds are held, the licensee shall retain said monies in his trust or escrow account until he has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction.

(g) Each auctioneer/firm shall keep such accounts and records as will disclose at all times the handling of funds in such Custodial Accounts for Sellers Proceeds. Accounts and records must at all times disclose the names of buyers and the amount of purchase and payment from each, also, the names of the sellers and the amount due and payable to each from funds in the Custodial Account for Sellers Proceeds. The names of the buyers and amount of purchase and payment from each related to an individual seller shall be delivered to the seller within 14 days of a written request made within 90 days of settlement of a specific auction.

(h) All trust or escrow account records and records of disbursement shall be available for inspection by the Commission or its designated agent, without advance notice, and copies shall be provided to the Commission upon request.

History Note: Authority G.S. 85B-3(f); 85B-7.1; 85B-8(a); Eff. June 1, 1991; Amended Eff. April 1, 2003; January 1, 1995.

CHAPTER 8 - BOARD OF CERTIFIED PUBLIC ACCOUNTANT EXAMINERS

21 NCAC 08A .0301 DEFINITIONS

(a) The definitions set out in G.S. 93-1(a) shall apply when those defined terms are used in 21 NCAC 8.

(b) In addition to the definitions set out in G.S. 93-1(a), the following definitions and other definitions in this Section apply when these terms are used in 21 NCAC 8:

- (1) "Active," when used to refer to the status of a person, describes a person who possesses a North Carolina certificate of qualification and who has not otherwise been granted "Retired," "Inactive," or "Conditional" status;
- (2) "Agreed upon procedure" means a client has engaged a CPA to issue a report of findings based on specific procedures performed on specific subject matter of specified elements, accounts, or accounting information that is part of but significantly less than a financial statement;
- (3) "AICPA" means the American Institute of Certified Public Accountants;
- (4) "Applicant" means a person who has applied to take the CPA examination;
- (5) "Attest service" means:

- (A) any audit;
- (B) any review of a financial statement;
- (C) any compilation of a financial statement when the CPA expects, or reasonably might expect, that a third party will use the compilation and the CPA does not disclose a lack of independence;
- (D) any examination of prospective financial information; or
- (E) any agreed upon procedure;

- (6) "Audit" means an examination of financial statements of a person by a CPA, conducted in accordance with generally accepted auditing standards, to determine whether, in the CPA's opinion, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;
- (7) "Calendar year" means the 12 months beginning January 1 and ending December 31;
- (8) "Candidate" means a person whose application to take the CPA examination has been accepted and who may sit for the CPA examination;
- (9) "Client" means a person who orally or in writing agrees with a licensee to receive any professional services;
- (10) "Commission" means compensation, except a referral fee, for recommending or referring any product or service to be supplied by another person;
- (11) "Compilation of a financial statement" means presenting in the form of a financial statement information that is the representation of any other person without the CPA's undertaking to express any assurance on the statement;
- (12) "Conditional," when used to refer to the status of a person, describes a person who holds a North Carolina certificate of qualification under certain conditions as imposed by the Board, such as additional requirements for failure to complete the required CPE hours in a calendar year;
- (13) "Contingent fee" means a fee established for the performance of any service pursuant to an arrangement in which no fee will be charged unless a specified finding or result is attained, or in which the amount of the fee is otherwise dependent upon the finding or result of such service;
- (14) "CPA" means certified public accountant;
- (15) "CPA firm" means a sole proprietorship, a partnership, a professional corporation, a professional limited liability company, or a registered limited liability partnership which uses "certified public accountant(s)" or "CPA(s)" in or with its name or offers to or renders any attest services in the public practice of accountancy;

APPROVED RULES

- (16) "CPE" means continuing professional education;
- (17) "Disciplinary action" means revocation or suspension of, or refusal to grant, membership, or the imposition of a reprimand, probation, constructive comment, or any other penalty or condition;
- (18) "Examination of prospective financial information" means an evaluation by a CPA of:
- (A) a forecast or projection,
 - (B) the support underlying the assumptions in the forecast or projection,
 - (C) whether the presentation of the forecast or projection is in conformity with AICPA presentation guidelines; or
 - (D) whether the assumptions in the forecast or projection provide a reasonable basis for the forecast or projection;
- (19) "FASB" means the Financial Accounting Standards Board;
- (20) "Forecast" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions the entity expects to exist and the course of action the entity expects to take;
- (21) "GASB" means the Governmental Accounting Standards Board;
- (22) "Inactive," when used to refer to the status of a person, describes one who has requested inactive status and been approved by the Board and who does not use the title "certified public accountant" nor does he or she allow anyone to refer to him or her as a "certified public accountant," and neither he or she nor anyone else refers to him or her in any representation as described in 21 NCAC 08A .0308(b).
- (23) "IRS" means the Internal Revenue Service;
- (24) "Jurisdiction" means any state or territory of the United States or the District of Columbia;
- (25) "License year" means the 12 months beginning July 1 and ending June 30;
- (26) "Member of a CPA firm" means any CPA who has an equity ownership interest in a CPA firm;
- (27) "NASBA" means the National Association of State Boards of Accountancy;
- (28) "NCACPA" means the North Carolina Association of Certified Public Accountants;
- (29) "North Carolina office" means any office physically located in North Carolina;
- (30) "Person" means any natural person, corporation, partnership, professional limited liability company, registered limited liability partnership, unincorporated association, or other entity;
- (31) "Professional" means arising out of or related to the particular knowledge or skills associated with CPAs;
- (32) "Projection" means prospective financial statements that present, to the best of the responsible party's knowledge and belief, given one or more hypothetical assumptions, an entity's expected financial position, results of operations, and changes in financial position or cash flows that are based on the responsible party's assumptions reflecting conditions it expects would exist and the course of action it expects would be taken given such hypothetical assumptions;
- (33) "Referral fee" means compensation for recommending or referring any service of a CPA to any person;
- (34) "Retired," when used to refer to the status of a person, describes one possessing a North Carolina certificate of qualification who verifies to the Board that the applicant does not receive or intend to receive in the future any earned compensation for current personal services in any job whatsoever and will not return to active status. However, retired status does not preclude volunteer services for which the retired CPA receives no direct nor indirect compensation so long as the retired CPA does not sign any documents, related to such services, as a CPA;
- (35) "Revenue Department" means the North Carolina Department of Revenue;
- (36) "Review" means to perform an inquiry and analytical procedures that permit a CPA to determine whether there is a reasonable basis for expressing limited assurance that there are no material modifications that should be made to financial statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting;
- (37) "Reviewer" means a member of a review team including the review team captain;
- (38) "Suspension" means a revocation for a specified period of time. A CPA may be reinstated after a specific period of time if the CPA has met all conditions imposed by the Board at the time of suspension; and
- (39) "Trade name" means a name used to designate a business enterprise.
- (c) Any requirement to comply by a specific date to the Board that falls on a weekend or federal holiday shall be received as in compliance if postmarked by U.S. Postal Service cancellation or received in the board office on the next business day.

History Note: Authority G.S. 93-1; 93-12(8c); Eff. February 1, 1976; Readopted Eff. September 26, 1977;

Amended Eff. January 1, 2004; April 1, 1999; August 1, 1998; February 1, 1996; April 1, 1994; September 1, 1992.

21 NCAC 08F .0101 TIME AND PLACE OF CPA EXAMINATIONS

- (a) The Board shall hold the CPA examination twice a year.
- (b) The dates of the CPA Examination are determined by the examination vendor(s).
- (c) The Board shall announce the time and place for holding each CPA examination at least 60 days prior to the date thereof.

History Note: Authority G.S. 93-12(3); 93-12(4); Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. January 1, 2004; May 1, 1989.

21 NCAC 08F .0110 PROCTORING OTHER JURISDICTIONS' CANDIDATES

- (a) As a courtesy to other jurisdiction boards, and on their behalf, this Board shall proctor, in North Carolina, candidates taking the CPA examination. The following procedures shall be followed by persons desiring to be proctored in this state.
- (b) A request for proctoring shall be on a form provided by the Board and shall contain evidence from the home jurisdiction board that it has approved the candidate's examination application and the proctoring request.
- (c) The request for proctoring form shall be delivered to the Board office not later than April 1 for the May CPA examination and not later than October 1 for the November CPA examination.
- (d) The approval of the proctoring request shall be at the discretion of the Board and is not promised to any applicant. Factors considered in the decision shall include, but not be limited to, space availability, reasons for the proctoring request, date the application was received, reasons for any previous proctoring requests, and any special circumstances requested by the home jurisdiction board or applicant.
- (e) Effective with the administration of the computer-based CPA Examination, the Board may limit other jurisdictions' candidates from testing in any testing center in North Carolina.

History Note: Authority G.S. 93-12; Eff. December 1, 1987; Amended Eff. January 1, 2004; May 1, 1989.

21 NCAC 08F .0111 INELIGIBILITY DUE TO VIOLATION OF ACCOUNTANCY ACT

- (a) A person may not be eligible to take the CPA examination or receive the North Carolina certificate of qualification as a CPA if the Board determines that the person has engaged in conduct that would constitute a violation of G.S. 93 or the Rules of Professional Ethics and Conduct.
- (b) Any individual found to have engaged in conduct which subverts, or attempts to subvert the CPA Examination process may have his or her scores on the examination withheld and declared invalid, be disqualified from holding the CPA certification and may be subject to the imposition of other appropriate sanctions.
- (c) Conduct which subverts or attempts to subvert the examination process includes but is not limited to:

- (1) conduct which violates the standard of the test administration such as communicating with any other examinee during the administration of the examination;
- (2) having in one's possession during the administration of the examination any books, notes, written or printed material, or data of any other kind, other than the distributed examination materials;
- (3) failure to cooperate with testing officials;
- (4) conduct which violates the credentialing process, such as falsifying or misrepresenting educational credentials or other information required for admission to the examination, impersonating an examinee, or having an impersonator take the examination on another's behalf;
- (5) conduct which violates the nondisclosure prohibitions of the examination or aiding or abetting another in doing so; and
- (6) retaking or attempting to retake an examination section by an individual holding a valid CPA certificate in this State or a candidate who has unexpired credit for having already passed the same examination section unless directed to do so by the Board.

History Note: Authority G.S. 93-12(5); 93-12(9); Eff. May 1, 1989; Amended Eff. April 1, 2003.

21 NCAC 08F .0113 CANDIDATE'S REQUEST TO REVIEW CPA EXAMINATION

The Board shall allow a North Carolina candidate pursuant to G.S. 93B-(8) to review his or her CPA Examination within 60 days after the release of the grades in question.

History Note: Authority G.S. 93-12(3); Eff. August 1, 1995; Amended Eff. January 1, 2004.

21 NCAC 08G .0401 CPE REQUIREMENTS FOR CPAS

- (a) In order for a CPA to receive CPE credit for a course:
 - (1) the CPA must attend or complete the course;
 - (2) the course must meet the requirements set out in 21 NCAC 08G .0404(a) or (c) and
 - (3) the course must increase the professional competency of the CPA.
- (b) The Board registers sponsors of CPE courses. A CPE course provided by a registered sponsor is presumed to meet the CPE requirements set forth in 21 NCAC 8G .0404(a) if the sponsor has indicated that the course meets those requirements. However, it is up to the individual CPAs attending the course and desiring to claim CPE credit for it to assess whether it increases their professional competency.
- (c) A course that increases the professional competency of a CPA is a course in an area of accounting in which the CPA practices or is planning to practice in the near future, or in the area of professional ethics or an area related to the profession.

(d) Because of differences in the education and experience of CPAs, a course may contribute to the professional competence of one CPA but not another. Each CPA must therefore exercise judgment in selecting courses for which CPE credit is claimed and choose only those that contribute to that CPA's professional competence.

(e) Active CPAs must complete 40 CPE hours, computed in accordance with 21 NCAC 08G .0409 by December 31 of each year, except as follows:

- (1) CPAs having certificate applications approved by the Board in April-June must complete 30 CPE hours during the same calendar year.
- (2) CPAs having certificate applications approved by the Board in July-September must complete 20 CPE hours during the same calendar year.
- (3) CPAs having certificate applications approved by the Board in October-December must complete 10 CPE hours during the same calendar year.

(f) There are no CPE requirements for retired or inactive CPAs.

(g) Any CPE hours completed during the calendar year in which the certificate is approved may be used for that year's requirement even if the hours were completed before the certificate was granted. When a CPA has completed more than the required number of hours of CPE in any one calendar year, the extra hours, not in excess of 20 hours, may be carried forward and treated as hours earned in the following year. A CPA may not claim CPE credit for courses taken in any year prior to the year of certification.

(h) Any CPE hours used to satisfy the requirements for change of status as set forth in 21 NCAC 08J .0105, for reinstatement as set forth in 21 NCAC 08J .0106, or for application for a new certificate as set forth in 21 NCAC 08I .0104 may also be used to satisfy the annual CPE requirement set forth in Paragraph (e) of this Rule.

(i) It is the CPA's responsibility to maintain records substantiating the CPE credits claimed for the current year and for each of the four calendar years prior to the current year.

History Note: Authority G.S. 93-12(8b); Eff. May 1, 1981;

Amended Eff. January 1, 2004; August 1, 1995; April 1, 1994; May 1, 1989; September 1, 1988.

21 NCAC 08G .0403 QUALIFICATION OF CPE SPONSORS

(a) The Board registers sponsors of CPE courses and not courses. The Board will maintain a list of sponsors which have agreed to conduct programs in accordance with the standards for CPE set forth in 21 NCAC 08G .0404. Such sponsors shall indicate their agreement by signing a CPE program sponsor agreement form provided by the Board. These sponsors are registered sponsors.

(b) Notwithstanding Paragraph (a) of this Rule, sponsors of continuing education programs which are listed in good standing on the National Registry of CPE Sponsors maintained by the NASBA are considered to be registered CPE sponsors with the Board. These sponsors, are not required to sign a CPE program sponsor agreement form with this Board.

(c) In the CPE program sponsor agreement with the Board, the registered sponsor shall agree to:

- (1) allow the Board to audit courses offered by the sponsor in order to determine if the sponsor is complying with the terms of the agreement and shall refund the registration fee to the auditor if requested by the auditor;
- (2) have an individual who did not prepare the course review each course to be sure it meets the standards in this Rule;
- (3) state the following in every brochure or other publication or announcement concerning a course:
 - (A) the general content of the course and the specific knowledge or skill taught in the course;
 - (B) any prerequisites for the course and any advance preparation required for the course and if none, that should be stated;
 - (C) the level of the course, such as basic, intermediate, or advanced;
 - (D) the teaching methods to be used in the course;
 - (E) the amount of sponsor recommended CPE credit a CPA who takes the course could claim; and
 - (F) the date the course is offered, if the course is offered only on a certain date, and, if applicable, the location;
- (4) ensure that the instructors or presenters of the course are qualified to teach the subject matter of the course and to apply the instructional techniques used in the course;
- (5) evaluate the performance of an instructor or presenter of a course to determine whether the instructor or presenter is suited to serve as an instructor or presenter in the future;
- (6) encourage participation in a course only by those who have the appropriate education and experience;
- (7) distribute course materials to participants in a timely manner;
- (8) use physical facilities for conducting the course that are consistent with the instructional techniques used;
- (9) assign accurately the number of CPE credits each participant may be eligible to receive by either:
 - (A) monitoring attendance at a group course; or
 - (B) testing in order to determine if the participant has learned the material presented;
- (10) provide, before the course's conclusion, an opportunity for the attendees to evaluate the quality of the course by questionnaires, oral feedback, or other means, in order to determine whether the course's objectives have been met, its prerequisites were necessary or desirable, the facilities used were satisfactory, and the course content was appropriate for the level of the course;

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- (11) inform instructors and presenters of the results of the evaluation of their performance;
 - (12) systematically review the evaluation process to ensure its effectiveness;
 - (13) retain for five years from the date of the course presentation or completion:
 - (A) a record of participants completing course credit requirements;
 - (B) an outline of the course (or equivalent);
 - (C) the date and location of presentation;
 - (D) the participant evaluations or summaries of evaluations;
 - (E) the documentation of the instructor's qualifications; and
 - (F) the number of contact hours recommended for each participant;
 - (14) have a visible, continuous and identifiable contact person who is charged with the administration of the sponsor's CPE programs and has the responsibility and is accountable for assuring and demonstrating compliance with these rules by the sponsor or by any other organization working with the sponsor for the development, distribution or presentation of CPE courses;
 - (15) develop and promulgate policies and procedures for the management of grievances including, but not limited to, tuition and fee refunds;
 - (16) possess a budget and resources that are adequate for the activities undertaken and their continued improvement; and
 - (17) provide persons completing course requirements with written proof of completion indicating the participant's name, the name of the course, the date the course was held or completed, the sponsor's name and address, and the number of CPE hours calculated and recommended in accordance with 21 NCAC 08G .0409.
- (d) Failure of a registered sponsor to comply with the terms of the CPE program sponsor agreement shall be grounds for the Board to terminate the agreement, to remove the registered sponsor's name from the list of registered sponsors and to notify the public of this action.

History Note: Authority G.S. 93-12(8b); Eff. May 1, 1981; Amended Eff. January 1, 2004; March 1, 1990; May 1, 1989; August 1, 1988; February 1, 1983.

21 NCAC 08G .0404 REQUIREMENTS FOR CPE CREDIT

- (a) A CPA shall not be granted CPE credit for a course unless the course:
 - (1) is in one of the six fields of study recognized by the Board and set forth in Paragraph (b) of this Rule;

- (2) is developed by an individual who has education and work experience in the subject matter of the course; and
 - (3) uses instructional techniques and materials that are current and accurate.
- (b) The six fields of study recognized by the Board are accounting and auditing, consulting services, management, personal development, specialized knowledge and applications, and taxation.
- (1) The accounting and auditing field of study includes accounting and financial reporting subjects, the body of knowledge dealing with recent pronouncements of authoritative accounting principles issued by the standard-setting bodies, and any other related subject generally classified within the accounting discipline. It also includes auditing subjects related to the examination of financial statements, operations systems, and programs; the review of internal and management controls; and the reporting on the results of audit findings, compilation, and review.
 - (2) The consulting services field of study deals with all consulting services provided by professional accountants—management, business, personal, and other. It includes management consulting services and personal financial planning services. This field also covers an organization's various systems, the services provided by consultant practitioners, and the engagement management techniques that are typically used. An organization's systems include those dealing with planning, organizing, and controlling any phase of individual financial activity and business activity. Services provided encompass those for management, such as designing, implementing, and evaluating operating systems for organizations, as well as business consulting services and personal financial planning.
 - (3) The management field of study considers the management needs of individuals primarily in public practice, industry, and government. Some subjects concentrate on the practice management area of the public practitioner, such as organizational structures, marketing services, human resource management, and administrative practices. For individuals in industry, there are subjects dealing with the financial management of the organization, including information systems, budgeting, and asset management, as well as items covering management planning, buying and selling businesses, contracting for goods and services, and foreign operations. For CPAs in government, this curriculum embraces budgeting, cost analysis, human resource management, and financial management in state and local governmental entities. In general, the emphasis in this field is on the

specific management needs of CPAs and not on general management skills.

- (4) The personal development field of study includes becoming a competent people manager, which covers such skills as communications, managing the group process, and dealing effectively with others in interviewing, counseling, and career planning. Public relations and professional ethics are also treated.
- (5) The specialized knowledge and applications field of study treats subjects related to specialized industries, such as not-for-profit organizations, health care, and oil and gas.
- (6) The taxation field of study includes subjects dealing with tax compliance and tax planning. Compliance covers tax return preparation and review and IRS examinations, ruling requests, and protests. Tax planning focuses on applying tax rules to prospective transactions and understanding the tax implications of unusual or complex transactions. Recognizing alternative tax treatments and advising the client on tax saving opportunities are also part of tax planning.

(c) The following may qualify as acceptable types of continuing education programs, provided the programs comply with the requirements set forth in Paragraph (a) of this Rule:

- (1) professional development programs of national and state accounting organizations;
- (2) technical sessions at meetings of national and state accounting organizations and their chapters;
- (3) courses taken at regionally accredited colleges and universities;
- (4) educational programs that are designed and intended for continuing professional education activity conducted within an association of accounting firms; and
- (5) correspondence courses that are designed and intended for continuing professional education activity. A CPA may claim credit for a course offered by a non-registered sponsor provided that the course meets the requirements of 21 NCAC 08G .0403(c), 21 NCAC 08G .0404, and 21 NCAC 08G .0409. The CPA shall maintain documentation proving that the course met these standards.

(d) CPE credit may be granted for teaching a CPE course or authoring a publication as long as the preparation to teach or write increased the CPA's professional competency and was in one of the six fields of study recognized by the Board and set forth in Paragraph (b) of this Rule.

(e) CPE credit shall not be granted for a self-study course if the material that the CPA must study to take the examination is not designed for CPE purposes. This includes periodicals, guides, magazines, subscription services, books, reference manuals and supplements which contain an examination to test the comprehension of the material read.

History Note: Authority G.S. 93-12(8b);

Eff. May 1, 1981;

Amended Eff. January 1, 2004; August 1, 1998;

February 1, 1996; March 1, 1990; May 1, 1989; June 1, 1988.

21 NCAC 08G .0406 COMPLIANCE WITH CPE REQUIREMENTS

(a) All active CPAs shall file with the Board a completed CPE reporting form by the July 1 renewal date of each year.

(b) If a CPA fails to complete the CPE requirements prior to the end of the previous calendar year but the CPA has completed them by June 30, the Board may:

- (1) change the CPA's status from active to conditional and require the payment of a civil penalty of one hundred dollars (\$100.00) for the first such failure within a five calendar year period;
- (2) place the CPA on conditional status again and require the payment of a civil penalty of two hundred fifty dollars (\$250.00) for the second such failure within a five calendar year period; and
- (3) deny the renewal of the CPA's certificate for a period of not less than 30 days and until the CPA meets the reinstatement requirements set forth in 21 NCAC 08J .0106 for the third such failure within a five calendar year period.

History Note: Authority G.S. 93-12(8b); 93-12(9)(e);
Eff. May 1, 1981;

*Amended Eff. January 1, 2004; April 1, 1994; March 1, 1990;
May 1, 1989; October 1, 1988.*

21 NCAC 08G .0409 COMPUTATION OF CPE CREDITS

(a) Group Courses: Non-College. CPE credit for a group course that is not part of a college curriculum shall be given based on contact hours. A contact hour shall be 50 minutes of instruction. One-half credits shall be equal to 25 minutes after the first credit hour has been earned in a formal learning activity. For example, a group course lasting 100 minutes shall be two contact hours and thus two CPE credits. A group course lasting 75 minutes shall be only one and one-half contact hours and thus one and one-half CPE credits. When individual segments of a group course shall be less than 50 minutes, the sum of the individual segments shall be added to determine the number of contact hours. For example, five 30-minute presentations shall be 150 minutes, which shall be three contact hours and three CPE credits. No credit shall be allowed for a segment unless the participant completes the entire segment.

(b) Completing a College Course. CPE credit for completing a college course in the college curriculum shall be granted based on the number of credit hours the college gives the CPA for completing the course. One semester hour of college credit shall be 15 CPE credits; one quarter hour of college credit shall be 10 CPE credits; and one continuing education unit (CEU) shall be 10 CPE credits. However, under no circumstances shall CPE credit be given to a CPA who audits a college course.

(c) Self Study. CPE credit for a self-study course shall be given based on the average number of contact hours needed to complete the course. The average completion time shall be allowed for CPE credit. A sponsor must determine, on the basis

of pre-tests, the average number of contact hours it takes to complete a course. CPE credit for self-study courses shall be limited so that a CPA completes at least eight hours of non-self study each year.

(d) Instructing a CPE Course. CPE credit for teaching or presenting a CPE course for CPAs shall be given based on the number of contact hours spent in preparing and presenting the course. No more than 50 percent of the CPE credits required for a year shall be credits for preparing for and presenting CPE courses. CPE credit for preparing for and presenting a course shall be allowed only once a year for a course presented more than once in the same year by the same CPA.

(e) Authoring a Publication. CPE credit for published articles and books shall be given based on the number of contact hours the CPA spent writing the article or book. No more than 25 percent of a CPA's required CPE credits for a year shall be credits for published articles or books.

(f) Instructing a College Course. CPE credit for instructing a graduate level college course shall be given based on the number of credit hours the college gives a student for successfully completing the course, using the calculation set forth in Paragraph (b) of this Rule. Credit shall not be given for instructing an undergraduate level course. In addition, no more than 50 percent of the CPE credits required for a year shall be credits for instructing a college course and, if CPE credit shall also be claimed under Paragraph (d) of this Rule, no more than 50 percent of the CPE credits required for a year shall be credits claimed under Paragraph (d) and this Paragraph. CPE credit for instructing a college course shall be allowed only once for a course presented more than once in the same year by the same CPA.

History Note: Authority G.S. 93-12(8b); Eff. May 1, 1989; Amended Eff. January 1, 2004; February 1, 1996; April 1, 1994; March 1, 1990.

21 NCAC 08H .0101 RECIPROCAL CERTIFICATES

(a) A person from another jurisdiction who desires to offer or render professional services as a CPA to his or her employer or a client in this state shall meet all the requirements imposed on an applicant under G.S. 93-12(5) or the requirements of G.S. 93-12(6).

(b) The fee for a reciprocal certificate shall be the maximum amount allowed by G.S. 93-12(7a).

(c) An applicant for a reciprocal certificate shall meet the following requirements:

- (1) The applicant has the legal authority to use the CPA title and to practice public accountancy in a jurisdiction.
- (2) The applicant has received a passing score on each part of the Uniform CPA Examination.

(d) An applicant applying for a reciprocal certificate under G.S. 93-12(6) must also meet the following requirements which the Board considers to be substantially equivalent to those of G.S. 93-12(5):

- (1) The applicant shall have 150 semester hours of college or university education including a bachelors or higher degree with a concentration in accounting and one year of experience in the field of accounting verified

by a certified public accountant who was the applicant's direct supervisor and otherwise comply with 21 NCAC 08F .0410; or

- (2) The applicant:
 - (A) within 10 years immediately preceding the filing date of the application, has had two years of experience in the field of accounting under the direct supervision of a CPA who held a valid license during the period of direct supervision in any state or territory of the United States or the District of Columbia; or
 - (B) has eight years of experience in the field of accounting, or eight years of experience teaching accounting as defined and calculated in 21 NCAC 08F .0409, or any combination of such experience earned within the 12 years immediately preceding the filing date of the application; and
- (3) During the two years preceding the applicant's filing date for a reciprocal certificate, the applicant has completed 80 hours of CPE in courses meeting the requirements of 21 NCAC 08G .0401(a). However, an applicant who received his or her initial CPA license within four years from the filing date of the application for a reciprocal certificate is exempt from this CPE requirement.

(e) An applicant for change in status, reissuance, or reinstatement of a reciprocal certificate that was inactive, forfeited, or retired more than 10 years before the date of reapplication, must comply with all current requirements for a reciprocal certificate.

History Note: Authority G.S. 93-12(6); 93-12(7a); Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. January 1, 2004; April 1, 1999; August 1, 1998; September 1, 1992; March 1, 1990; May 1, 1989; June 1, 1988.

21 NCAC 08H .0106 NON-RESIDENT NOTIFICATION

(a) An individual whose principal place of business is outside this State must notify the Board that he or she intends to perform or offers to perform services in this State as a CPA no later than 30 days after the intent to perform or offer to perform services. Such notification shall be made on a form supplied by the Board.

(b) Notification to the Board shall be valid until December 31 of each year at which time the individual must renew his or her notification by January 31 or his or her privilege to perform or offer to perform services in this state as a CPA is terminated.

History Note: Authority G.S. 93-10; Eff. April 1, 2003.

21 NCAC 08J .0108 CPA FIRM REGISTRATION

(a) All CPA firms shall register with the Board within 30 days after opening a North Carolina office or beginning a new CPA firm unless they are a professional corporation, professional limited liability company, or registered limited liability

partnership, in which case they shall register prior to formation pursuant to 21 NCAC 08K .0104 and .0301.

(b) In addition to the registration required by Paragraph (a) of this Rule, all CPA firms shall renew annually by January 31 with the Board upon forms provided by the Board.

(c) The information provided by the registration shall include:

- (1) Either an application for exemption from peer review, a request to be deemed in compliance with peer review or registration for peer review, pursuant to 21 NCAC 08M .0105;
- (2) For all CPA firms not exempt from the peer review program, with the registration immediately following its review, the information required by 21 NCAC 08M .0106(a);
- (3) For all North Carolina offices, an office registration form indicating the name of the office supervisor, the location of the office and its telephone number;
- (4) For all partnerships or registered limited liability partnerships, a list of all resident and nonresident partners of the partnership;
- (5) For all professional limited liability companies, the information set forth in 21 NCAC 08K .0104(d);
- (6) For all incorporated CPA firms, the information set forth in 21 NCAC 08K .0104(d);
- (7) For all CPA firms, the appropriate registration fees as set forth in 21 NCAC 08J .0110; and
- (8) For all new CPA firms, the percentage of ownership held individually by each owner who has five percent or more of ownership:
 - (A) in the new CPA firm; and
 - (B) at the year-end in each CPA firm in which that owner was an owner during the preceding two years.
- (9) For all changes in ownership of a CPA firm, the percentage of ownership held individually by each owner who has five percent or more of ownership.

(d) All information provided for registration with the Board shall pertain to events of and action taken during the year preceding the year of registration. The last day of the preceding calendar year is the "year-end".

(e) With regard to Paragraph (c)(3) of this Rule, one representative of a CPA firm may file all documents with the Board on behalf of the CPA firm's offices in North Carolina. However, responsibility for compliance with this Rule shall remain with each office supervisor.

(f) With regard to Paragraph (c)(4) or (c)(5) of this Rule, one annual listing by a representative of the partnership, registered limited liability partnership, or professional limited liability company shall satisfy the requirement for all owners of the CPA firm. However, each owner shall remain responsible for compliance with this Rule. The absence of a filing under Paragraph (c)(4) or (c)(5) of this Rule shall be construed to mean that no partnership, registered limited liability partnership, or professional limited liability company exists.

(g) Notice that a CPA firm has dissolved or any change in the information required by Paragraph (c)(3) of this Rule shall be

delivered to the Board's office within 30 days after the change or dissolution occurs. A professional corporation or professional limited liability company which is dissolving shall deliver the Articles of Dissolution to the Board's office within 30 days of filing with the Office of the Secretary of State.

(h) Upon written petition by a CPA firm, the Board may grant the CPA firm a conditional registration for a period of 60 days or less, if the CPA firm shows that circumstances beyond its control prohibited it from registering with the Board, completing a peer review or notifying the Board of change or dissolution pursuant to Paragraphs (a), (b), (c), and (g) of this Rule. The Board may grant a second extension under continued extenuating circumstances.

(i) A complete registration, as required by 21 NCAC 08J .0108(b) and (c), shall be postmarked with proper postage or received in the Board office not later than the last day of January unless that date falls on a weekend or federal holiday, in which case that day shall be the next business day. Only a U.S. Postal Service cancellation shall be considered as the postmark. If a registration is sent to the Board office via a private delivery service, the date the package is received by the delivery service shall be considered as the postmark.

History Note: Authority G.S. 55B-10; 55B-12; 57C-1; 57C-2; 59-84.2; 93-12(8a); 93-12(8c); Eff. June 1, 1985;

Amended Eff. January 1, 2004; April 1, 1999; August 1, 1998; August 1, 1995; April 1, 1994; April 1, 1991; May 1, 1989.

21 NCAC 08M .0106 COMPLIANCE

(a) A CPA firm registered for peer review shall provide to the Board the following:

- (1) Peer review due date;
- (2) Year end date;
- (3) Final Letter of Acceptance from peer review program within 60 days of the date of the letter; and
- (4) A package to include the Peer Review Report, Letter of Comments, Letter of Response and Final Letter of Acceptance for all adverse and second consecutive modified reports issued by a peer review program within 60 days of the date of the Final Letter of Acceptance.

(b) A peer review is not complete until the Final Letter of Acceptance is issued by the peer review program with the new due date.

(c) If a CPA firm fails to comply with 21 NCAC 08M .0105(c), (d), or (g), the Board may take disciplinary action against the CPA firm's members which may include:

- (1) a conditional license and one hundred dollars (\$100.00) civil penalty upon conditions as the Board may deem appropriate for non-compliance of less than 60 days;
- (2) a conditional license and two hundred fifty dollars (\$250.00) civil penalty for non-compliance in excess of 60 days but not more than 120 days; and
- (3) a suspension of each member's CPA certificate for a period of not less than 30 days and a civil penalty of five hundred dollars (\$500.00) for non-compliance in excess of 120 days.

History Note: Authority G.S. 93-12(7b); 93-12(8c); Eff. January 1, 2004.

21 NCAC 08N .0202 DECEPTIVE CONDUCT PROHIBITED

(a) Deception Defined. A CPA shall not engage in deceptive conduct. Deception includes fraud or misrepresentation and representations or omissions which a CPA either knows or should know have a capacity or tendency to deceive. Deceptive conduct is prohibited whether or not anyone has been actually deceived.

(b) Prohibited Deception. Prohibited conduct under this Section includes but is not limited to deception in:

- (1) obtaining or maintaining employment;
- (2) obtaining or keeping clients;
- (3) obtaining or maintaining certification, retired status, or exemption from peer review;
- (4) reporting CPE credits;
- (5) certifying the character or experience of exam or certificate applicants;
- (6) implying abilities not supported by education, professional attainments, or licensing recognition;
- (7) asserting that services or products sold in connection with use of the CPA title are of a particular quality or standard when they are not;
- (8) creating false or unjustified expectations of favorable results;
- (9) using or permitting another to use the CPA title in a form of business not permitted by the accountancy laws or rules;
- (10) permitting anyone not certified in this state (including one licensed in another state) to unlawfully use the CPA title in this state or to unlawfully operate as a CPA firm in this state; or
- (11) falsifying a review, report, or any required program or checklist of any peer review program.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2004; April 1, 1999.

21 NCAC 08N .0203 DISCREDITABLE CONDUCT PROHIBITED

(a) Discreditable Conduct. A CPA shall not engage in conduct discreditable to the accounting profession.

(b) Prohibited Discreditable Conduct. Discreditable conduct includes but is not limited to:

- (1) acts that reflect adversely on the CPA's honesty, integrity, trustworthiness, good moral character, or fitness as a CPA in other respects;
- (2) stating or implying an ability to improperly influence a governmental agency or official;
- (3) failing to comply with any order issued by the Board; or

- (4) failing to fulfill the terms of a peer review engagement contract.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. January 1, 2004; August 1, 1995.

21 NCAC 08N .0205 CONFIDENTIALITY

(a) Nondisclosure. A CPA shall not disclose any confidential information obtained in the course of employment or a professional engagement except with the consent of the employer or client.

(b) Exceptions. This Rule shall not be construed:

- (1) to relieve a CPA of any report obligations pertaining to Section .0400 of this Subchapter; or
- (2) to affect in any way the CPA's compliance with a validly issued subpoena or summons enforceable by this Board or by order of a court; or
- (3) to preclude the CPA from responding to any inquiry made by the AICPA Ethics Division or Trial Board, by a duly constituted investigative or disciplinary body of a state CPA society, or under state statutes; or
- (4) to preclude the disclosure of confidential client information necessary for the peer review process or for any quality review program; or
- (5) to preclude the CPA from assisting the Board in enforcing the accountancy statutes and rules.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. April 1, 2003.

21 NCAC 08N .0208 REPORTING CONVICTIONS, JUDGMENTS, AND DISCIPLINARY ACTIONS

(a) Criminal Actions. A CPA shall notify the Board within 30 days of any conviction or finding of guilt of, or pleading of *nolo contendere* to any criminal offense.

(b) Civil Actions. A CPA shall notify the Board within 30 days of any judgment or settlement in a civil suit, bankruptcy action, administrative proceeding, or binding arbitration, the basis of which is grounded upon an allegation of professional negligence, gross negligence, dishonesty, fraud, misrepresentation, incompetence, or violation of any federal or state tax law and which was brought against either the CPA or a North Carolina office of a CPA firm of which the CPA was a managing partner.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. April 1, 2003; April 1, 1999.

21 NCAC 08N .0211 RESPONSIBILITIES IN TAX PRACTICE

(a) Standards for Tax Services. A CPA shall not render services in the area of taxation unless the CPA has complied with the standards for tax services.

(b) Statements on Standards for Tax Services. The Statements on Standards for Tax Services issued by the AICPA, including

subsequent amendments and editions, are hereby incorporated by reference, as provided by G.S. 150B-21.6, and shall be considered as the standards for tax services for the purposes of Paragraph (a) of this Rule.

(c) Departures. Departures from the statements listed in Paragraph (b) of this Rule must be justified by those who do not follow them.

(d) Copies of Standards. Copies of the Statements on Standards for Tax Services may be inspected in the offices of the Board, as described in 21 NCAC 08A .0102. Copies may be obtained from the AICPA, 1211 Avenue of the Americas, New York, NY 10036 as part of the "AICPA Professional Standards." They are available at cost, which is approximately twenty-eight dollars (\$28.00) in paperback form or two hundred dollars (\$200.00) in looseleaf subscription form.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. April 1, 2003.

21 NCAC 08N .0302 FORMS OF PRACTICE

(a) Authorized Forms of Practice. A CPA who uses CPA in or with the name of the business or offers or renders attest services in the public practice of accountancy to clients shall do so only through a registered sole proprietorship, partnership, Professional Corporation, Professional Limited Liability Company, or Registered Limited Liability Partnership.

(b) Authorized Ownership. A CPA firm may have a ownership of up to 49 percent by non-CPAs. A CPA firm shall have ownership of at least 51 percent and be controlled in law and fact by holders of valid CPA certificates who have the unrestricted privilege to use the CPA title and to practice public accountancy in a jurisdiction and at least one whom shall be licensed by this Board.

(c) CPA Firm Registration Required. A CPA shall not offer or render professional services through a CPA firm which is in violation of the registration requirements of 21 NCAC 08J .0108, 08J .0110, or 08M .0101.

(d) Supervision of CPA Firms. Every North Carolina office of a CPA firm registered in North Carolina shall be actively and locally supervised by a designated actively licensed North Carolina CPA whose primary responsibility and a corresponding amount of time shall be work performed in that office.

(e) CPA Firm Requirements for Non-CPA Ownership. A CPA firm and its designated supervising CPA partner shall be held accountable for the following in regard to a non-CPA owner:

- (1) a non-CPA owner shall be a natural person or a general partnership or limited liability partnership directly owned by natural persons;
- (2) a non-CPA owner shall actively participate in the business of the firm or an affiliated entity as his or her principal occupation;
- (3) a non-CPA owner shall comply with all applicable accountancy statutes and the administrative code;
- (4) a non-CPA owner shall be of good moral character and shall be dismissed and disqualified from ownership for any conduct that, if committed by a licensee, would result in a discipline pursuant to G.S. 93-12(9);

- (5) a non-CPA owner shall report their name, address, phone number, and social security number, and or Federal Tax ID number on the CPA firm's registration; and
- (6) a non-CPA owner's name may not be used in the name of the CPA firm or held out to clients or the public that implies the non-CPA owner is a CPA.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. April 1, 2003; April 1, 1999; August 1, 1995.

21 NCAC 08N .0305 RETENTION OF CLIENT RECORDS

(a) Return upon Demand. A CPA must return client records in his or her possession to the client after a demand is made for their return. If the client is a partnership, records shall be returned upon request to any of its general partners. If the client is a limited partnership or a registered limited liability partnership, records shall be returned upon request to the general partner(s) and the managing partner or his or her designated individual respectively. If the client is a corporation, records shall be returned upon request to its president. If the client is a limited liability company, records shall be returned upon request to the manager. Joint records shall be returned upon request to any party. The records must be returned immediately upon demand unless circumstances make some delay reasonable in order to retrieve a closed file or to extract the CPA's work papers described in Paragraph (e) of this Rule. If the records cannot be returned immediately upon demand, the CPA shall immediately notify the client of the date the records will be returned. Nothing in this Rule shall be interpreted to require a CPA to pay delivery costs when the records are returned to the client.

(b) Return of Original Records. If the engagement is terminated prior to completion or the CPA's product has neither been received nor paid for by the client, the CPA is only required to return those records originally given to the CPA by the client.

(c) Retention to Force Payment. A CPA shall not retain a client's records in order to force payment of any kind.

(d) Work Papers Included in Client Records. Work papers are usually the CPA's property and need not be surrendered to the client. However, in some instances work papers will contain data which should properly be reflected in the client's books and records but for convenience have not been duplicated therein with the result that the client's records are incomplete. In such instances, the portion of the work papers containing such data constitutes part of the client's records, and copies shall be given to the client along with the rest of the client's records. Work papers considered part of the client's records include but are not limited to:

- (1) Worksheets in lieu of original entry (e.g., listings and distributions of cash receipts or cash disbursements on columnar work paper);
- (2) Worksheets in lieu of general ledger or subsidiary ledgers, such as accounts receivable, job cost and equipment ledgers, or similar types of depreciation records;
- (3) All adjusting and closing journal entries and supporting details not fully set forth in the journal entry; and

- (4) Consolidating or combining journal entries and worksheets and supporting detail used in arriving at final figures incorporated in an end product such as financial statements or tax returns.

(e) Work Papers Belonging to the CPA. Work papers developed by the CPA incident to the performance of an engagement which do not result in changes to the client's records, or are not in themselves part of the records ordinarily maintained by such clients, are solely the CPA's work papers and are not the property of the client. For example, the CPA may make extensive analyses of inventory or other accounts as part of the selective audit procedures. These analyses are considered to be a part of the CPA's work papers, even if the analyses have been prepared by client personnel at the request of the CPA. Only to the extent these analyses result in changes to the client's records would the CPA be required to furnish the details from the work papers in support of the journal entries recording the changes, unless the journal entries themselves contain all necessary details.

(f) Reasonable Fees for Copies. Nothing in this Rule shall be construed to require the CPA to furnish a client with copies of the client's records already in the client's possession. However, if the client asserts that such records have been lost, or are otherwise not in the client's possession, the CPA shall furnish copies of the records for a fee.

History Note: Authority G.S. 55B-12; 57C-2-01; 93-12(9); Eff. April 1, 1994; Amended Eff. April 1, 2003.

**CHAPTER 12 - LICENSING BOARD FOR
GENERAL CONTRACTORS**

21 NCAC 12 .0202 CLASSIFICATION

(a) A general contractor must be certified in one of five classifications. These classifications are:

- (1) Building Contractor. This classification covers all building construction activity including but not limited to: commercial, industrial, institutional, and all residential building construction; parking decks; all site work, grading and paving of parking lots, driveways, sidewalks, curbs, gutters, and water and wastewater systems which are ancillary to the aforementioned structures and improvements; and covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), S(Metal Erection), and S(Swimming Pools).
- (2) Residential Contractor. This classification covers all construction activity pertaining to the construction of residential units which are required to conform to the residential building code adopted by the Building Code Council pursuant to G.S. 143-138; all site work, driveways, sidewalks, and water and wastewater systems ancillary to the aforementioned structures and improvements;

and the work done as part of such residential units under the specialty classifications of S(Insulation), S(Masonry Construction), S(Roofing), and S(Swimming Pools).

- (3) Highway Contractor. This classification covers all highway construction activity including but not limited to: grading, paving of all types, installation of exterior artificial athletic surfaces, relocation of public and private utility lines ancillary to the principal project, bridge construction and repair, parking decks, sidewalks, curbs, gutters and storm drainage. Includes installation and erection of guard rails, fencing, signage and ancillary highway hardware; covers paving and grading of airport and airfield runways, taxiways, and aprons, including the installation of signage, runway lighting and marking; and covers work done under the specialty classifications of S(Boring and Tunneling), S(Concrete Construction), S(Marine Construction), S(Railroad Construction), and H(Grading and Excavating).

- (4) Public Utilities Contractor. This classification includes those whose operations are the performance of construction work on water and wastewater systems and on the subclassifications of facilities set forth in G.S. 87-10(3). The Board may issue a license to a public utilities contractor that is limited to any of the subclassifications set forth in G.S. 87-10(3) for which the contractor qualifies. A public utilities contractor license covers work done under the specialty classifications of S(Boring and Tunneling), PU(Communications), PU(Fuel Distribution), PU(Electrical-Ahead of Point of Delivery), and S(Swimming Pools).

- (5) Specialty Contractor. This classification covers all construction operation and performance of contract work outlined as follows:

- (A) H(Grading and Excavating). Covers the digging, moving and placing of materials forming the surface of the earth, excluding air and water, in such a manner that the cut, fill, excavation, grade, trench, backfill, or any similar operation can be executed with the use of hand and power tools and machines commonly used for these types of digging, moving and material placing. Covers work on earthen dams and the use of explosives used in connection with all or any part of the activities described in this Subparagraph. Also includes clearing and grubbing, and erosion control activities.
- (B) S(Boring and Tunneling). Covers the construction of underground or

- underwater passageways by digging or boring through and under the earth's surface including the bracing and compacting of such passageways to make them safe for the purpose intended. Includes preparation of the ground surfaces at points of ingress and egress.
- (C) PU(Communications). Covers the installation of the following:
- (i) All types of pole lines, and aerial and underground distribution cable for telephone systems;
 - (ii) Aerial and underground distribution cable for Cable TV and Master Antenna TV Systems capable of transmitting R.F. signals;
 - (iii) Underground conduit and communication cable including fiber optic cable; and
 - (iv) Microwave systems and towers, including foundations and excavations where required, when the microwave systems are being used for the purpose of transmitting R.F. signals; and installation of PCS or cellular telephone towers and sites.
- (D) S(Concrete Construction). Covers the construction and installation of foundations, pre-cast silos and other concrete tanks or receptacles, prestressed components, and gunite applications, but excludes bridges, streets, sidewalks, curbs, gutters, driveways, parking lots and highways.
- (E) PU(Electrical-Ahead of Point of Delivery). Covers the construction, installation, alteration, maintenance or repair of an electrical wiring system, including sub-stations or components thereof, which is or is intended to be owned, operated and maintained by an electric power supplier, such as a public or private utility, a utility cooperative, or any other properly franchised electric power supplier, for the purpose of furnishing electrical services to one or more customers.
- (F) PU(Fuel Distribution). Covers the construction, installation, alteration, maintenance or repair of systems for distribution of petroleum fuels, petroleum distillates, natural gas,
- chemicals and slurries through pipeline from one station to another. Includes all excavating, trenching and backfilling in connection therewith. Covers the installation, replacement and removal of above ground and below ground fuel storage tanks.
- (G) PU(Water Lines and Sewer Lines). Covers construction work on water and sewer mains, water service lines, and house and building sewer lines as defined in the North Carolina State Building Code, and covers water storage tanks, lift stations, pumping stations, and appurtenances to water storage tanks, lift stations and pumping stations. Includes pavement patching, backfill and erosion control as part of such construction.
- (H) PU(Water Purification and Sewage Disposal). Covers the performance of construction work on water and wastewater systems, water and wastewater treatment facilities and all site work, grading, and paving of parking lots, driveways, sidewalks, and curbs and gutters which are ancillary to such construction of water and wastewater treatment facilities. Covers the work done under the specialty classifications of S(Concrete Construction), S(Insulation), S(Interior Construction), S(Masonry Construction), S(Roofing), and S(Metal Erection) as part of such work on water and wastewater treatment facilities.
- (I) S(Insulation). Covers the installation, alteration or repair of materials classified as insulating media used for the non-mechanical control of temperatures in the construction of residential and commercial buildings. Does not include the insulation of mechanical equipment and ancillary lines and piping.
- (J) S(Interior Construction). Covers the installation of acoustical ceiling systems and panels; drywall partitions (load bearing and non-load bearing), lathing and plastering, flooring and finishing, interior recreational surfaces, window and door installation, and installation of fixtures, cabinets and millwork. Includes the removal of asbestos and replacement with non-toxic substances.
- (K) S(Marine Construction). Covers all marine construction and repair

- activities and all types of marine construction in deep-water installations and in harbors, inlets, sounds, bays, and channels; covers dredging, construction and installation of pilings, piers, decks, slips, docks, and bulkheads. Does not include structures required on docks, slips and piers.
- (L) S(Masonry Construction). Covers the installation, with or without the use of mortar or adhesives, of the following:
- (i) Brick, concrete block, gypsum partition tile, pumice block or other lightweight and facsimile units and products common to the masonry industry;
 - (ii) Installation of fire clay products and refractory construction; and
 - (iii) Installation of rough cut and dressed stone, marble panels and slate units, and installation of structural glazed tile or block, glass brick or block, and solar screen tile or block.
- (M) S(Railroad Construction). Covers the building, construction and repair of railroad lines including:
- (i) The clearing and filling of rights-of-way;
 - (ii) Shaping, compacting, setting and stabilizing of road beds;
 - (iii) Setting ties, tie plates, rails, rail connectors, frogs, switch plates, switches, signal markers, retaining walls, dikes, fences and gates; and
 - (iv) Construction and repair of tool sheds and platforms.
- (N) S(Roofing). Covers the installation and repair of roofs and decks on residential, commercial, industrial, and institutional structures requiring materials that form a water-tight and weather-resistant surface. The term "materials" shall be defined for purposes of this Subparagraph to include, among other things, cedar, cement, asbestos, clay tile and composition shingles, all types of metal coverings, wood shakes, single ply and built-up roofing, protective and reflective roof and deck coatings, sheet metal valleys, flashings, gravel stops, gutters and downspouts, and bituminous waterproofing.
- (O) S(Metal Erection). Covers:
- (i) The field fabrication, erection, repair and alteration of architectural and structural shapes, plates, tubing, pipe and bars, not limited to steel or aluminum, that are or may be used as structural members for buildings, equipment and structure; and
 - (ii) The layout, assembly and erection by welding, bolting or riveting such metal products as, but not limited to, curtain walls, tanks of all types, hoppers, structural members for buildings, towers, stairs, conveyor frames, cranes and crane runways, canopies, carports, guard rails, signs, steel scaffolding as a permanent structure, rigging, flagpoles, fences, steel and aluminum siding, bleachers, fire escapes, and seating for stadiums, arenas, and auditoriums.
- (P) S(Swimming Pools). Covers the construction, service and repair of all swimming pools. Includes:
- (i) Excavation and grading;
 - (ii) Construction of concrete, gunite, and plastic-type pools, pool decks, and walkways, and tiling and coping; and
 - (iii) Installation of all equipment including pumps, filters and chemical feeders. Does not include direct connections to a sanitary sewer system or to portable water lines, nor the grounding and bonding of any metal surfaces or the making of any electrical connections.
- (Q) S(Asbestos). This classification covers renovation or demolition activities involving the repair, maintenance, removal, isolation, encapsulation, or enclosure of Regulated Asbestos Containing Materials (RACM) for any commercial, industrial, or institutional building, whether public or private. It also covers all types of residential building construction involving RACM during renovation or demolition activities.

(b) An applicant may be licensed in more than one classification of general contracting provided the applicant meets the qualifications for the classifications, which includes passing the examination for the classifications in question. The license granted to an applicant who meets the qualifications for all classifications will carry with it a designation of "unclassified."

History Note: Authority G.S. 87-1; 87-10; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. June 1, 1994; June 1, 1992; May 1, 1989; January 1, 1983; Temporary Amendment Eff. February 18, 1997; Amended Eff. April 1, 2003; August 1, 2002; April 1, 2001; August 1, 2000; August 1, 1998.

21 NCAC 12 .0503 RENEWAL OF LICENSE

(a) Form. A licensee's application for renewal requires the licensee to set forth whether there were any changes made in the status of the licensee's business during the preceding year and also requires the licensee to give a financial statement for the business in question. The financial statement need not be prepared by a certified public accountant or by a qualified independent accountant but may be completed by the licensee on the form itself.

(b) The Board may require a licensee to submit an audited financial statement if there is any evidence indicating that the licensee may be unable to meet its financial obligations. A licensee may be required to provide evidence of continued financial responsibility satisfactory to the Board if there are indications that the licensee is insolvent, financially unstable, or unable to meet its financial responsibilities. Except as provided herein, evidence of financial responsibility shall be subject to approval by the Board in accordance with the requirements of Rule .0204 of this Chapter. A licensee shall provide the Board with a copy of any bankruptcy petition filed by the licensee within 30 days of its filing. A licensee in bankruptcy shall provide to the Board an audited financial statement with a classified balance sheet as part of any application for renewal.

(c) Display. The certificate of renewal of license granted by the Board, containing the signatures of the Chairman and the Secretary-Treasurer, must be displayed at all times by the licensee at his place of business.

History Note: Authority G.S. 87-1; 87-10; Eff. February 1, 1976; Readopted Eff. September 26, 1977; ARRC Objection March 19, 1987; Amended Eff. May 1, 1989; August 1, 1987; Temporary Amendment Eff. June 28, 1989 for a period of 155 days to expire on December 1, 1989; RRC Removed Objection of March 19, 1987 Eff. August 20, 1992 based on subsequent amendment; Amended Eff. September 1, 1992; Temporary Amendment Eff. May 31, 1996; Amended Eff. April 1, 2003; August 1, 2002; April 1, 1997.

21 NCAC 12 .0701 IMPROPER PRACTICE

(a) Preferring Charges. Any person who believes that any licensed general contractor is in violation of the provisions of G.S. 87-11 may prefer charges against that person or corporation

by setting forth in writing those charges and swearing to their authenticity. The charges are to be filed with the Secretary-Treasurer of the Board at the Board's address in Rule .0101 of this Chapter.

(b) Preliminary or Threshold Determination.

- (1) A charge, properly filed, shall be initially referred to the review committee.
- (2) The review committee shall be a committee made up of the following individuals:
 - (A) one member of the Board, and
 - (B) the legal counsel of the Board, and
 - (C) the Secretary-Treasurer.
- (3) The review committee shall be specifically delegated the responsibility of determining, prior to a full-scale hearing, whether or not a charge is unfounded or trivial. The decision of the review committee shall be final.
- (4) Once a charge is referred to the review committee, a written notice of and detailed explanation of the charge shall be forwarded to the person or corporation against whom the charge is made and a response is requested of the person or corporation so charged to show compliance with all lawful requirements for retention of the license. Notice of the charge and of the alleged facts or alleged conduct shall be given by first class mail to the last known address of the person or corporation.
- (5) If the respondent denies the charge brought against him, then, the review committee may direct that a field investigation be performed by an investigator retained by the Board.
- (6) After all preliminary evidence has been received by the review committee, it shall make a threshold determination of the charges brought. From the evidence, it shall recommend to the Board that:
 - (A) The charge be dismissed as unfounded or trivial;
 - (B) When the charge is admitted as true by the respondent, the Board accept the respondent's admission of guilt and order the respondent not to commit in the future the specific act or acts admitted by him to have been violated and, also, not to violate any of the acts of misconduct specified in G.S. 87-11 at any time in the future; or
 - (C) The charge, whether admitted or denied, be presented to the full Board for a hearing and determination by the Board on the merits of the charge in accordance with the substantive and procedural requirements of the provisions of Section .0800 of this Chapter and the provisions of G.S. 87-11.
- (7) Notice of the threshold determination of the review committee shall be given to the party against whom the charges have been brought

and the party preferring the charge within ten days of the review committee's decision. Though it is not forbidden to do so, the review committee shall not be required to notify the parties of the reasons of the review committee in making its threshold determination.

(c) Board Determination. The Board may choose to hold a hearing on the merits of any disputed charge. After a hearing, in accordance with the hearing requirements of Section .0800 of this Chapter, the Board shall make a determination of the charge in light of the requirements of G.S. 87- 11.

History Note: Authority G.S. 87-11; 150B-3; 150B-38; Eff. February 1, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2003; May 1, 1989.

21 NCAC 12 .0703 FEE FOR SUBMITTAL OF BAD CHECK

(a) The Board shall charge any fee allowed by law if a check submitted to the Board is subsequently returned due to insufficient funds at or no account in a bank.

(b) Until such time as the payor of the bad check has made the check good and paid the prescribed fee, the payor will not be eligible to take an examination, review an examination, obtain a license or have his license renewed.

(c) Any license which has been issued or renewed based on the payment of a check which is subsequently returned to the Board for reasons stated in (a) of this Rule will be declared invalid until such time as the payor has made the check good and paid the prescribed fee. The invalidity shall commence from the date of issuance of the license or renewal.

(d) Payment to the Board for making good such bad check and for the prescribed fee shall be made in the form of a cashier's check or money order.

(e) All examination, license and license renewal applications provided by the Board shall contain information in a conspicuous place thereon clearly advising the applicant of any applicable bad check fee.

History Note: Authority G.S. 87-10; 25-3 through 25-512; Eff. January 1, 1983; Amended Eff. April 1, 2003; May 1, 1989.

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

21 NCAC 16B .0305 TIME FOR FILING

The completed application, fee, photographs, and undergraduate college and dental school transcripts must be postmarked or delivered to the Board's office at least 90 days prior to the date of examination. Dental school transcripts for those still in dental school must be sent in upon graduation and before the examination date. All data received by the Board concerning the applicant shall be part of the application and shall be retained as part of the record.

History Note: Authority G.S. 90-28; 90-30; 90-48; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2003; August 1, 2002; May 1, 1989; March 1, 1988.

21 NCAC 16B .0315 REEXAMINATION

(a) A complete application, except for school transcripts and National Board scores, is required in case of reexamination.

(b) Any applicant who has failed both the written and clinical portions of the examination three times or who has failed the clinical portion of the examination three times, regardless of having passed the written portion of the examination, shall successfully complete an additional course of study in clinical dentistry encompassing at least one academic year, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination and shall provide additional experience and expertise in clinical dentistry for the applicant. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

(c) Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination may retake the written portion of the examination two additional times during a one year period from the date of the initial examination and need not retake the clinical portion of the examination. If the applicant does not pass the written portion of the examination within the one year period, the applicant must retake both the written and clinical portions of the examination upon reexamination subsequent to the one year period. Any applicant who has passed the clinical portion of the examination but has failed the written portion of the examination three times shall successfully complete an additional course of study, such course of study as determined by the Board shall be in the area or areas of deficiency exhibited on the examination. Such applicant must send evidence of the additional study, along with the application, before being admitted for reexamination.

(d) Any applicant who has passed the written portion of the examination but has failed the clinical portion of the examination need not retake the written portion of the examination upon subsequent reexamination during one calendar year.

History Note: Authority G.S. 90-28; 90-30; 90-48; Eff. January 1, 1983; Amended Eff. April 1, 2003; August 1, 2002; May 1, 1991; May 1, 1989; October 1, 1986.

21 NCAC 16C .0203 TRANSCRIPTS REQUIRED

Applicants shall furnish a high school transcript or high school equivalency certificate or other verification of high school completion, and dental hygiene school or college transcripts. These transcripts are to accompany the application, or may be mailed to the Board's office from the record department of each school attended. Transcripts must be postmarked or delivered to the Board office by the application deadline date.

History Note: Authority G.S. 90-223; 90-224; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2003; January 1, 1994; May 1, 1989.

21 NCAC 16C .0305 TIME FOR FILING

The completed application, fee, photographs, high school transcripts or high school equivalency certificate or other verification of high school completion, and dental hygiene

school or college transcripts, must be postmarked or delivered to the Board's office at least 90 days prior to the date of the examination. Dental hygiene school transcripts for those still in dental hygiene school must be sent in before the examination date. All data received by the Board concerning the applicant shall become a part of the required application and shall be retained as part of the record.

History Note: Authority G.S. 90-223; 90-224; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2003; August 1, 2002; May 1 1989; March 1, 1988.

21 NCAC 16I .0101 APPLICATIONS

An application form for a dental hygiene renewal certificate shall be adopted from time to time by the Board and shall be designed to obtain information that the Board deems necessary and requisite as required by law. A renewal application must be postmarked or delivered to the Board's office before January 31 of each year for renewal without a fee for late filing. All applications submitted to the Board must be completed in full.

History Note: Authority G.S. 90-227; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. April 1, 2003; August 1, 1998; May 1, 1989.

21 NCAC 16I .0106 FEE FOR LATE FILING AND DUPLICATE LICENSE

- (a) If the application for a renewal certificate, accompanied by the fee required, is not postmarked nor delivered to the Board's office before January 31 of each year, an additional fee of fifty dollars (\$50.00) shall be charged for the renewal certificate.
- (b) A fee of twenty-five dollars (\$25.00) shall be charged for each duplicate of any license or certificate issued by the Board.

History Note: Authority G.S. 90-227; 90-232; 150B-19(5); Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. May 1, 1989; Transferred and Recodified from 21 NCAC 16I .0002 Eff. May 1, 1994;

(a) The following fees shall be payable to the Board:

(1) Application for general dentistry examination	\$500.00
(2) Application for instructor's license or renewal thereof	\$140.00
(3) Application for provisional license	\$100.00
(4) Application for intern permit or renewal thereof	\$150.00
(5) Certificate of license to a resident dentist desiring to change to another state or territory	\$ 25.00
(6) Duplicate license	\$ 25.00
(7) Reinstatement of license after retirement from practice in this State	\$225.00
(8) Fee for late renewal of any license or permit	\$ 50.00

(b) Each dentist renewing his license to practice dentistry in North Carolina shall be assessed a fee of forty dollars (\$40.00) in addition to the annual renewal fee, to be contributed to the operation of the North Carolina Caring Dental Professionals.

History Note: Authority G.S. 90-28; 90-39; 90-48; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Amended Eff. August 1, 1998; December 1, 1994; May 1, 1989;

Amended Eff. April 1, 2003; August 1, 1998.

21 NCAC 16I .0107 LICENSE VOID UPON FAILURE TO RENEW

If an application for a renewal certificate accompanied by the renewal fee, plus the additional late filing fee, is not postmarked nor delivered to the Board's office before March 31 of each year, the license becomes void. Should the license become void due to failure to timely renew, the applicant must apply for reinstatement.

History Note: Authority G.S. 90-277; Eff. September 3, 1976; Readopted Eff. September 26, 1977; Transferred and Recodified from 21 NCAC 16I .0003 Eff. May 1, 1994; Amended Eff. April 1, 2003; August 1, 2002.

21 NCAC 16L .0104 SOLICITATIONS FOR VOTES

Solicitations for votes shall not:

- (1) be false or misleading or imply endorsement by the Board;
- (2) contain a material misrepresentation of fact;
- (3) misrepresent credentials, degrees, education, or experience of the candidate;
- (4) include false or misleading testimonials or endorsements;
- (5) mislead or deceive because only partial disclosure of relevant facts are made;
- (6) contain representations or implications that the solicitation materials were generated by the Board; or
- (7) use or refer to the Board's name or any variation of the Board's name on the candidate's letterhead, envelopes, postcards or other printed or electronic media. The candidate may indicate that he or she is a candidate for election to the Board.

History Note: Authority G.S. 90-22; 90-48; Eff. April 1, 2003.

21 NCAC 16M .0101 DENTISTS

March 1, 1988; May 1, 1987; Temporary Amendment Eff. October 28, 1998; Amended Eff. April 1, 2003; August 1, 2000.

21 NCAC 16R .0101 APPLICATIONS

An application form for a dental license renewal certificate shall be adopted from time to time by the Board and shall be designed to obtain information that the Board deems necessary and requisite as required by law. A renewal application must be

postmarked or delivered of the Board's office before January 31 of each year for renewal without a fee for late filing. All applications submitted to the Board must be completed in full.

History Note: Authority G.S. 90-31 Eff. April 1, 2003.

21 NCAC 16R .0102 FEE FOR LATE FILING

If the application for a renewal certificate, accompanied by the fee required, is not postmarked nor delivered to the Board's office before January 31 of each year, an additional fee of fifty dollars (\$50.00) shall be charged for the renewal certificate.

History Note: Authority G.S. 90-31; 90-39; Eff. April 1, 2003.

21 NCAC 16R .0104 APPROVED COURSES AND SPONSORS

(a) Courses allowed to satisfy the continuing education requirement must be directly related to clinical patient care. Hours spent reviewing dental journals, publications or videos shall not count toward fulfilling the continuing education requirement, with the exception of self-study courses offered by approved sponsors as set out in Paragraph (b) of this Rule.

(b) Approved continuing education course sponsors include:

- (1) those recognized by the Continuing Education Recognition Program Of the American Dental Association;
- (2) the Academy of General Dentistry;
- (3) North Carolina Area Health Education Centers;
- (4) educational institutions with dental, dental hygiene or dental assisting schools or departments;
- (5) national, state or local societies or associations; and
- (6) local, state or federal governmental entities.

History Note: Authority G.S. 90-31.1; Eff. May 1, 1994; Amended Eff. April 1, 2003; April 1, 2001.

21 NCAC 16R .0107 PENALTY/NON-COMPLIANCE/CONTINUING EDUCATION

If the applicant for a renewal certificate fails to provide proof of completion of reported continuing education hours for the current year as required by Rules .0103 and .0105 of this Section, the Board may refuse to issue a renewal certificate for the year for which renewal is sought, until such time as the licensee completes the required hours of education for the current year and meets all other qualifications for renewal. Should the applicant fail to meet the qualifications for renewal, including completing the required hours of continuing education, before March 31 of each year, the license becomes void and must be reinstated. If the applicant applies for credit for or exemption from continuing education hours and fails to provide the required documentation upon request, the Board shall refuse to issue a certificate of renewal until such time as the applicant meets the qualifications for exemption or credit. Should the applicant fail to provide the required documentation before

March 31 of each year, then the license becomes void and must be reinstated.

History Note: Authority G.S. 90-31.1; Eff. May 1, 1994; Amended Eff. April 1, 2003; April 1, 2001.

CHAPTER 21 - BOARD OF GEOLOGISTS

21 NCAC 21 .0104 DUTIES OF OFFICERS

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

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

(c) Secretary-treasurer:

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

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

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

History Note: Authority G.S. 89E4; 89E5; Eff. February 1, 1986; Amended Eff. April 1, 2003; April 1, 1989.

21 NCAC 21 .0301 REQUIREMENTS FOR LICENSING

(a) Education. In determining whether an applicant meets the minimum education requirements of the Geologists Licensing Act, the Board shall accept transcripts from colleges and universities that are accredited by a national or regional

accrediting organization such as the Southern Association of Colleges and Schools. The Board requires 30 hours of geological study, with 24 hours of upper-level courses in areas including: geology, geophysics, geochemistry, oceanography, paleontology, hydrology, soil science, economic geology and engineering geology.

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

(c) Written Examination. Except as provided in Paragraph (e) of this Rule, all applicants shall pass the written examination administered by the Board in conjunction with the Association of State Boards of Geology (A.S.B.O.G.). The applicant shall be notified, not less than 30 days before the examination, as to the time and place of the examination. A person who has failed an examination is allowed to take the examination again at the next regularly scheduled examination period. A person having a record of three failures shall not be allowed to take that examination again until a written appeal is made to the Board and qualifications for examination are reviewed and reaffirmed by the Board. The applicant shall demonstrate to the Board that actions have been taken to improve the applicant's possibility of passing the exam.

(d) Experience. In determining whether an applicant meets the minimum experience requirements of the Geologists Licensing Act, the Board shall consider the total work experience record of the applicant. The Board shall look for the applicant's ability to conduct geological work in a satisfactory manner with little or no supervision.

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

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

History Note: Authority G.S. 89E-7; 89E-8; 89E-9; 89E-11; Eff. February 1, 1986; Amended Eff. April 1, 2003; April 1, 1990; April 1, 1989;

March 1, 1988.

21 NCAC 21 .0302 APPLICATION PROCEDURE

(a) All applicants for licensing are required to furnish with their applications the following:

- (1) A legible official copy of their college transcript(s), and verification of graduation sent directly from the institution to the Board;
- (2) Verification of experience in the practice of geology on forms provided by the Board;
- (3) Five references as defined in Rule .0301(b) of this Section;
- (4) A notarized copy of a completed application form as prescribed by the Board; and
- (5) The application fee as prescribed in Rule .0107 of this Chapter.

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

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

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

History Note: Authority G.S. 89E-7; 89E-8; 89E-9; 89E-11; 89E-12; 89E-21; Eff. February 1, 1986; Amended Eff. April 1, 2003; April 1, 1990; April 1, 1989; March 1, 1988.

21 NCAC 21 .0501 FILING OF CHARGES AND DISCIPLINARY ACTIONS

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

(b) Upon receipt of such charge or upon its own initiative, the Board may, consistent with procedures required by G.S. 150B, suspend or revoke the license or certificate of registration, may issue a reprimand as provided in Rule .0502 of this Section or may, upon a statement of the reasons therefore, dismiss the charge as unfounded or trivial, which statement shall be mailed to the geologist and the person who filed the charge. If the Board determines that a licensee is professionally incompetent, the Board may require the licensee to demonstrate fitness to practice as allowed in G.S. 89E-19(b). In addition to issuing a reprimand or suspending or revoking a license or certificate of registration, the Board, pursuant to G.S. 89E-19, may impose a civil penalty for any violation of G.S. 89E or these Rules.

(c) The Board may publish in the Board's newsletter or other public media any disciplinary action taken against a licensee or

registrant or any legal action taken against any person found to be in violation of G.S. 89E or these Rules.

History Note: Authority G.S. 89E-5; 89E-17; 89E-19; 89E-20; Eff. February 1, 1986; Amended Eff. April 1, 1989; Temporary Amendment Eff. November 24, 1999; Amended Eff. April 1, 2003; August 1, 2000.

21 NCAC 21 .0502 REPRIMAND

- (a) If evidence of a violation is found, but it is determined that a disciplinary hearing is not warranted, the Board may issue a reprimand to the accused party. A record of such reprimand shall be mailed to the accused party and within 15 days after receipt of the reprimand the accused party may refuse the reprimand and request that a Hearing be held pursuant to G.S. 150B. Such refusal and request shall be addressed to the Board and filed with the Executive Director of the Board.
- (b) Upon timely filing of a notice refusing the reprimand and requesting a hearing, the Board shall determine whether the Board shall conduct the evidentiary hearing or whether it shall refer the matter to the Office of Administrative Hearings for designation of an administrative law judge to conduct the hearing. If the Board elects to conduct the hearing, the legal counsel for the Board shall thereafter prepare and file a Notice of Hearing. If the Board refers the matter to the Office of Administrative Hearings, that agency shall prepare and serve all subsequent notices related to the evidentiary hearing, including the Notice of Hearing.
- (c) If the Letter of Reprimand is accepted, a copy of the reprimand shall be maintained in the office of the Board. If a party receiving a reprimand wishes merely to file a letter rebutting his reprimand, he may in writing waive his right to hearing and submit a letter of rebuttal to be placed in his file.

History Note: Authority G.S. 89E-5; 89E-19; 89E-20; Eff. February 1, 1986; Amended Eff. April 1, 1989; Temporary Amendment Eff. November 24, 1999; Amended Eff. April 1, 2003; August 1, 2000.

21 NCAC 21 .0603 SUBPOENAS

- (a) The Board shall use the following procedure to issue a subpoena pursuant to the authority granted the Board by G.S. 150B-39:
 - (1) Subpoenas shall be issued in duplicate, with a "Return of Service" form attached to each copy. The person serving the subpoena shall fill out the "Return of Service" form for each copy and promptly return one copy of the subpoena, with the attached "Return of Service" form completed to the Board;
 - (2) Subpoenas shall be served by the sheriff of the county in which the person subpoenaed resides, when the party requesting such subpoena prepays the Sheriff's service fee;
 - (3) In accordance with G.S. 150B-39, the Board may quash any subpoena issued in a case for which the Board is conducting a hearing. Any person receiving a subpoena in such case may

- object thereto by filing a written objection to the subpoena with the Board by mailing same to the Board office;
- (4) Such objection shall include a concise, but complete, statement of reasons why the subpoena should be revoked or modified. These reasons may include lack of relevancy of the evidence sought, lack of particularity in the description of the evidence sought, or any other reason sufficient in law for holding the subpoena invalid, such as that the evidence is privileged, that appearance or production would be so disruptive as to be unreasonable in light of the significance of the evidence sought, or other undue hardship.
- (5) Any such objection to a subpoena must be served on the party who requested the subpoena simultaneously with the filing of the objection with the Board.
- (6) The party who requested the subpoena, in such time as may be granted by the Board, may file a written response to the objection. The written response shall be served by the requesting party on the objecting witness simultaneously with filing the response with the Board.
- (7) After receipt of the objection and response thereto, if any, the Board shall issue a notice to the party who requested the subpoena and the party who is challenging it, and may notify all other parties of an open hearing, to be scheduled as soon as practicable, at which time evidence and testimony may be presented, limited to the narrow questions raised by the objection and response, if any.
- (8) Promptly after the close of such hearing, the Board shall rule on the challenge and issue a written decision. A copy of the decision shall be issued to all parties and made a part of the record.
- (9) Subpoenas shall contain the following:
 - (A) the caption of the case;
 - (B) the name and address of the person subpoenaed;
 - (C) the date, hour and location of the hearing in which the witness is commanded to appear;
 - (D) a particularized description of the books, papers, records or objects the witness is directed to bring with him to the hearing, if any;
 - (E) the identity of the party on whose application the subpoena was issued, and the date of issue;
 - (F) the signature of the person issuing the subpoena; and
 - (G) a return of service form, fully executed, which shows the name and capacity of the person serving the subpoena, the date on which the subpoena was delivered to the person

directed to make service, the date on which service was made, the person on whom service was made, the location and manner in which service was made, and the signature of the person making service.

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

(c) Where the Board grants a request for hearing and elects to refer the contested case to the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing, the issuance or quashing of subpoenas will be governed by G.S. 150B-27 or other applicable rules of the Office of Administrative Hearings.

History Note: Authority G.S. 89E-5; 89E-20; 150B-38; 150B-39; 150B-40; Eff. February 1, 1986; Amended Eff. April 1, 2003; April 1, 1989.

21 NCAC 21 .0605 EXCEPTIONS AND PROPOSED DECISIONS

(a) When a request for hearing has been granted and the case referred to the Office of Administrative Hearings and the administrative law judge has made a proposal for decision, each party shall do the following:

- (1) file written exceptions to the proposal for decision, unless the party accepts the decision in its entirety. Any party may choose to submit alternative findings of fact and conclusions of law. Where a party excepts to a finding, conclusion, or recommendation and requests its deletion or amendment, an alternative finding, conclusion or recommendation shall be proposed. Exceptions and alternative findings of fact and conclusions of law shall be received by the Board no later than 30 calendar days after the receipt of the proposal for decision and accompanying evidentiary materials by the Board. Each exception and proposed alternative finding or conclusion shall specifically, separately, and in detail, set forth how the finding or conclusion is clearly contrary to the preponderance of the admissible evidence, and the specific reason(s) the Board should not adopt the administrative law judge's finding of fact or conclusion of law. Each exception and proposed alternative finding or conclusion shall also reference the specific evidence in the record which supports the rejection of the administrative law judge's finding of fact or conclusion of law, including but not limited to references to the testimony of witnesses and any evidentiary exhibits. Any new findings of fact proposed to the Board must be supported by a preponderance

of the admissible evidence in the record. Reference must be made to the transcript of the hearing;

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

(b) When a request for hearing has been granted and the Board elects to conduct the evidentiary hearing, the parties may file a hearing brief outlining the issues of law to be determined by the Board as a result of the evidentiary hearing. These briefs must be filed with the Board no later than 30 days prior to the date of hearing. Response briefs are not encouraged, but shall be accepted if filed with the Board no later than five days after receipt of the other party's brief. The parties also may file a proposed decision with findings of fact and conclusions of law. Proposed decisions must be filed with the Board within 15 days of the conclusion of the hearing or within 15 days of the Boards' receipt of the transcript of the hearing, if any, whichever is later. The findings of fact and conclusions of law in the proposed decision must make specific reference to the evidence admitted at the hearing and to the transcript.

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

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

(e) Giving due consideration to the proposal for decision and the exceptions and arguments of the parties, the Board may adopt the proposal for decision or may modify it as the Board deems necessary. The decision rendered shall be a part of the record

and a copy thereof given to all parties. The decision as adopted or modified becomes the "final agency decision" for the right to judicial review. Said decision shall be rendered by the Board within 60 days of the next regularly scheduled meeting following the oral arguments, if any. If there are no oral arguments presented, the decision shall be rendered within 60 days of the next regularly scheduled Board meeting following receipt of the written exceptions.

History Note: Authority G.S. 89E-5; 89E-20; 150B-38; 150B-40; 150B-42; Eff. February 1, 1986; Amended Eff. April 1, 2003; April 1, 1989.

21 NCAC 21 .0606 ORAL ARGUMENT

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

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

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

History Note: Authority G.S. 89E-5; 89E-20; 150B-38; 150B-40; Eff. April 1, 2003.

21 NCAC 21 .0802 COPIES OF RULES: INSPECTION

(a) Anyone desiring to obtain a copy of the rules of the Board may do so by requesting such from the Board. The Board shall charge twenty-five cents (\$0.25) per page and actual postage costs.

(b) The rules of the Board and other public documents maintained by the Board are available for public inspection at the office of the Board (3733 Benson Drive, Raleigh, N.C. 27609) during regular office hours.

History Note: Authority G.S. 89E-5; 89E-14; 89E-17; 132-1; 132-2; 132-6; Eff. February 1, 1986; Amended Eff. April 1, 2003; April 1, 1989.

21 NCAC 21 .0902 SUBMISSION OF REQUEST FOR DECLARATORY RULING

(a) All requests for declaratory rulings shall be written and filed with the Board. The first page of the request shall bear the

notation: REQUEST FOR DECLARATORY RULING. The request must include the following information:

- (1) name and address of petitioner;
- (2) statute or rule or order of the Board on which a ruling is desired;
- (3) concise statement of the manner in which petitioner is aggrieved by the rule or statute or its potential application to him;
- (4) a concise statement as to whether the request is for a ruling on the validity of a rule, statute or order or on the applicability of a rule, statute or order to a given factual situation;
- (5) arguments or data which demonstrate that the petitioner is aggrieved by the rule, statute or order or by the potential application to him;
- (6) a statement of the consequences of a failure to issue a declaratory ruling in favor of petitioner; and
- (7) a statement of whether an oral argument is desired and, if so, the reason(s) for requesting such an oral argument.

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

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

History Note: Authority G.S. 89E-5; 89E-20; 150B-4; Eff. February 1, 1986; Amended Eff. April 1, 2003.

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

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

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

- (1) The corporation or limited liability company shall have been incorporated or organized prior to June 5, 1969 and permitted by law to render professional services or must be a

- (2) corporate successor to such a corporation or limited liability company as defined by G.S. 55B-15; or
- (2) The corporation or limited liability company must have been incorporated or organized prior to September 1, 1991, and before and after September 1, 1991 the corporation or limited liability company must have been a bonafide firm engaged in the practice of geology and such services as may be ancillary thereto within the State of North Carolina.

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

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

(e) **Approval of Name.** The name used by a geological corporation or limited liability company shall be approved by the Board before being used. Names shall be approved by the Board pursuant to the requirements and limitations of G.S. 55, 55B and G.S. 57C unless the name has been registered previously by another geological corporation or limited liability company. This Rule shall not prohibit the continued use of any corporate name adopted in conformity with the General Statutes of North Carolina and board rules in effect at the date of such adoption.

History Note: Authority G.S. 55B-5; 55B-10; 55B-11; 55B-14; 55B-15; 57C-2-01; 89E- 5; 89E-12; 89E-13; Eff. January 1, 1992; Amended Eff. April 1, 2003.

CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0120 DEFINITIONS.

The following definitions shall apply throughout this chapter unless the context indicates otherwise:

- (1) "Accountability/Responsibility" means being answerable for action or inaction of self, and of others in the context of delegation or assignment.
- (2) "Assigning" means designating responsibility for implementation of a specific activity or set of activities to a person licensed and competent to perform such activities.
- (3) "Delegation" means transferring to a competent individual the authority to perform a selected nursing activity in a selected situation. The nurse retains accountability for the delegation.
- (4) "Supervision" means the provision of guidance or direction, evaluation and follow-up by the licensed nurse for accomplishment of an assigned or delegated nursing activity or set of activities.
- (5) "Participating in" means to have a part in or contribute to the elements of the nursing process.

- (6) "Advanced Practice Registered Nurse (APRN)" means for the purposes of Board qualification a nurse who meets the criteria specified in G.S. 90-171.21(d)(4).
- (7) "National Credentialing Body" means a credentialing body that offers certification or re-certification in the licensed nurse's or Advanced Practice Registered Nurse's specialty area of practice.
- (8) "Prescribing Authority" means the legal permission granted by the Board of Nursing and Medical Board for the nurse practitioner and nurse midwife to procure and prescribe legend and controlled pharmacological agents and devices to a client in compliance with Board of Nursing rules and other applicable federal and state law and regulations.

History Note: Authority G.S. 90-171.23; Eff. April 1, 2003.

21 NCAC 36 .0228 CLINICAL NURSE SPECIALIST PRACTICE

(a) The registered nurse who meets the qualifications as outlined in Paragraph (b) of this Rule may be recognized by the Board as a clinical nurse specialist or a clinical nurse specialist applicant and perform nursing activities at an advanced skill level as outlined in Paragraph (c) of this Rule.

(b) In order for the individual to be recognized, the individual shall have an unrestricted license to practice as a registered nurse in North Carolina and meet one of the following qualifications:

- (1) have completed a graduate degree in a clinical nursing specialty and be currently certified in a clinical specialty by a national credentialing body approved by the Board as defined in Paragraph (e) of this Rule; or
- (2) have a graduate degree in a related field and have been initially certified by the American Nurses Credentialing Center as a Specialist prior to June 1992 and have maintained such certification continuously to date; or
- (3) have completed a graduate degree in a clinical nursing specialty and is awaiting initial certification by a national credentialing body approved by the Board, as defined in Paragraph (e) of this Rule, for a period not to exceed 24 months after completion of the graduate program.

(c) Clinical nurse specialist practice incorporates the basic components of nursing practice as defined in Rule .0224 of this Section as well as the understanding and application of nursing principles at an advanced level in his/her area of clinical specialization which includes but is not limited to:

- (1) assessing clients' health status, synthesizing and analyzing multiple sources of data, and identifying alternative possibilities as to the nature of a healthcare problem;
- (2) diagnosing and managing clients' acute and chronic health problems within a nursing framework;

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- (3) formulating strategies to promote wellness and prevent illness;
- (4) prescribing and implementing therapeutic and corrective nursing measures;
- (5) planning for situations beyond the nurse's expertise, and consulting with or referring clients to other health care providers as appropriate;
- (6) promoting and practicing in collegial and collaborative relationships with clients, families, other health care professionals and individuals whose decisions influence the health of individual clients, families and communities;
- (7) initiating, establishing and utilizing measures to evaluate health care outcomes and modify nursing practice decisions;
- (8) assuming leadership for the application of research findings for the improvement of health care outcomes; and
- (9) integrating education, consultation, management, leadership and research into the advanced clinical nursing specialist role.

(d) The registered nurse who seeks recognition by the Board as a clinical nurse specialist or clinical nurse specialist applicant shall:

- (1) complete the appropriate application, which shall include:
 - (A) evidence of the appropriate graduate degree as set out in Subparagraph (b)(1), (2) or (3) of this Rule; and
 - (B) evidence of current certification in a clinical specialty from a national credentialing body as set out in Subparagraphs (b)(1) and (2) of this Rule;
- (2) submit an administrative fee of twenty-five dollars (\$25.00) for processing the application; and
- (3) submit evidence of renewal or initial certification at the time such occurs in order to maintain Board recognition consistent with Paragraph (b) of this Rule.

(e) The Board may approve those national credentialing bodies offering certification and recertification in a clinical nursing specialty which have established the following minimum requirements:

- (1) current licensure as a registered nurse;
- (2) a minimum of 500 hours of clinical experience as a registered nurse in the nursing specialty;
- (3) recertification criteria include evidence of:
 - (A) a combination of two or more of the following:
 - (i) clinical practice; or
 - (ii) continuing education units; or
 - (iii) re-examination; and
 - (B) recertification a minimum of every five years after initial certification; and

- (4) certification limited to registered nurses except when offered to other licensed health professionals who have a baccalaureate or higher degree in their discipline.

History Note: Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21(d)(4); 90-171.23(b); 90-171.42(b); Eff. April 1, 1996; Amended Eff. April 1, 2003.

21 NCAC 36 .0405 APPROVAL OF NURSE AIDE EDUCATION PROGRAMS

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

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

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

- (A) students will be supervised by qualified faculty as defined in Subparagraph (b)(3) of this Rule for clinical experience with faculty/student ratio not to exceed 1:10;
- (B) the selection and utilization of clinical facilities must support the program curriculum as outlined in Subparagraph (b)(2) of this Rule;
- (C) a written contract shall exist between the program and clinical facility prior to student clinical experience in the facility;
- (D) admission requirements shall include:
 - (i) successful completion of nurse aide I training program or Board of Nursing established equivalent and current nurse aide I listing on DFS Registry; and
 - (ii) GED or high school diploma; and
 - (iii) other admission requirements as identified by the program; and
- (E) a procedure for timely processing and disposition of program and student complaints shall be established.

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

- modify the nurse aide II course content shall be directed to the Board office.
- (3) Minimum competency and qualifications for faculty for the nurse aide Level II programs shall include:
- (A) a current unrestricted license to practice as a registered nurse in North Carolina;
 - (B) have had at least two years of direct patient care experiences as an R.N.; and
 - (C) have experience teaching adult learners.
- (4) Each nurse aide II program shall furnish the Board records, data, and reports requested by the Board in order to provide information concerning operation of the program and any individual who successfully completes the program.
- (5) When an approved nurse aide II program closes, the Board shall be notified in writing by the program. The Board shall be informed as to permanent storage of student records.

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

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

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

- (1) When a hearing is scheduled, the Board shall cause notice to be served on the program and shall specify a date for the hearing to be held not less than 20 days from the date on which notice is given.
- (2) If the Board determines from evidence presented at hearing that the program is complying with the Law and all rules, the Board shall assign the program Full Approval status.
- (3) If the Board, following a hearing, finds that the program is not complying with the Law and all rules, the Board shall withdraw approval.
 - (A) This action constitutes discontinuance of the program; and
 - (B) The parent institution shall present a plan to the Board for transfer of students to approved programs or fully refund tuition paid by the

student. Closure shall take place after the transfer of students to approved programs within a time frame established by the Board; and

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

History Note: Authority G.S. 90-171.20(2)(4)(7)d., e., g.; 90-171.39; 90-171.40; 90-171.43(4); 90-171.55; 90-171.83; 42 U.S.C.S. 1395i-3 (1987); Eff. March 1, 1989; Amended Eff. April 1, 2003; August 1, 2002; July 1, 2000; December 1, 1995; March 1, 1990;

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .1601 PHARMACY PERMITS

(a) Applications for pharmacy permits, whether original or renewal, shall be made upon forms provided by the Board. The Board shall not issue any original or annual renewal pharmacy permit until the Board is satisfied that:

- (1) The pharmacist-manager is sure that at all times adequate qualified personnel have been secured by the management of the store to properly render pharmaceutical service in the manner prescribed by law.
- (2) The pharmacy posts in a location conspicuous to the public the specific hours that a pharmacist is on duty in the pharmacy. This requirement does not apply to hospitals, nursing homes, and similar institutions subject to the provisions of Section .1400 of this Chapter.
- (3) The pharmacist-manager shall be responsible for obtaining and maintaining equipment in the pharmacy adequate to meet the pharmaceutical care needs of the pharmacy's patients. The pharmacy's reference library shall include a medical dictionary and current editions of generally accepted reference books on drug interactions, clinical pharmacology, USP Dispensing Information or its equivalent, and if IV admixture services are provided, a reference on Parenteral Incompatibilities.
- (4) The pharmacy is equipped with sanitary appliances including lavatory facilities with hot and cold running water; is adequately lighted; and is kept in a clean, orderly, and sanitary condition.
- (5) All prescription medications are labeled in accordance with G.S. 106-134 and 106-134.1.

(b) In addition to the requirements for issuance and renewal of a pharmacy permit imposed by statute and rules of the Board, a permit shall not be issued or renewed to any person to operate a pharmacy wherein the prescriptions of medical practitioners are compounded or dispensed and distributed when such distribution is effected by mail and the practitioner- pharmacist-patient relationship does not exist, until the Board is satisfied that:

- (1) The pharmacy maintains records of prescriptions compounded or dispensed and

distributed in manner that is readily retrievable;

- (2) During the pharmacy's regular hours of operation but not less than six days per week, for a minimum of forty hours per week, a toll-free telephone service is provided to facilitate communication between patients and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number must be disclosed on the label affixed to each container of dispensed drugs;
- (3) The pharmacy complies with all lawful orders, directions, and requests for information from the Boards of pharmacy of all states in which it is licensed and all states into which it distributes prescription drugs;
- (4) The pharmacy complies with all USP and FDA requirements regarding the storage, packaging, and shipping of prescription medications. The pharmacist-manager and all other pharmacists employed in the pharmacies permitted pursuant to this Paragraph shall be subject to all Federal and State statutes and regulations concerning the dispensing of prescription medications including, but not limited to, 21 NCAC 46 .1801 and .1805 and 21 CFR 1306.01, 1306.05, and 1306.21.

(c) The Board shall not issue an original or renewal permit to any person to operate a drugstore or pharmacy as a department in or a part of any other business serving the general public (except hospitals, nursing homes, and similar institutions subject to the provisions of Section .1400 of this Chapter) unless such pharmacy facility:

- (1) is physically separated from such other business;
- (2) is separately identified to the public both as to name and any advertising;
- (3) completes all transactions relative to such pharmacy within the registered facility; and
- (4) meets the same requirements for registration as all other pharmacies.

(d) Permits to operate pharmacies, whether original or renewal, shall be issued to the pharmacist-manager of such pharmacy pursuant to a joint application of the owner and pharmacist-manager for the conduct and management of said pharmacy. The issuance of said permit shall not be complete and the permit shall not be valid until it has been countersigned by the pharmacist-manager as represented in the application. The permit so issued is valid only so long as the pharmacist-manager to whom it was issued assumes the duties and responsibilities of pharmacist-manager. Permits may be reissued at any time to a successor pharmacist-manager pursuant to the proper amendment of the application for the permit.

(e) Upon application, the Board may issue and renew separate permits for pharmacies operating at one location. Records for each permitted pharmacy must be maintained separately. Prior to issuance of an original permit, each pharmacy shall submit a plan to the Board that shall assure accountability for the actions of each pharmacy at the location.

History Note: Authority G.S. 90-85.6; 90-85.21; Eff. April 1, 1983; Amended Eff. April 1, 2003; April 1, 1999; October 29, 1998; July 1, 1996; September 1, 1995; May 1, 1989; August 1, 1988; March 1, 1984.

21 NCAC 46 .1602 LICENSE BY RECIPROCITY

An applicant for licensure without examination, must have:

- (1) Originally been licensed as a pharmacist by an examination equivalent to the North Carolina examination specified in Rule .1505(a)(1) and (a)(2) of this Chapter;
- (2) Achieved scores on an equivalent examination, such as the NAPLEX examination, which would qualify for licensure in this state at the time of examination; and
- (3) Been licensed by a state which deems licensees from this state to be equivalent to the extent that they are suitable for licensure in that state without further substantial examination.

History Note: Authority G.S. 90-85.6; 90-85.20; Eff. April 1, 1983; Amended Eff. April 1, 2003; July 1, 1996; May 1, 1989.

21 NCAC 46 .2107 BALLOTS: CASTING AND COUNTING

A ballot shall be mailed, with return envelope, to all eligible voters in April of each year. A brief description of a nominee's qualifications, provided by the nominee and edited, if necessary, by the secretary, shall accompany each ballot. Secret ballots shall be cast in the envelope provided by mail or delivered to the Board office in the envelope provided before May 15. Ballots received shall be counted and certified by the Board of Pharmacy Elections at the regularly scheduled May Board meeting. The Board of Pharmacy Elections shall determine the validity of any challenged ballot and mechanical devices may be used in compiling election results. No person running for election or re-election may participate in the counting and certification of ballots for the election or re-election involving that person. The secretary-treasurer shall convey the certified election results to the Governor.

History Note: Authority G.S. 90-85.7; Eff. April 1, 1983; Amended Eff. April 1, 2003.

21 NCAC 46 .2109 DEVICE AND MEDICAL EQUIPMENT COMMITTEE REPRESENTATIVES

(a) The device and medical equipment committee shall consist of the following:

- (1) a representative of the medical equipment suppliers;
- (2) a representative of the medical oxygen suppliers;
- (3) a representative of the rehabilitation technology suppliers; and
- (4) two Board members appointed by the President of the Board.

(b) All device and medical equipment permit holders are eligible to vote for one representative in each category specified in Subparagraphs (a)(1)-(3) of this Rule. The representative must practice in the particular area for which he or she is nominated, but need not practice exclusively in that area.

(c) The representatives specified in Subparagraphs (a)(1)-(3) of this Rule shall be elected or appointed to terms of five years, and may not serve more than two consecutive five-year terms. The committee may establish a staggered schedule for the elections. In case of death, resignation or removal from the committee, the remaining members of the committee shall elect a representative who meets the criteria for the position.

History Note: Authority G.S. 90-85.6; 90-85.22; Eff. September 1, 1995; Amended Eff. April 1, 2003.

21 NCAC 46 .2507 ADMINISTRATION OF IMMUNIZATIONS BY PHARMACISTS

A pharmacist who has successfully completed a course of training approved by the Board, and the North Carolina Medical Board, or the North Carolina Board of Nursing, may administer immunizations.

History Note: Authority G.S. 90-85.3; 90-85.6; Eff. April 1, 2003.

21 NCAC 46 .2803 REQ/PHARMACIES DISPENSING STERILE PHARMACEUTICALS

All locations holding a pharmacy permit where sterile pharmaceuticals are routinely compounded for dispensing must meet the following requirements:

- (1) The location shall have a designated area with entry restricted to designated personnel for preparing compounded sterile products. This area shall be structurally isolated from other areas, with restricted entry or access, and must be designed to avoid unnecessary traffic and airflow disturbances from activity within the controlled facility. It shall be used only for the preparation of these specialty products. It shall be of sufficient size to accommodate a laminar airflow hood and to provide for the proper storage of drugs and supplies under appropriate conditions of temperature, light, moisture, sanitation, ventilation, and security.
- (2) The permit-holder preparing sterile products shall have the following equipment in addition to that required by Board Rule .1601 of this Chapter:
 - (a) Environmental control devices capable of maintaining at least Class 100 conditions in the work place where critical objects are exposed and critical activities are performed;
 - (b) Sink with hot and cold running water that is convenient to the compounding area for the purpose of hand scrubs prior to compounding;
 - (c) Disposal containers for used needles, syringes, etc., and if applicable

cytotoxic waste from the preparation of chemotherapy agents and infectious wastes from patients' homes;

- (d) When cytotoxic drug products are prepared, environmental control devices; also include biohazard cabinetry;
 - (e) include biohazard cabinetry;
 - (f) Refrigerator-freezer with a thermometer;
 - (g) Temperature controlled delivery containers; and
 - (h) Infusion devices, if appropriate.
- (3) The permit-holder dispensing sterile pharmaceuticals shall maintain inventories of the following supplies: Disposable needles, syringes, and other supplies needed for aseptic admixture; disinfectant cleaning solution; handwashing agents with bactericidal action; disposable, lint-free towels or wipes; appropriate filters and filtration equipment; oncology drug spill kit; and disposable masks, caps, gowns, and gloves.
- (4) In addition to the requirements of Rule .1601(a)(3) of this Chapter, a permit-holder dispensing sterile pharmaceuticals shall have in its reference library the following reference materials: Handbook on Injectable Drugs (ASHP); King's Guide to Parenteral Admixtures; American Hospital Formulary Service; and Procedure for Handling Cytotoxic Drugs (ASHP).

History Note: Authority G.S. 90-85.6; Eff. October 1, 1990; Amended Eff. April 1, 2003; September 1, 1995.

21 NCAC 46 .2805 LABELING

In addition to any other labeling requirements, containers of sterile pharmaceuticals dispensed to patients shall be labeled with instructions for storage to maintain sterility and, for anti-neoplastic drugs, appropriate warning labels.

History Note: Authority G.S. 90-85.6; Eff. October 1, 1990; Amended Eff. April 1, 2003.

21 NCAC 46 .3301 REGISTRATION

- (a) Following initial registration with the Board, registration of a pharmacy technician shall be renewed annually and shall expire on December 31. It shall be unlawful to work as a pharmacy technician more than 60 days after expiration of the registration without renewing the registration.
- (b) The current registration of a pharmacy technician shall be readily available for inspection by agents of the Board.
- (c) The training program described in G.S. 90-85.15A(b) is not required for students enrolled in a community college pharmacy technician program.
- (d) Volunteer pharmacy technicians providing services at a facility which has a pharmacy permit designated as a free clinic

shall complete the training program described in G.S. 90-85.15A(b) but need not register with the Board.

History Note: Authority G.S. 90-85.6; 90-85.15A; Eff. April 1, 2003.

**CHAPTER 54 - NORTH CAROLINA
PSYCHOLOGY BOARD**

21 NCAC 54 .2801 SCOPE

(a) Pursuant to G.S. 90-270.21, licensed psychologists (provisional and permanent), licensed psychological associates, or temporary licensees, all of whom shall be identified as "psychologists" under G.S. 90-270.2(9), may employ or supervise unlicensed individuals to provide ancillary services.

The psychologist shall, at all times, retain full professional responsibility for the quality of the services rendered and for the effects of the services upon the client, patient, or other individuals. This responsibility for the quality of services delivered by supervisees and for the welfare of the client or patient shall be no different than if the psychologist had provided the services in person. The psychologist shall have had face-to-face contact during the course of services with all patients, clients, or other recipients of services who are provided ancillary services by unlicensed persons as part of the psychologist's services.

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

(c) Failure of any psychologist to train ancillary services personnel, to ensure that training has occurred, or to supervise ancillary services personnel may subject that psychologist to disciplinary action pursuant to G.S. 90-270.15(a).

(d) The Board shall have the authority to restrict or revoke a psychologist's privilege to utilize unlicensed individuals to provide ancillary services for the following reasons:

- (1) evidence that the psychologist is not competent to supervise ancillary services personnel;
- (2) evidence that the psychologist has failed to adhere to legal or ethical standards;
- (3) evidence that there is a lack of congruence between the psychologist's training, experience, and area of practice and the ancillary services personnel's area(s) of practice;
- (4) evidence that the psychologist has a license against which disciplinary or remedial action has been taken; or
- (5) evidence that an unlicensed person in the psychologist's employment or under the psychologist's supervision has violated any provision of G.S. 90-270.15(a), which would otherwise apply to licensed individuals.

History Note: Authority G.S. 90-270.9; 90-270.21; Eff. April 1, 2003.

21 NCAC 54 .2806 SERVICES NOT APPROPRIATE FOR UNLICENSED INDIVIDUALS

Individuals providing ancillary services shall not engage in tasks involving judgment during the execution of those services when training in the foundation of psychology for the level of judgment is characteristically based on academic preparation at the master's, specialist, or doctoral level in psychology. Examples of these activities include administration of projective techniques; psychological evaluation report writing; and all forms of diagnostic interviewing, counseling, and psychotherapy. Psychological test results shall not, under any circumstances, be interpreted by ancillary services personnel to recipients of services or their duly designated representative(s).

History Note: Authority G.S. 90-270.9; 90-270.21; Eff. April 1, 2003.

CHAPTER 57 - REAL ESTATE APPRAISAL BOARD

21 NCAC 57A .0204 CONTINUING EDUCATION

(a) All registered trainees, real estate appraiser licensees and certificate holders shall, upon the second renewal of their registration, license or certificate following their initial registration, licensure or certification by the Board, and upon each subsequent renewal, present evidence satisfactory to the Board of having obtained continuing education as required by this Section,

(b) Each trainee, licensee and certificate holder who is required to complete continuing education pursuant to Paragraph (a) of this Rule must complete 28 hours of continuing education between July 1, 2003 and June 30, 2005 and prior to June 30 of every odd numbered year thereafter. Except as provided in Paragraphs (g) and (h) of this Rule, such education must have been obtained by taking courses approved by the Board for continuing education purposes. Such education must relate to real estate appraisal and must contribute to the goal of improving the knowledge, skill and competence of trainees, state-licensed and state-certified real estate appraisers. There is no exemption from the continuing education requirement for trainees or appraisers whose registered, licensed or certified status has been upgraded to the level of licensed residential, certified residential or certified general appraiser since the issuance or most recent renewal of their registration, license or certificate, and courses taken to satisfy the requirements of a higher level of certification may not be applied toward the annual continuing education requirement.

(c) Each appraisal continuing education course must involve a minimum of three and one-half classroom hours of instruction on real estate appraisal or related topics such as the application of appraisal concepts and methodology to the appraisal of various types of property; specialized appraisal techniques; laws, rules or guidelines relating to appraisal; standards of practice and ethics; building construction; financial or investment analysis; land use planning or controls; feasibility analysis; statistics; accounting; or similar topics. The trainee, licensee or certificate holder must have attended at least 90 percent of the scheduled classroom hours for the course in order to receive credit for the course.

(d) Beginning July 1, 2003, each trainee, licensee and certificate holder who is required to complete continuing education

pursuant to .0204(a) must, as part of the 28 hours of continuing education required in .0204(b) of this section, complete the seven (7) hour Uniform Standards of Professional Appraisal Practice (USPAP) update course, as required by the Appraiser Qualification Board of the Appraisal Foundation, or its equivalent, prior to June 30, 2005 and prior to June 30 of every odd numbered year thereafter.

(e) A licensee who elects to take approved continuing education courses in excess of the minimum requirement shall not carry over into the subsequent years any continuing education credit.

(f) Course sponsors must provide a prescribed certificate of course completion to each trainee, licensee and certificate holder satisfactorily completing a course. In addition, course sponsors must send directly to the Board a certified roster of all who successfully completed the course. This roster must be sent within 15 days of completion of the course, but not later than June 30 of each year. In order to renew a registration, license or certificate in a timely manner, the Board must receive proper proof of satisfaction of the continuing education requirement prior to processing a registration, license or certificate renewal application. If proper proof of having satisfied the continuing education requirement is not provided, the registration, license or certificate shall expire and the trainee, licensee or certificate holder shall be subject to the provisions of Rules .0203(e) and .0206 of this Section.

(g) A current or former trainee, licensee or certificate holder may request that the Board grant continuing education credit for a course taken by the trainee, licensee or certificate holder that is not approved by the Board, or for appraisal education activity equivalent to a Board-approved course, by making such request and submitting a non-refundable fee of fifty dollars (\$50.00) for each course or type of appraisal education activity to be evaluated. Continuing education credit for a non-approved course shall be granted only if the trainee, licensee or certificate holder provides satisfactory proof of course completion and the Board finds that the course satisfies the requirements for approval of appraisal continuing education courses with regard to subject matter, course length, instructor qualifications, and student attendance. Appraisal education activities for which credit may be awarded include, but are not limited to, teaching appraisal courses, authorship of appraisal textbooks, and development of instructional materials on appraisal subjects. The awarding of credit for such activities is wholly discretionary on the part of the Board. Trainees or licensed or certified appraisers who have taught an appraisal course or courses approved by the Board for continuing education credit shall be deemed to have taken an equivalent course and shall not be subject to the fifty (\$50.00) fee, provided they submit verification satisfactory to the Board of having taught the course(s). A trainee, licensee or certificate holder who teaches a Board-approved continuing education course may not receive continuing education credit for the same course more than once every three years, regardless of how often he teaches the course.

(h) A trainee, state-licensed or state-certified real estate appraiser may receive continuing education credit by taking any of the Board-approved precertification or precertification courses or their approved equivalents. These courses cannot be used for both continuing education credit and for credit for licensing purposes. Trainees, licensees and certificate holders who wish to use a precertification course for continuing education credit must comply with the provisions of 21 NCAC 57B .0604.

(i) A trainee, licensee or certificate holder may request in writing and be granted an extension of time to satisfy the continuing education requirements if he provides evidence satisfactory to the Board that he was unable to obtain the necessary education due to an incapacitating illness, military assignment outside the 50 states, or similar condition. If an extension of time is granted, the trainee, licensee or certificate holder shall be permitted to renew or reinstate, as appropriate, his registration, license or certificate for that period of time for which the extension was granted. The granting of such request and the length of any extension of time granted are wholly discretionary on the part of the Board.

History Note: Authority G. S. 93E-1-7(a) and (b); 93E-1-8(a); 93E-1-10; Eff. July 1, 1994;

Amended Eff. July 1, 2003; August 1, 2002; April 1, 1999.

21 NCAC 57A .0210 TEMPORARY PRACTICE

(a) A real estate appraiser from another state who is licensed or certified by the appraiser licensing or certifying agency in such state may apply to receive temporary appraiser licensing or certification privileges in this State by filing a notarized application with the Board.

(b) Upon filing a properly completed application accompanied by a fee of one hundred fifty dollars (\$150.00) and otherwise satisfying the Appraisal Board as to his or her qualifications, eligibility and moral fitness for temporary licensing or certification privileges, an applicant shall be granted a temporary practice permit by the Board authorizing the applicant to perform in this State the appraisal assignment described in such application, provided that the length of time projected by the applicant for completion of the assignment is reasonable given the scope and complexity of the assignment. As part of the examination for moral fitness, the Board may consider whether an applicant's trainee registration or appraiser license or certification is or has been subject to discipline in their resident state or any other state, and may consider all other information outlined in Rule .0202(c) of this Section.

(c) Privileges granted under the provisions of this Rule shall expire upon the expiration date set forth in the temporary practice permit. However, upon a showing by the permittee satisfactory to the Appraisal Board that, notwithstanding the permittee's diligent attention to the appraisal assignment, additional time is needed to complete the assignment, the Board shall extend the temporary practice privileges granted under the permittee's temporary practice permit to afford him additional time to complete the appraisal assignment.

(d) Persons granted temporary practice privileges under this Rule shall not advertise or otherwise hold themselves out as being a North Carolina registered trainee or state-licensed or state-certified appraiser.

(e) A trainee may apply for a temporary practice permit and the provisions of Sections (a), (b) and (c) above shall apply. The supervising appraiser for the trainee must be a North Carolina state-licensed or state-certified appraiser. If not, the supervising appraiser must be licensed or certified as a real estate appraiser in another state and must also receive a temporary practice permit for the same assignment as the trainee. The term "trainee" shall include apprentices and others who are credentialed and

regulated by a state agency to perform real estate appraisals under the supervision of a licensed or certified appraiser.

(f) An applicant for a temporary practice permit may not begin performing any appraisal work in this State until the temporary practice permit has been issued by the Board.

History Note: Authority G. S. 93E-1-9(c) and (d); 93E-1-10; Title XI, Section 1122(a); 12 U.S.C. 3351(a); Eff. July 1, 1994 Amended Eff. July 1, 2003; August 1, 2002; April 1, 1999.

21 NCAC 57A .0401 USE OF TITLES

(a) A trainee shall utilize either the term "registered trainee" or the term "trainee real estate appraiser" when performing an appraisal of real estate or any interest therein, and when referring to himself as a trainee.

(b) A state-licensed residential real estate appraiser shall utilize the term "state-licensed residential real estate appraiser" and a state-certified residential real estate appraiser shall utilize the term "state-certified residential real estate appraiser" when performing an appraisal of real estate or any interest therein, and when referring to himself as an appraiser. A state-certified general real estate appraiser shall utilize either the term "state-certified general real estate appraiser" or "state-certified residential/general real estate appraiser" when performing appraisals of all types of real estate or any interest therein, and when referring to himself as an appraiser.

(c) Trainee registration, licensure or certification as a real estate appraiser is granted only to persons and does not extend to a business entity operated by a trainee, state-licensed or state-certified real estate appraiser.

History Note: Authority G.S. 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2003; August 1, 2002; April 1, 1999.

21 NCAC 57A .0403 ADVERTISING

(a) When advertising or otherwise holding himself out as a trainee or real estate appraiser, a trainee shall identify himself either as a "registered trainee" or as a "trainee real estate appraiser", a state-licensed residential real estate appraiser shall identify himself as a "state-licensed residential real estate appraiser", a state-certified residential real estate appraiser shall identify himself as a "state-certified residential real estate appraiser", and a state-certified general real estate appraiser shall identify himself as either a "state-certified general real estate appraiser" or a "state-certified residential/general real estate appraiser".

(b) A registered trainee, state-licensed or state-certified real estate appraiser doing business as a partnership, association, corporation or other business entity shall not represent in any manner to the public that the partnership, association, corporation or other business entity is registered, licensed or certified by the State of North Carolina to engage in the business of real estate appraising.

(c) In the event that any trainee, licensee or certificate holder shall advertise in any manner using a firm name, corporate name, or an assumed name which does not set forth the surname of the trainee, licensee or certificate holder, he shall first notify the Board in writing of such name and furnish the Board with a copy of each registration of assumed name certificate filed with

the office of the county register of deeds in compliance with G.S. 66-68.

History Note: Authority G.S. 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2003; August 1, 2002; April 1, 1999.

21 NCAC 57B .0101 REGISTERED TRAINEE, AND LICENSED RESIDENTIAL REAL ESTATE APPRAISER COURSE REQUIREMENTS

(a) Each applicant for registration as a trainee or licensure as a state-licensed residential real estate appraiser shall complete a minimum of 90 hours of prelicensing education, consisting of the following;

- (1) A minimum of 30 hours in Introduction to Real Estate Appraisal (R-1);
- (2) A minimum of 30 hours in Valuation Principles and Procedures (R-2);
- (3) A minimum of 15 hours in Applied Residential Property Valuation (R-3); and
- (4) A minimum of 15 hours in The Uniform Standards of Professional Appraisal Practice (USPAP)

(b) Credit for these courses must be earned from a Board-approved course sponsor or school and all course content shall be approved by the Appraisal Board in accordance with these rules. These courses must be completed within the five-year period immediately preceding the date when application for registration, licensure or certification is made to the Board.

(c) Introduction to Real Estate Appraisal (R-1) shall be a prerequisite to taking Valuation Principles and Procedures (R-2), and Valuation Principles and Procedures (R-2) shall be a prerequisite to taking Applied Residential Property Valuation (R-3).

History Note: Authority G.S. 93E-1-6(a); 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2003; August 1, 2002.

21 NCAC 57B .0306 INSTRUCTOR REQUIREMENTS

(a) Except as indicated in Paragraph (b) of this Rule, all appraisal prelicensing and precertification courses or courses deemed equivalent by the Board shall be taught by instructors who possess the fitness for licensure required of applicants for trainee registration or real estate appraiser licensure or certification and either the minimum appraisal education and experience qualifications listed in this Rule or other qualifications that are found by the Board to be equivalent to those listed. These qualification requirements shall be met on a continuing basis. The minimum qualifications are as follows:

- (1) Residential appraiser courses: 120 classroom hours of real estate appraisal education equivalent to the residential appraiser education courses prescribed in Rules .0101 and .0102 of this Subchapter and either two years' full-time experience as a residential real estate appraiser within the previous five years or three years full time experience as a general real estate appraiser within the previous five years, with at least one-half of such experience

being in residential property appraising. Instructors must also be either state-certified residential or state-certified general real estate appraisers.

- (2) General appraiser courses: 180 classroom hours of real estate appraisal education equivalent to the general appraiser education courses prescribed in Rules .0101, .0102 and .0103 of this Subchapter and three years' full-time experience as a general real estate appraiser within the previous five years, with at least one-third of such experience being in income property appraising. Instructors must also be state-certified general real estate appraisers.
- (3) USPAP: certification by the Appraiser Qualifications Board of the Appraisal Foundation as an instructor for the National USPAP Course.

(b) Guest lecturers who do not possess the qualifications stated in Paragraph (a) of this Rule may be utilized to teach collectively up to one-fourth of any course, provided that each guest lecturer possesses education and experience directly related to the particular subject area he is teaching.

(c) Instructors shall conduct themselves in a professional manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates knowledge of the subject matter being taught and mastery of the following basic teaching skills:

- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate grammar and vocabulary.
- (2) The ability to present instruction in a thorough, accurate, logical, orderly, and understandable manner, to utilize illustrative examples as appropriate and to respond appropriately to questions from students;
- (3) The ability to effectively utilize varied instructive techniques other than straight lecture, such as class discussion or other techniques.
- (4) The ability to effectively utilize instructional aids to enhance learning;
- (5) The ability to maintain an effective learning environment and control of a class; and
- (6) The ability to interact with adult students in a manner that encourages students to learn, that demonstrates an understanding of students backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

(d) Upon request of the Board, an instructor or proposed instructor must submit to the Board a videotape in a manner and format which depicts the instructor teaching portions of a prelicensing course specified by the Board and which demonstrates that the instructor possesses the basic teaching skills described in Rule .0306(c) of this Section.

(e) The inquiry into fitness shall include consideration of whether the instructor has ever had any disciplinary action taken

on his or her appraisal license or certificate or any other professional license or certificate in North Carolina or any other state, or whether the instructor has ever been convicted of or pleaded guilty to any criminal act.

(f) Instructors shall not have received any disciplinary action regarding his or her appraisal license or certificate from the State of North Carolina or any other state within the previous two years. For the purposes of this section, disciplinary action means a reprimand, suspension (whether active or inactive) or a revocation.

(g) Proposed prelicensing or precertification instructors who do not meet the minimum appraisal education and experience qualifications listed in Paragraph (a) of this Rule, and who seek to have their qualifications determined by the Board to be equivalent to the qualifications listed in Paragraph (a) of this Rule, must supply the Board with copies of sample appraisal reports.

History Note: Authority G.S. 93E-1-8(a); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2003; August 1, 2002.

21 NCAC 57B .0603 CRITERIA FOR COURSE APPROVAL

The following requirements must be satisfied in order for course sponsors to obtain approval of a course for appraiser continuing education credit:

- (1) The subject matter of the course must comply with the requirements of Rule .0204 of Subchapter 57A and the information to be provided in the course must be both accurate and current.
- (2) The course must involve a minimum of three and one-half classroom hours of instruction on acceptable subject matter. A classroom hour consists of 50 minutes of classroom instruction and 10 minutes of break time. Instruction must be given for the full number of hours for which credit is given. Instructors may not accumulate unused break time to end the class early.
- (3) The course instructor(s) must:
 - (a) possess the fitness for licensure required of applicants for trainee registration, real estate appraiser licensure or certification and;
 - (b) either:
 - (i) two years' full-time experience that is directly related to the subject matter to be taught,
 - (ii) a baccalaureate or higher degree in a field that is directly related to the subject matter to be taught,
 - (iii) two years' full-time experience teaching the subject matter to be taught, or

- (iv) an equivalent combination of such education and experience.
- (4) If two or more instructors shall be utilized to teach a course during the approval period and the course shall be taught in states other than North Carolina, it is sufficient for the course sponsor to show that it has minimum instructor requirements comparable to these requirements. The inquiry into fitness shall include consideration of whether the instructor has had any disciplinary action taken on his or her appraisal license or any other professional license in North Carolina or any other state, or whether the instructor has been convicted of or pleaded guilty to any criminal act.
- (5) The course must be one involving a qualified instructor who, except as noted in Item (6) of this Rule, shall be physically present in the classroom at all times and who shall personally provide the instruction for the course. The course instructor may utilize videotape instruction, remote television instruction or similar types of instruction by other persons to enhance or supplement his personal instruction; however, such other persons shall not be considered to be the official course instructor and the official course instructor must be physically present when such indirect instruction by other persons is being utilized. No portion of the course may consist of correspondence instruction. The instructor must comply with Rule .0306(c) of this Subchapter. Instructors for the National USPAP courses must be certified by the Appraiser Qualifications Board of the Appraisal Foundation.
- (6) For courses attended on or after the effective date of this rule, a trainee or appraiser may receive up to seven hours of credit per renewal period for participation in a course on a computer disk or on-line via the Internet. A sponsor seeking approval of a computer-based education course must submit a complete copy of the course on the medium that is to be utilized and, must make available at the sponsor's expense, all hardware and software necessary for the Board to review the submitted course. In the case of an internet-based course, the Board must be provided access to the course via the internet at a date and time satisfactory to the Board and shall not be charged any fee for such access. To be approved for credit, a computer-based continuing education course must meet all of the conditions imposed by the Rules in this Subchapter in advance, except where otherwise noted. The course must be interactive, permitting the participant to communicate, via telephone, electronic mail, or a website bulletin board, with the presenter

and other participants. The sponsor of an on-line course must have a reliable method for recording and verifying attendance. The sponsor of a course on a computer disk must demonstrate that there is a reliable method for the user or the sponsor to record and verify participation in the course. A participant may periodically log on and off of a computer-based continuing education course provided the total time spent participating in the course is equal to or exceeds the credit hours assigned to the program. A course completion certificate must be forwarded to the student as stated in Rule .0607 of this Section, and a course roster must be sent to the Appraisal Board in accordance with Rule .0608 of this Section.

- (7) The course must be an educational program intended to improve the knowledge, skill and competence of trainees, state-licensed and state-certified real estate appraisers. Activities not eligible for approval as a continuing education course include in-house training programs of a firm, organization or agency, or similar activities.
- (8) The course sponsor must certify that the course will be conducted in accordance with the operational requirements stated in Rule .0606 of this Section and that the course sponsor will comply with all other applicable rules contained in this Section.

History Note: Authority G.S. 93E-1-8(c); 93E-1-10; Eff. July 1, 1994; Amended Eff. July 1, 2003; August 1, 2002.

21 NCAC 57C .0101 FORM OF COMPLAINTS AND OTHER PLEADINGS

- (a) There shall be no specific form required for complaints. To be sufficient, a complaint shall be in writing, identify the trainee or licensed or certified appraiser and shall reasonably apprise the Board of the facts which form the basis of the complaint.
- (b) When investigating a complaint, the scope of the investigation shall not be limited to the persons or transactions described or alleged in the complaint.
- (c) Persons who make complaints are not parties to contested cases heard by the Board, but may be witnesses in the cases.
- (d) There shall be no specific form required for answers, motions or other pleadings relating to contested cases before the Board, except they shall be in writing. To be sufficient, the document must identify the case to which it refers and reasonably apprise the Board of the matters it alleges, answers, or requests. In lieu of submission in writing, motions, requests and other pleadings may be made on the record during the course of the hearing before the Board.
- (e) During the course of an investigation of a licensee, the Board, through its legal counsel or staff, may send a trainee or appraiser one or more Letters of Inquiry requesting the trainee or appraiser to respond. The initial Letter of Inquiry, or attachments thereto, shall set forth the subject matter being investigated. Upon receipt of a Letter of Inquiry, the trainee or

appraiser shall respond within 14 calendar days. Trainees and appraisers shall include with their written response copies of all documents requested in a Letter of Inquiry.

(f) Hearings in contested cases before the Board shall be governed by the provisions of G.S. 150B, Article 3A.

*History Note: Authority G.S. 93E-1-10;
Eff. July 1, 1994;
Amended Eff. July 1, 2003; August 1, 2002.*

CHAPTER 58 - REAL ESTATE COMMISSION

21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS

(a) All monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesperson shall be delivered immediately to the broker by whom he or she is employed.

(b) In the event monies received by a licensee while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, the broker having custody over such monies shall first secure from all parties having an interest in the monies written authorization for the deposit of the monies in an interest-bearing account. Such authorization shall specify how and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction at the closing or not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account."

(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include:

- (1) bank statements.
- (2) canceled checks which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. When a check is used to disburse funds for more than one sales

transaction, owner, or property, the check shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding check.

- (3) deposit tickets. For a sales transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. When a single deposit ticket is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket for each sales transaction, owner, or property, or the ticket may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket.

- (4) a separate ledger sheet for each sales transaction and for each property or owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided herein, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries when appropriate.

- (5) a journal or check stubs identifying in chronological sequence each bank deposit and

disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and an appropriate reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account.

- (6) copies of contracts, leases and management agreements.
- (7) closing statements and property management statements.
- (8) any documents not otherwise described herein necessary and sufficient to verify and explain record entries.

Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create a clear audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. To be sufficient, records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.

(f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.

(g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. If it appears to a broker holding a disputed deposit that a party has abandoned his or her claim, the broker may disburse the money to the other claiming parties according to their written agreement provided that the broker first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds.

(h) A broker may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A licensee shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained or disbursed by a licensee, are trust monies and shall be treated as such in the manner required by this Rule.

(j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other

person in the conversion or misapplication of such money or property.

(k) In addition to the records required by Paragraph (e) of this Rule, a licensee acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the licensee shall reconcile the subsidiary ledger sheets to the corresponding property or property owner ledger sheet. In lieu of maintaining a subsidiary ledger sheet, the licensee may maintain an accounts payable ledger sheet for each owner or property and each vendor to whom trust monies are due for monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger sheet entry including the amount to be disbursed for each and the purpose of the disbursement. The licensee may also maintain an accounts payable ledger sheet in the format previously described herein for vacation rental tenant security deposit monies and vacation rental advance payments.

History Note: Authority G.S. 93A-3(c); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. July 1, 2003; September 1, 2002; August 1, 2000; August 1, 1998; July 1, 1996; July 1, 1993; May 1, 1990.

21 NCAC 58A .0113 REPORTING CRIMINAL CONVICTIONS AND DISCIPLINARY ACTIONS

Any broker or salesperson who is convicted of any felony or misdemeanor or who has disciplinary action taken against him or her by any governmental agency in connection with any other occupational license shall file with the Commission a written report of such conviction or disciplinary action within 60 days of the final judgment or final order in the case. A form for this report is available from the Commission.

History Note: Authority G.S. 93A-3(c); 93A-6(a); 93A-6(a)(10); 93A-6(b)(2); Eff. August 1, 1996; Amended Eff. July 1, 2003; July 1, 2000.

21 NCAC 58A .0302 FILING AND FEES

(a) All applications for a real estate license shall be complete and shall be submitted to the Commission's office accompanied by the application fee. Examination scheduling of applicants who are required to pass the real estate licensing examination shall be accomplished in accordance with Rule .0401 of this Subchapter. An applicant for a real estate salesperson license shall not make application for a broker license while the salesperson application is pending unless the applicant first withdraws the salesperson application.

(b) The license application fee shall be thirty dollars (\$30.00). Applicants electing to take the licensing examination by computer must pay, in addition to the license application fee, the examination fee charged by the Commission's authorized testing service.

(c) An applicant shall update information provided in connection with an application or submit a newly completed application form without request by the Commission to assure

that the information provided in the application is current and accurate. Failure to submit updated information prior to the issuance of a license may result in disciplinary action against a licensee in accordance with G.S. 93A-6(b)(1). In the event that the Commission requests an applicant to submit updated information or to provide additional information necessary to complete the application and the applicant fails to submit such information within 90 days following the Commission's request, the Commission shall cancel the applicant's application. An applicant whose license application has been canceled and who wishes to obtain a real estate license must start the licensing process over by submitting a written application to the Commission upon a prescribed form and paying all required fees.

History Note: Authority G.S. 93A-4(a),(d); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. July 1, 2003; October 1, 2000; August 1, 1998; July 1, 1998; July 1, 1996; February 1, 1989.

21 NCAC 58A .0502 BUSINESS ENTITIES

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity which changes its business form shall be required to submit a new application immediately upon making the change and to obtain a new license. Incomplete applications shall not be acted upon by the Commission. Application forms for partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be available upon request to the Commission and shall set forth the name of the entity, the name under which the entity will do business, the address of its principal office, and a list of all brokers and salespersons associated with the entity.

(b) The application of any partnership, including a general partnership, limited partnership and limited liability partnership, shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners; a copy of any Certificate of Limited Partnership as may be required by law; past conviction of criminal offenses of any general or limited partner; past revocation, suspension, or denial of a business or professional license of any general or limited partner; and the name and residence address of each general and limited partner.

(c) The application of a limited liability company shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its Articles of Organization evidencing its authority to engage in the business of real estate brokerage; past conviction of criminal offenses of any manager or member; past revocation, suspension, or denial of a business or professional license of any manager or member; and the name and residence address of each manager or member.

(d) The application of a corporation shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its Articles of Incorporation evidencing its authority to engage in the business of real estate brokerage; past conviction of criminal offenses of

any corporate director, officer, employee, and of any shareholder who owns 10 percent or more of the outstanding shares of any class; past revocation, suspension, or denial of a business or professional license to any director, officer, employee, and of any shareholder who owns 10 percent or more of the outstanding shares of any class; the name and residence address of each director and officer of the corporation; and the name and address of each person, partnership, corporation, or other entity owning ten percent or more of the outstanding shares of any class.

(e) The application of any other business entity shall also call for a full description of the organization of the applicant and persons affiliated with the applicant, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage; past conviction of criminal offenses of any principal in the company; past revocation, suspension or denial of a business or professional license of any principal; and the name and residence address of each principal. For purposes of this Paragraph, the term principal shall mean any person or entity who owns the business entity to any extent, or who is an officer, director, manager, member, partner or who holds any other comparable position.

(f) A foreign business entity shall further qualify by filing with its application for license a copy of any certificate of authority to transact business in this state issued by the North Carolina Secretary of State which may be required by law and a consent to service of process and pleadings which shall be accompanied by a certified copy of the resolution of the general partners, managers or board of directors authorizing the proper partner, manager or officer to execute said consent.

(g) After filing a written application with the Commission and upon a showing that at least one principal of said business entity holds a broker license on active status and in good standing and will serve as principal broker of the entity, the entity shall be licensed provided it appears that the applicant entity employs and is directed by personnel possessed of the requisite truthfulness, honesty, and integrity. The principal broker of a partnership of any kind must be a general partner of the partnership, the principal broker of a limited liability company must be a manager of the company, and the principal broker of a corporation must be an officer of the corporation. A licensed business entity may serve as the principal broker of another licensed business entity if the principal broker-entity has as its principal broker a natural person who is himself licensed as a broker. The natural person who is principal broker shall assure the performance of the principal broker's duties with regard to both entities.

(h) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(i) The principal broker of a business entity shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity at which real estate brokerage activities are conducted;
- (2) renewing the real estate broker license of the entity;

- (3) retaining the firm=s renewal pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;
- (4) notifying the Commission of any change of business address or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;
- (5) notifying the Commission in writing of any change of his or her status as principal broker within ten days following the change;
- (6) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the trust account records are out-of-balance or have not been reconciled as required by Rule .0107 of this Chapter;
- (7) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as principal broker until a new principal broker has been designated with the Commission or, if no new principal broker is designated, for the period of time for which said records are required to be retained by Rule .0108 of this Chapter; and
- (8) notifying the Commission if, upon the termination of his status as principal broker, the firm=s transaction and trust account records cannot be retained or preserved or if the trust account records are out-of-balance or have not been reconciled as required by Rule .0107(e) of this Chapter.

(j) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity=s application for licensure. Upon receipt of notice from an entity or agency of this state that a licensed entity has ceased to exist or that its authority to engage in business in this state has been terminated by operation of law, the Commission shall cancel the license of the entity.

History Note: Authority G.S. 93A-3(c); 93A-4(a),(b),(d); Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. July 1, 2003; October 1, 2000; August 1, 1998; January 1, 1997; July 1, 1994; May 1, 1990.

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

21 NCAC 68 .0101 DEFINITIONS

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

- (1) "Applicant" means a person who submits documentation seeking Board status for registration or certification.

- (2) "Application packet" means a set of instructions and forms required by the Board for registration.
- (3) "Approved Supervisor" means a supervisor as set out in G.S. 90-113.31. This is a person who fulfills or is in the process of fulfilling the requirements for this Board designation pursuant to Rule .0211 of this Chapter by completing its academic, didactic and experiential requirements.
- (4) "Assessment" means identifying and evaluating an individual's strengths, weaknesses, problems and needs for the development of a treatment or service plan for alcohol, tobacco and drug abuse.
- (5) "Clinical Supervision Specific Education" means training that directly covers the aspects of clinical supervision of a substance abuse professional or any of the 12 core functions in their clinical application.
- (6) "Complainant" means a person who has filed a complaint pursuant to these Rules.
- (7) "Consultation" means a meeting for discussion, decision-making and planning with other service providers for the purpose of providing substance abuse services.
- (8) "Crisis" means a decisive, crucial event either directly or indirectly related to alcohol or drug use, in the course of treatment that threatens to compromise or destroy the rehabilitation effort.
- (9) "Deemed Status Group" means those persons who are credentialed as a clinical addictions specialist because of their membership in a deemed status discipline.
- (10) "Education" means a service which is designed to inform and teach various groups; including clients, families, schools, businesses, churches, industries, civic and other community groups about the nature of substance abuse disorders and about available community resources. It also serves to improve the social functioning of recipients by increasing awareness of human behavior and providing alternative cognitive or behavioral responses to life's problems.
- (11) "Full Time" means 2,000 hours per year.
- (12) "General Professional Skill Building" means education provided to enhance general skills of a substance abuse professional.
- (13) "Impairment" means a mental illness, substance abuse or chemical dependency, physical illness, or aging problem.
- (14) "Letter of Reference" means a letter that recommends a person for certification.
- (15) "Membership In Good Standing" means a member's certification is not in a state of revocation, lapse, or suspension. However, an individual whose certification is suspended and the suspension is stayed is a member in good standing during the period of the stay.

APPROVED RULES

- (16) "Passing score" means the score set by the entity administering the exam.
- (17) "President" means the President of the Board.
- (18) "Prevention Consultation" means a service provided to other mental health, human service, and community planning/development organizations or to individual practitioners in other organizations to assist in the development of insights and skills of the practitioner necessary for prevention.
- (19) "Prevention performance domains" means areas of professional activities to include:
- (a) planning and evaluations;
 - (b) education and skill development;
 - (c) community organization;
 - (d) public and organizational policy; and
 - (e) professional growth and responsibility.
- (20) "Referral" means identifying the needs of an individual that cannot be met by the counselor or agency and assisting the individual in utilizing the support systems and community resources available.
- (21) "Rehabilitation" means re-establishing the functioning needed for professional competency.
- (22) "Reinstatement" means an action where the Board restores certification or registration to an applicant after the applicant completes the requirements imposed by the Board.
- (23) "Relapse" means the return to the pattern of substance abuse as well as the process during which indicators appear prior to the person's resumption of substance abuse or a re-appearance or exacerbation of physical, psychological or emotional symptoms of impairment.
- (24) "Renewal" means an action by the Board granting a substance abuse professional a consecutive certification or registration based upon the completion of requirements for renewal as prescribed by the Board.
- (25) "Revival" means an action by the Board granting a substance abuse professional a certification or registration following a lapse of certification or registration wherein the professional must also meet the requirements for renewal as prescribed by the Board..
- (26) "Reprimand" means a written warning from the Board to a person making application for certification by the Board or certified by the Board.
- (27) "Respondent" means a person who is making application for certification by the Board or is certified by the Board against whom a complaint has been filed.
- (28) "Sexual activity" means:
- (a) Contact between the penis and the vulva or the penis and the anus;
 - (b) Contact between the mouth and the penis, the mouth and the vulva, or the mouth and the anus; or
 - (c) The penetration, however slight, of the anal or genital opening of another by a hand or finger or by any object with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (29) "Sexual Contact" means the intentional touching, either directly or indirectly, of the genitalia, anus, groin, breast, inner thigh, or buttocks of any person with an intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person.
- (30) "Substance Abuse Counseling Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the 12 core functions (Rule .0204 of this Chapter) as documented by a job description and supervisors evaluation.
- (31) "Substance Abuse Prevention Consultant Experience" means approved supervised experience that may be full time or part-time, paid or voluntary, and must include all of the prevention domains referenced by Rule .0206 of this Chapter and as documented by a job description and supervisor's evaluation.
- (32) "Substance Abuse Specific" means education focused upon alcohol and other drugs and the substance abusing population and is provided for a substance abuse professional by one whose education and experience is in the field of alcohol and other drugs.
- (33) "Supervised Practice" means supervision of the applicant in the knowledge and skills related to substance abuse professionals.
- (34) "Suspension" means a loss of certification or the privilege of making application for certification.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.40; 90-113.41; 90-113.41A; Eff. August 1, 1996; Temporary Amendment Eff. November 15, 1997; Amended Eff. April 1, 2003; August 1, 2002; April 1, 2001; August 1, 2000; August 1, 1998.

21 NCAC 68 .0202 REGISTRATION PROCESS FOR BOARD CERTIFICATION

- (a) Individuals may register with the Board at the beginning of their entry into the field. This allows the Board to review the applicant's materials including education, training, experience and supervision contracts and provide the applicant with a clear understanding of his or her standing in the certification process.
- (b) Although early registration is not required, it will provide better direction through the process. To register, the applicant shall send the following to the Board:
- (1) Completed registration form provided by the Board;

- (2) Documentation of required high school graduation or completion of GED, as well as documentation of any baccalaureate or advanced degree the applicant may have completed;
- (3) A signed supervision contract provided by the Board documenting the proposed supervision process by an approved supervisor;
- (4) A signed form attesting to the applicant's commitment to adhere to the ethical standards of the Board;
- (5) Documentation of three hours of educational training in ethics; and
- (6) A check or money order in the amount as set in G.S. 90-113.38 (b) that is non-refundable and made payable to the Board.

(c) Once the materials are determined by the Board to be in order the applicant shall be granted registration status.

(d) If a Registrant performs services as a counselor, in order for this experience to be considered toward certification at a later date, the Registrant shall receive supervision from an approved supervisor at a ratio of one hour of supervision for every ten hours of practice.

(e) Registration with the Board shall be for a period of no more than five years unless the Registrant resubmits the documents and pays the fees set forth in this Rule.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40; Eff. August 1, 1996; Amended Eff. April 1, 2003; August 1, 2002.

21 NCAC 68 .0208 CONTINUING EDUCATION REQUIRED FOR COUNSELOR AND PREVENTION CONSULTANT RECERTIFICATION

(a) Each certified Counselor and Prevention Consultant shall receive 60 hours of Board approved, as set out in these Rules, education during the current certification period which shall be documented. A minimum of 30 hours shall be substance abuse specific (SAS) and no more than 25 percent may be inservice education. The education may include a combination of hours including attending workshops, receiving clinical supervision and providing workshops.

(b) Recertification educational guidelines as a Substance Abuse Professional require:

- (1) No more than 25 percent may be inservice education, received within your organization by staff of the same employment.
- (2) No more than 25 percent of workshop presentation with one hour of presentation translating to one hour of education. Workshop presentation shall be a part of an event pre-approved by the Board as set out in these Rules.
- (3) No more than 25 percent of Alcohol/Drug Education Traffic School (ADETS) and Drug Education School (DES) events.
- (4) An applicant shall include documentation of each event submitted.
- (5) All applicants shall include six hours of HIV/AIDS/STDS/TB/Bloodborne pathogens

training and education and three hours of professional ethics training and education for each recertification.

- (6) No more than 50 percent self study, pre-approved by the Board as set out in these Rules.

(c) To be recertified, a certified professional must submit the following:

- (1) A completed application form with continuing education documented; and
- (2) A non-refundable one hundred twenty-five dollar (\$125.00) recertification fee.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.38; Eff. August 1, 1996; Amended Eff. April 1, 2003; August 1, 2002; August 1, 2000.

21 NCAC 68 .0406 PROCEDURES FOR APPROVAL OF SELF-STUDY COURSES

(a) Self-study courses may be submitted for approval for certification and recertification hours.

(b) A copy of all documents including test and documentation of completion shall be submitted with the application.

(c) No more than 50% of hours may be credited through self-study programs.

(d) Self-study courses may not be repeated for credit.

(e) A fee of one hundred fifty dollars (\$150.00) shall be submitted for each course by the vendor for pre-approval by the Board. Pursuant to G.S. 90-113.39, approval is for one year from the date the Certification Board approves the application.

(f) Self study approved by IC&RC/AODA, Inc. member boards and organizations granted deemed status shall be accepted with documentation of completion.

History Note: Authority G.S. 90-113.30; 90-113.37; 90-113.38; 90-113.39; 90-113.40; Eff. August 1, 1996; Amended Eff. April 1, 2003.

21 NCAC 68 .0512 RESPONSIBILITY OF SUPERVISOR TO SUPERVISEE

A certified professional serving as a clinical supervisor shall:

- (1) Be aware of his or her influential position with respect to students, employees, and supervisees, and therefore not exploit the trust and dependency of such persons.
- (2) Avoid dual relationships that could impair professional judgment, increase the risk of exploitation, or potentially cause harm to the supervisee. To implement this standard the supervisor shall not:
 - (A) Instruct or supervise family members who are related by blood to the second degree or marriage or a member of the supervisor's household as students or; supervisees (related by marriage means related to spouse, brother-in-law, mother, and father-in-law;

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- (B) Provide therapy or therapeutic counseling to students, employees, or supervisees; or
- (C) Solicit or engage in sexual activity or contact with students or supervisees during the period of supervision.
- (3) Be trained in and knowledgeable about supervision methods and techniques.
- (4) Shall supervise or consult only within his or her knowledge, training, and competency.
- (5) Guide his or her supervisee to perform services responsibly, competently, and ethically. The supervisor shall assign to his or her employees, supervisees, and students only those tasks or duties that these individuals can be expected to perform competently, based on the supervisee's education, experience, or training, either independently or with the level of supervision being provided.
- (6) Not disclose the confidential information provided by a supervisee except:
 - (A) As mandated by law;
 - (B) To prevent harm to a client, an organization, or other persons involved with the supervision;
 - (C) Where the supervisee is a respondent or defendant in a civil, criminal, or disciplinary action;
 - (D) In educational or training settings where there are multiple supervisors, and then only to other professional colleagues who share responsibility for the performance or training of the supervisee; or
 - (E) If consent is obtained in writing, and then such information may be revealed only:
 - (i) In accordance with the terms of the consent; and
 - (ii) After being clear to the supervisee regarding the limits to confidentiality within the supervisory relationship, and pursuant to 21 NCAC 68 .0508 of the North Carolina Administrative Code.
- (7) Establish and facilitate a process for providing evaluation of performance and feedback to a supervisee. To implement this process the supervisee shall be informed of the timing of evaluations, methods, and levels of competency expected.
- (8) Not endorse students or supervisees for certification, licensure, employment, or completion of an academic training program if they believe the supervisees are not qualified for the endorsement. Supervisors shall develop a plan to assist supervisees who are not qualified for endorsement to become qualified.

- (9) Make financial arrangements for any remuneration with supervisees and organizations only if these arrangements are clear and in writing. All fees shall be disclosed to the supervisee prior to the beginning of supervision if practicable.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.38; 90-113.39; 90-113.40; Eff. April 1, 2003.

21 NCAC 68 .0606 EFFECT OF ACTIONS OF COURT OF OTHER PROFESSIONAL GROUPS

(a) If a person certified or applying for certification by the Board has been disciplined by another professional organization or convicted of a felony or a misdemeanor and that discipline or conviction relates to his qualifications or functions as a substance abuse professional, the Ethics Committee or the Board may take this prior record into consideration when imposing disciplinary sanctions.

(b) When such prior discipline or conviction is discovered, it shall be referred to the Ethics Committee and shall be treated by the Ethics Committee in the same manner as a complaint.

(c) Such prior discipline or conviction as described in Paragraph (a) of this Rule shall be presumed to be correct and appropriate. In order to overcome this presumption, the respondent must prove to the Committee's or the Board's satisfaction at least one of the following:

- (1) The process was so flawed that the finding of the organization or board is without basis; or
- (2) The disciplinary action by the organization or board does not bear a reasonable relation to the conduct complained of resulting in undue punishment.

(d) Registrants and certified professionals shall notify the Board within 30 days from the date of any conviction or finding of guilt, or pleading of nolo contendere for all criminal convictions. This reporting shall include DWI convictions but exclude all other traffic convictions pursuant to G.S. 20.

(e) Failure to report these criminal convictions shall be considered a violation of the Ethical Principles of Conduct.

History Note: Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.43; 90-113.44; 90-113.45; Temporary Adoption Eff. October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1996; Amended Eff. April 1, 2003.

TITLE 23 – DEPARTMENT OF COMMUNITY COLLEGES

23 NCAC 02C .0305 EDUCATION SERVICES FOR MINORS

(a) The State Board shall encourage individuals to complete high school before seeking admission to a college.

(b) A minor, 16 years old or older, may be considered a student with special needs and may be admitted to an appropriate program at a college if the local public or private educational

agency determines that admission to the program is the best educational option for the student and the admission of the student to the program is approved by the college. This requirement may be waived if the student has been out of school at least six months and the application is supported by a notarized petition of the student's parent, legal guardian, or other person or agency having legal custody and control. The petition shall certify the student's residence, date of birth, date of leaving school, and the petitioner's legal relationship to the student.

(c) A high school student, 16 years old or older, based upon policies approved by the local public or private board of education and board of trustees, may be admitted to any curriculum course one hundred level and above or any continuing education course, except adult basic skills, concurrently under the following conditions:

- (1) Upon recommendation of the chief administrative school officer and approval of the president of the college;
- (2) Upon approval of the student's program by the chief administrative school officer and the president of the college; and
- (3) Upon certification by the Chief Administrative School Officer that the student is taking the equivalent of one-half of a full-time schedule and is making progress toward graduation.

(d) High school students, taking courses pursuant to Paragraphs (b) and (c) of this Rule, shall not displace adults but may be admitted any term on a space-available basis to any curriculum course one hundred level and above or any continuing education course, except adult basic skills. Once admitted, they shall be treated the same as all other students.

(e) Local boards of trustees and local school boards may establish cooperative programs in areas they serve in order to provide college courses to high school students. College credits shall be awarded to those high school students upon successful completion of the courses. Cooperative programs shall be approved, prior to implementation, by the State Board or its designee.

(f) Students less than 16 years old who are mature enough to function well in an adult education setting and are intellectually gifted as evidenced by a score in the range from the 92nd percentile to the 99th percentile on an aptitude and an achievement test selected from a list of tests approved by the System Office may be admitted to community colleges. Tests included on the System Office approved list shall be selected from the Mental Measurements Year Book published by the Burds Institute of Mental Measurements. The student shall be ranked by an official of the student's school in the top 10 percent on the following behavioral characteristics: mature, observant, inquisitive, persistent, innovative, analytical, adaptable, leadership, desire to achieve, self-confidence and communications skills. Students less than 16 years old shall not displace adults but may be admitted any term on a space-available basis to any curriculum course one hundred level and above. Students admitted to community colleges under this Paragraph shall pay the same tuition and fees as other curriculum students.

(g) Except as authorized by G.S. 115D-20(4), colleges shall not start classes, offer summer school courses, or offer regular high school courses for high school students.

(h) A college may make available to persons of any age non-credit, non-remedial, enrichment courses during the summer period. These courses shall be self-supporting and shall not earn credit toward a diploma, certificate, or degree at the college or high school.

(i) At the request of the director of a youth development center having custody of juveniles committed to the Department of Juvenile Justice and Delinquency Prevention, a college may make available to these juveniles any course offered by that college if they meet the course admission requirements. The director's request shall include the director's approval for each juvenile to enroll in the course.

History Note: Authority G.S. 115D-1; 115D-5; 115D-20; S.L. 1995, c. 625;

Eff. January 1, 1987;

Amended Eff. September 1, 1993;

Temporary Amendment Eff. June 1, 1997;

Amended Eff. July 1, 1998;

Temporary Amendment Eff. August 22, 2001;

Amended Eff. April 1, 2003.

23 NCAC 02D .0319 FEE WAIVERS FOR THE HUMAN RESOURCES DEVELOPMENT PROGRAM

(a) Tuition and fees for enrollment in courses coded in the Master Course List as Human Resources Development shall be waived if the student enrolling meets at least one of the following criteria:

- (1) Is unemployed;
- (2) Has received notification of a pending layoff;
- (3) Is working and is eligible for the Federal Earned Income Tax Credit (FEITC); or
- (4) Is working and earning wages at or below two hundred percent (200%) of the federal poverty guidelines.

Courses included in the Master Course List shall address the six core components set forth in Subparagraph (2)(f) of Rule 02E .0101.

(b) Students for whom tuition and fees are waived shall sign a form adopted by the State Board of Community Colleges verifying that they meet one of these criteria.

History Note: Authority G.S. 115D-5; S.L. 2001, c.424, s.30.3(b) and (e);

Eff. February 1, 1976;

Amended Eff. August 17, 1981;

Temporary Amendment Eff. October 4, 2001;

Amended Eff. April 1, 2003.

23 NCAC 02E .0402 WORK STATION OCCUPATIONAL SKILLS TRAINING

(a) Training as defined by this Rule is designed to assist manufacturing, service, or governmental organizations with in-service training of their employees. The goal is the development of skilled workers to support the continued economic growth of the North Carolina economy thereby enhancing the quality of life for the citizens of the state. Courses supported with public funds that provide occupational skills training at an individual's work station must meet the following conditions:

- (1) Training courses shall be available to all local companies.
- (2) Training shall occur in the facilities or at the sites in which the company normally operates.
- (3) Trainees may be newly-hired employees who need job skills training or existing employees who need job skills up-grading.
- (4) Training shall be conducted at the employee's assigned work station during normal working hours.
- (5) Training shall be directly related to job skills.
- (6) Training shall prepare new or current employees to use technology, equipment, or production processes.

(b) Colleges may offer work station based courses in those situations where the development of job skills is dependent on technology, equipment or production processes in the work environment which cannot be duplicated in a traditional classroom or laboratory training setting. The purpose of work station based training is to teach the skills of a particular job. The instruction provided shall not duplicate or supplant company training.

(c) Colleges may offer work station based training, as defined in this Rule, in the following ways:

- (1) **Occupational Extension at the Work Station:** A college may teach an occupational extension course at an individual's work station if the training is provided by a community college instructor, the trainee is in a full-time training capacity, and the training is offered consistent with Rules 23 NCAC 02D .0324 and 23 NCAC 02E .0101(2)(a). The employee shall not be performing any work duties during the training. When these criteria are met, the college will earn regular budget FTE.
- (2) **Structured On-the-Job Training:** Structured On-the-Job Training shall earn FTE on a contact hour basis for the applied learning component. Structured On-the-Job Training shall meet the following criteria:
 - (A) The applied learning component of the course shall be based on skill competencies determined by industry, employer standards, external agency licensing or certification requirements, or general accepted practices in the field of specialization;
 - (B) The course content and designated instructional hours for a structured on-the-job training course shall comply with the program criteria of the Continuing Education Unit of the Southern Association of Colleges and Schools;
 - (C) The System President shall approve a course when the course outline contains specific student learning objectives and a method of measuring student performance; and
 - (D) All instructional components shall follow a structured training outline.

The outline shall be kept on file at the college until released by audit.

- (3) **Customized On-the-Job Training:** Colleges may offer Customized On-the-Job Training as an occupational extension course when an outline of the proposed training course, including learning objectives and training assessments, has been approved in advance by the System President. Customized On-the-Job Training classes shall be limited to 15 trainees per instructor, consist of no more than 240 hours of training per trainee per course, and shall be taught by a community college instructor. If these criteria are met, the college will earn budget FTE on a contact hour basis after the training has been reported to and approved by the local college board of trustees.

- (4) **Company-Provided Training:** When a college can document that the public purpose is justified, the college may use Occupational Extension funds to reimburse company instructors for providing training. The public purpose shall be justified when the skills taught in the course are transferable to work in other companies involved in the same or similar industry cluster, such that the benefit to the public is the development of a skilled workforce. Company instructors shall operate in a full-time training capacity during the designated instructional periods, and shall follow a structured training outline that is jointly developed by the college and the company. The training outline including the public purpose documentation shall be kept on file at the college until released by audit. Company-Provided Training shall earn the administrative component only of the budget FTE, after being reported to and approved by the college board of trustees. Company Provided Training shall be limited to no more than 15 trainees per instructor, no more than 240 hours of training per trainee, per course, and shall be taught by a company instructor.

(d) Content of all courses offered under this Rule shall be supported by an analysis of the job for which training is offered. The job analysis shall designate each separate task within a job and assign a number of hours required to teach each separate task.

(e) A work station based course shall not be offered on a repetitive or recurring basis to the same employees within the same organization. An employee may not take a given course more than twice.

(f) An instructor conducting training under this Rule, whether an employee of the organization in which instruction is offered or an employee of the sponsoring college, shall not, during hours of instruction, be involved in any activity other than instruction. An instructor shall not engage in any administrative, supervisory, or operational functions of the organization in which instruction is offered during those hours when the instructor is partially or totally paid by the college. An official

of the organization in which instruction is offered shall agree in writing to these conditions.

History Note: Authority G.S. 115D-5; Eff. February 1, 1976; Emergency Amendment Eff. August 6, 1976 For a Period of 120 days to Expire on December 4, 1976; Made Permanent Eff. November 4, 1976; Amended Eff. September 1, 1985; December 1, 1984; Temporary Amendment Eff. October 15, 1992 For a Period of 180 days to Expire on April 15, 1993; Amended Eff. September 1, 1993; Temporary Amendment Eff. November 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. April 1, 2003; June 1, 1994.

23 NCAC 02E .0403 INSTRUCTION TO CAPTIVE OR CO-OPTED GROUPS

- (a) A college shall obtain State Board approval prior to providing instruction to students who are classified captive or co-opted. Captive or co-opted groups of students are defined as inmates in a correctional facility; clients of sheltered workshops, domiciliary care facilities, nursing facilities, mental retardation centers; substance abuse rehabilitation centers; and in-patients of psychiatric hospitals. Approval by the State Board of Community Colleges shall constitute approval of the curriculum program or occupational extension course(s) and the group to be served by the college.
(b) Instruction to captive or co-opted groups may be approved when the State Board determines that the proposed instruction for the group is not a function of the requesting agency, and the instruction is within the purpose of the community college.
(c) Instruction to captive or co-opted groups may be approved in the form of curriculum programs or courses and occupational extension courses. State Board of Community Colleges (SBCC) approved curricula for Captive or co-opted groups shall include changes in programs of study and SBCC approved occupational extension course modifications. Physical education or work experience may not be a part of a curriculum program in a correctional setting.
(d) Policies governing student enrollment in curriculum programs or courses and occupational extension courses shall be consistent with general college policies.

History Note: Authority G.S. 115D-1; 115D-5; Emergency Adoption Eff. July 1, 1979 For a Period of 120 days to Expire on October 29, 1979; Made Permanent by Amendment Eff. October 5, 1979; Amended Eff. April 1, 2003; January 1, 1996; September 1, 1993; December 1, 1984.

TITLE 26 – OFFICE OF ADMINISTRATIVE HEARINGS

26 NCAC 02C .0109 CITATION TO AUTHORITIES

(a) The agency shall cite authorities according to the most current edition of the rules of citation contained in "A Uniform System of Citation" except as listed in Paragraph (b) of this Rule. "A Uniform System of Citation" is hereby incorporated by reference and includes subsequent amendments and editions. A

copy may be obtained from the Harvard Law Review Association, Gannett House, 1511 Massachusetts Ave., Cambridge, Massachusetts 02138 at a cost of sixteen dollars (\$16.00).

(b) The agency shall cite:

- (1) the General Statutes of North Carolina as "G.S. #";
(2) the Session Laws of North Carolina as "S.L. 20xx-xxx, s. x";
(3) an Executive Order issued by the Governor as "E.O. #, (Governor's name), (year)";
(4) the North Carolina Administrative Code as "(Title #) NCAC (Chapter or Subchapter #) (.####)"; and
(5) the North Carolina Register as "(Vol. #) NCR (Issue #), (page #)".

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19; Temporary Adoption Eff. November 1, 1995; Eff. April 1, 1996; Amended Eff. December 1, 2002.

26 NCAC 02C .0401 SCOPE AND AVAILABILITY

- (a) The rules in this Section set forth the requirements for submitting rules for inclusion in the Code. The agency shall also comply with the requirements in Sections .0100 - .0200 of this Subchapter.
(b) These Rules apply to agencies subject to G.S. 150B, Article 2A, as well as those agencies subject to G.S. 150B-21.21(a) and (b).
(c) The Official North Carolina Administrative Code is available by subscription from WestGroup and may be ordered directly from WestGroup by calling 1-800-762-5272, ordering from the online store at http://www.westgroup.com, or by writing to WestGroup, 610 Opperman Drive, Eagan, MN 55123.
(d) The North Carolina Administrative Code is available on the OAH website: http://www.oah.state.nc.us.

History Note: Authority G.S. 150B-21.17; 150B-21.18; 150B-21.19; Eff. April 1, 1996; Amended Eff. December 1, 2002; April 1, 1997.

TITLE 28 – DEPARTMENT OF JUVENILE JUSTICE AND DELINQUENCY PREVENTION

28 NCAC 01A .0202 HEARINGS

- (a) Persons desiring to make oral presentations at a public hearing may submit a written copy of the presentation to the hearing officer prior to or at the public hearing.
(b) Persons making oral presentations shall be limited to 10 minutes. The hearing officer may extend the length of the presentation beyond 10 minutes if he determines that it is required to ensure a full understanding of the issues.
(c) The hearing officer at the public hearing shall announce a written list identifying the parties who have filed written submissions prior to the hearing and copies of those submissions shall be made available upon request.

(d) A written submission shall state the rule or proposed rule to which the comments are addressed and shall also include the name and address of the person submitting it. Written submissions must be sent to: Secretary/Administrative Hearings Officers, Department of Juvenile Justice and Delinquency Prevention, 1801 Mail Service Center, Raleigh, NC 27699-1801; or submitted in person to the Hearing Officer at the time of the public hearing.

(e) The Hearing Officer shall have control over the rulemaking hearing, including:

- (1) the responsibility of having a record made of the hearing;
- (2) extension of and enforcement of time allotments;
- (3) recognition of speakers;
- (4) prevention of repetitious presentations; and
- (5) general management of the hearing.

(f) The Hearing Officer shall give each person attending the hearing a fair opportunity to present views, data, and comments.

History Note: Authority G.S.143B-512(a); 150B-21.2; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 01A .0203 FEES

The Department may charge a fee to persons requesting materials from hearing records. The fee shall cover the materials cost of meeting the request.

History Note: Authority G.S. 143B-512(a); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 01A .0204 DECLARATORY RULINGS

(a) The Secretary or his designee shall have the power to make declaratory rulings. All requests for declaratory rulings shall be by written petition and shall be submitted to: Secretary/Administrative Hearing Officer, Department of Juvenile Justice and Delinquency Prevention, 1801 Mail Service Center, Raleigh, NC 278699-1801.

(b) Every request for a declaratory ruling must include the following information:

- (1) The name and address of the petitioner;
- (2) The statute or rule to which the petition relates; and
- (3) A concise statement of the manner in which the petitioner is aggrieved by the rule and the criteria under this Rule that justifies the request for a declaratory ruling.

(c) The Secretary or the Department's Hearing Officer shall issue notice to persons who may be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

(d) A record of all declaratory ruling proceedings shall be maintained by the Secretary's Office and shall be available for public inspection during regular business hours. This record shall contain:

- (1) The original request;
- (2) The reasons for refusing to issue a ruling when the request is denied;

- (3) All written memoranda and information submitted;
- (4) Any written minutes or audio tape or other record of the oral hearing; and
- (5) A statement of the ruling when the request is granted.

History Note: Authority G.S. 143B-512; 143B-516, 150B-4; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 01A .0301 DESIGNATED AGENCIES AUTHORIZED TO SHARE INFORMATION

The following agencies shall share with one another upon request, information in their possession that is relevant to any case in which a petition is filed alleging that a juvenile is abused, neglected, dependent, undisciplined or delinquent:

- (a) The Department of Juvenile Justice & Delinquency Prevention;
- (b) The Office of Guardian Ad Litem Services of the Administrative Office of the Courts;
- (c) County Departments of Social Services;
- (d) Area mental health developmental disability and substance abuse authorities;
- (e) Local law enforcement agencies;
- (f) District attorneys' offices as authorized by G.S. 7B-3100;
- (g) County mental health facilities, developmental disabilities and substance abuse programs;
- (h) Local school administrative units;
- (i) Local health departments; and
- (j) A local agency designated by an administrative order issued by the chief district court judge of the district court district in which the agency is located, as an agency authorized to share information pursuant to these Rules and the standards set forth in G.S. 7B-3100.

History Note: Authority G.S. 7B-3100; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0102 DEFINITIONS

In this Subchapter the following terms have the listed meanings:

- (1) Juvenile Crime Prevention Council Fund (JCPC Fund). The funding account allocated by the General Assembly to the Department for the use of county government on a matching basis to establish and to maintain intervention and prevention services planned for by the Juvenile Crime Prevention Council.
- (2) Cash Match. The local funding provided by county government and other local resources and used to provide the share of a program budget proportionate to the Department funds as required by the Department.
- (3) In-Kind Match. A non-cash, local contribution to the operating costs of a Juvenile Crime Prevention Council funded program.

- (4) Youth Services Programs. Youth Services Programs are local intervention and prevention programs that provide services to the delinquent youth, undisciplined youth and those youth at risk of becoming delinquent.
- (5) Multi-County Programs. Multi-county programs are programs that are administered by a single agency with a single revenue and expenditure budget and that contract for services using Juvenile Crime Prevention Council program agreement with two or more counties. Those individual program agreements meet all requirements for county participation in the Juvenile Crime Prevention Council fund.
- (6) Discretionary Juvenile Crime Prevention Council Funds. Discretionary Juvenile Crime Prevention Council Funds are those funds allocated to counties by the Department that remain uncommitted for a period of six months or are released by the county. Those funds are released for redistribution in accordance with this Subchapter.

History Note: Authority G.S. 143B-516(e); 143B-543; 143B-550; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0103 COUNTY ELIGIBILITY

- (a) The Department shall provide to counties annual written notification of the amount of the Juvenile Crime Prevention Council funds available and the local match required to utilize these state appropriated dollars.
- (b) The Chairperson of the Board of County Commissioners, in order to indicate the desire of the county to participate in the Juvenile Crime Prevention Council fund, shall submit an annual funding plan to provide intervention and prevention funding.
- (c) Counties may withdraw from the program at any time by giving 30 days prior written notice of the withdrawal. Funds designated for a county choosing to withdraw shall be placed in the Discretionary Juvenile Crime Prevention Council Fund. Notice of withdrawal must be signed by the Chairperson of the Board of County Commissioners.
- (d) Counties shall not spend Juvenile Crime Prevention Council funds to duplicate services otherwise required by law.
- (e) Counties shall not use the Juvenile Crime Prevention Council fund to supplant existing funds for services or programs.

History Note: Authority G.S. 143B-516; 143B-543; 143B-550; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0104 FUNDING

- (a) Every participating county shall receive continuation funds in the amount of the previous fiscal year as provided by the legislature. The Department may apportion expansion funds with either:
 - (1) an equal amount per county;

- (2) a proportionate amount per county based on the county population that is 10-17 years of age; or
- (3) a combination of the two.
- (b) If the legislative appropriation for any fiscal year is less than that of the previous year, the Department shall calculate reductions in the county allocations using the same amount per county or the same proportionate amount as the overall state fund reduction or both.

History Note: Authority G.S. 143B-516(b)(9); 143B-550; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0105 LOCAL MATCH

- (a) Local match required for the expenditure of Juvenile Crime Prevention Council funds allocated for each county during any fiscal year may include either cash or in-kind contributions, except that capital expenditures shall require a cash match.
- (b) Cash used as a required match may include any local general revenue funds collected by the local government and included in the current fiscal year budget.
 - (1) For purposes of this Rule, cash match may not include any state or federal monies; however, Juvenile Crime Prevention Council program funds may be used as a match for federal grants. Juvenile Crime Prevention Council administrative funds may be used as match for federal funds only if approved by the Department in the certification budget.
 - (2) Cash used as a required match may also include any private foundation grant or individual contribution so long as such grant or contribution is made a part of the operating budget of the local program and is reported to the County Finance Officer on the Program Agreement and Accounting forms.
- (c) In-kind contributions may include non-cash goods or services within a county's current assets or operation that is used to support the operation of any new or continuing program for which Juvenile Crime Prevention Council funds are requested.
- (d) In documenting the value of an in-kind contribution, the county will:
 - (1) Use the value of goods or services that directly benefits and is specifically identifiable to the programs's activities; and
 - (2) Provide justification to the Department of the value claimed.

History Note: Authority G.S. 143B-516(b)(11); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0106 BUDGET AND BUDGET AMENDMENTS

- (a) A Program Agreement Form including a line item budget shall be required for each program receiving Juvenile Crime Prevention Council funds.
- (b) Juvenile Crime Prevention Council funds shall be administered by county governments in accordance with the provisions of G.S. 159-15.

(c) Audits shall be submitted to the county and to the Department as required by law.

(d) The county shall receive from the program and shall submit a line item budget amendment with the Department in accordance with G.S. 159-15 when there is an adjustment in the revenues or in the cost center expenditures. Notice to the Department of any budget amendment shall be made by submission of a program agreement revision prior to June 30 of the fiscal year of operation.

(e) Prior to the expenditure of funds, a county shall receive from a program and shall submit a program agreement revision for approval when a budget change within a program will result in a change in the overall impact of service delivery capability. Such changes include:

- (1) Eliminating a staff member or function in the program;
- (2) Assigning a staff member to a service delivery function not included in the approved Program Agreement;
- (3) Shifting Juvenile Crime Prevention Council funds from one currently funded program to another within the same county; and
- (4) Any request for Discretionary Funds.

(f) Counties shall use funds only for the purposes approved by the Department in a program agreement or revision.

History Note: Authority G.S. 143B-516; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0107 DISCRETIONARY FUNDS

(a) Discretionary funds shall be treated as additional state funds over and above the annual allotment to a county and shall not be available for more than one year. Discretionary Funds may not be expended on routine operations of a local program that causes increased recurring cost to the state.

(b) In order to receive discretionary funds, the program must:

- (1) Be a program funded by the department, which is in danger of closing or reducing its level of service and shall submit a statement of projected future funding sources documenting how the program plans to continue in operation during the next year; or
- (2) Be a currently operating departmentally funded program in need of equipment, materials, renovations, or staff development, which will expand or enhance the service capability of the program on a continuing basis. A program shall show a measurable expansion of services, which may include:
 - (A) More youth physically served in the renovated facility;
 - (B) Additional staff training that will add a new treatment dimension to the ongoing program; or
 - (C) Equipment or materials directly relating to improved treatment.

(c) Discretionary Funds may be used for emergency placement of youth for whom all local resources have been exhausted but where Department placement is inappropriate.

(d) Juvenile Crime Prevention Council funds that remain uncommitted for six consecutive months, that are released by the withdrawal of a county from the Juvenile Crime Prevention Council fund and that are released with the third quarter accounting shall be transferred to the discretionary fund and made available to participating counties.

History Note: Authority G.S. 143B-516; 143B-512; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0108 DISBURSEMENT, REVERSIONS AND FINAL ACCOUNTING

(a) Funds approved for Juvenile Crime Prevention Council programs shall be disbursed monthly, except for seasonal programs. Seasonal program funds shall be disbursed as determined by the Department.

(b) The county shall submit the third quarter accounting forms for the Juvenile Crime Prevention Council and all funded programs to the Department at the end of the ninth month of the fiscal year unless otherwise required by the Department. This statement shall be prepared jointly by the program director, program fiscal officer and the county finance officer.

(c) A Final Accounting Form must be submitted not later than August 1 of each fiscal year to the Department unless otherwise directed by the Department.

- (1) If a reversion is indicated from the Final Accounting Form, the Department shall notify the county finance officer of the reversion and the county shall refund all reverted funds to the Department within 45 days of notification.
- (2) Reversion identified in the multi-county programs shall be billed to the program with notification to the participating counties. This direct billing is for the purpose of facilitating reversion and does not eliminate the responsibility of each participating county for the proper use and accounting of the funds received by the county for the program and for any requested reversion of those funds.

History Note: Authority G.S. 143B-516(a); 143B-550; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0109 THIRD PARTY PAYMENTS

(a) Client fees may not be required by programs which receive Juvenile Crime Prevention Council funds.

(b) When third party payments are billed on behalf of youth served in Juvenile Crime Prevention Council programs, the revenue generated shall be used only for authorized expenses, and documented through a program agreement revision approved by the Department during the fiscal year in which the payment is received by the program. Authorized expenses include:

- (1) Expansion of services;
- (2) Purchase or replacement of supplies or equipment, or to make other one-time expenditures that will directly enhance the effectiveness or the program; or

- (3) Reduction of the amount of Juvenile Crime Prevention Council funds necessary to meet the program's obligations during the fiscal year. Notification to the Juvenile Crime Prevention Council is required so that Juvenile Crime Prevention Council funds may be reallocated to meet other needs within the county or released to the Department.

(c) Third party payments shall not be used as local match funds. Third party payments shall be treated as other revenue and the amount and the source of funds must be included in the final accounting report.

History Note: Authority G.S. 143B-516; 143B-550; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0110 CAPITAL EXPENDITURES

(a) Capital expenditures include equipment valued in accordance with Office of State Budget policy and with a useful life of more than one year. Equipment expenses incurred by programs where Juvenile Crime Prevention Council funds constitute the major funding source shall be subject to the following:

- (1) Inventory control shall be maintained by placing all equipment purchased by funded programs on the local equipment inventory.
- (2) Equipment purchased by such programs shall, for the life of that equipment, be used solely for the purpose stipulated in the Program Agreement.
- (3) The disposal of such equipment shall be in accordance with the county's surplus equipment policy and any revenue realized by the county shall be returned to the program for which the equipment was purchased.
- (4) Should the program cease operation during the useful life of the equipment, the county may, with the approval of the Department, transfer the equipment to another youth services program within the county.
- (5) If the property cannot be transferred to another youth services program, the county in agreement with the Department may reimburse the program at the fair market value of the property and transfer the property.
- (6) The county, in agreement with the Department, may sell property and transfer revenue to any youth services program.

(b) All Juvenile Crime Prevention Council funded programs shall abide by the administering agency's policy for capital expenditures. If no administering agency policy exists, then the county government shall establish a policy. The program shall abide by the county government policy.

History Note: Authority G.S. 143B-516; 143B-550; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0202 JUVENILE CRIME PREVENTION COUNCIL RESPONSIBILITIES

In implementing the planning requirements of G.S. 143B-543, the Juvenile Crime Prevention Council's shall:

- (1) Monitor currently funded Juvenile Crime Prevention Council programs and evaluate the availability of intermediate and community level sanctions;
- (2) Maintain a current and ongoing assessment of the needs of children involved or potentially involved in the juvenile justice system;
- (3) Submit to the county commissioners an annual plan for the provision of intervention/prevention services which shall include:
 - (A) A list of services which prioritizes funding for intermediate and community level sanction programs and may include prevention programs;
 - (B) A statement from the Juvenile Crime Prevention Council, verifying the existence of adequate intermediate and community level sanctions if prevention programs are included in the funding recommendations;
 - (C) Verification of the request for proposal process ensuring public notification of available funding; and
 - (D) Program proposals that are recommended for funding;
- (4) Explore alternative funding sources, including other state and federal funds and private corporations and foundations; and
- (5) Promote public awareness of delinquency, risk factors, and prevention strategies.

History Note: Authority G.S. 143B-549; 143B-550; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0203 JUVENILE CRIME PREVENTION COUNCIL CERTIFICATION

(a) In order to receive funds from the Department, each Juvenile Crime Prevention Council shall satisfy the following:

- (1) Have membership appointed by the Board of County Commissioners;
- (2) Have written bylaws that ensure open meetings, recorded minutes, notice of meetings and distribution of minutes prior to or during subsequent meetings;
- (3) Have established external communication requirements as follows:
 - (A) The Juvenile Crime Prevention Council shall communicate through the media and by written Request for Proposals the availability of funding to all public and private non-profit agencies and interested community members, that serve at risk children, and their families;
 - (B) The Juvenile Crime Prevention Council shall make annual needs

assessment information available to all non-profit agencies and interested community members that serve at risk children and their families; and

(C) The Juvenile Crime Prevention Council shall inform its members and other interested members of the community about full Council meetings.

- (b) To apply for certification, each Juvenile Crime Prevention Council shall complete an Application for Certification, which is available through the Department.
- (c) The completed Application for Certification shall be signed by the Juvenile Crime Prevention Councils Chairperson, the Chairperson of the Board of County Commissioners or county manager and forwarded to the Department not later than June 30 of each year.

History Note: Authority G.S. 143B-516; 143B-544; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 02A .0204 JUVENILE CRIME PREVENTION COUNCIL ADMINISTRATIVE GRANTS

- (a) The Department shall allow administrative grants as approved for each county Juvenile Crime Prevention Council certified under these Rules to fund administrative expenses.
- (b) This administrative grant shall be deducted from the regular Juvenile Crime Prevention Council fund allocation set forth in Rule .0103 of this Subchapter.
- (c) Administrative grants shall be used only for reasonable expenses incurred by or in support of the Juvenile Crime Prevention Council including but not necessarily limited to operating expenses, per diem expenses, and training.
- (d) No local match shall be required for administrative grants. The Department shall request refunds of unexpended funds or unapproved expenditures.

History Note: Authority G.S. 143B-516; 143B-544; 143B-545; 143B-546; 143B-547; 143B-548; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 03A .0102 DEFINITIONS

In this Subchapter the following term has the listed meaning: Individual Plan of Care. A written record maintained on each juvenile served by programs operated by funding support received from the Department which shall include the following elements:

- (1) A schedule of planned program activities;
- (2) Any other specially designed activities to meet the needs of an individual client;
- (3) The anticipated length of stay;
- (4) Specific behavior and attitude changes expected to result from the implementation of the Plan of Care;
- (5) A method of evaluating a program impact on such things as self esteem, academic performance, personal enrichment, social growth and development, delinquent behavior, school attendance; and

- (6) A mechanism for periodic review and revision based on progress or lack thereof.

History Note: Authority G.S. 143B-516(b)(8); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 03A .0303 BEHAVIOR MANAGEMENT AND DISCIPLINE

- (a) In determining appropriate discipline, each program shall consider the child's age, intelligence, emotional makeup, and past experience.
- (b) Each program shall develop and adhere to a written policy regarding behavior management and discipline which includes the following requirements:
- (1) Physical or corporal punishment shall not be permitted;
 - (2) Physical or mechanical restraint shall be used only when necessary to protect a child from physical injury to self or others or when transporting a juvenile who is being held under a secure custody order;
 - (3) No juvenile shall be placed in a locked room or other place, except for juveniles being held under a secure custody order; and
 - (4) Meals or nourishment shall not be denied.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 03A .0305 ALCOHOL AND OTHER DRUG POSSESSION AND USE

Program managers, direct services staff, and volunteers of programs funded by the Department shall not possess or consume or be under the influence of any alcohol or controlled substance without a prescription while engaged in any program activities.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 03A .0308 INSURANCE REQUIRED

Each program funded by the Department, other than programs operated by units of local government, shall maintain liability insurance in the amount of five hundred thousand dollars (\$500,000) to cover any juvenile participating in the program and provide documentation of such at the request of the department.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 03A .0309 SAFETY CONCERNS

- (a) All programs funded by the Department shall ensure that safety measures, which include trained staff and safety equipment, are in place for all program sponsored functions.
- (b) During periodic on-site visits by officials representing the Department, programs shall provide written documentation of staff training and competency in all program activities authorized by the contract.
- (c) All residential programs shall comply with all state and federal licensure requirements.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 03A .0402 EMERGENCY PLAN

- (a) Each program shall develop and distribute to staff members and volunteers an emergency plan which includes names and phone numbers of individuals to be notified in emergency situations that may occur during program activities.
- (b) The emergency plan must provide that in the event of an emergency resulting in a serious injury to or death of a program staff member, participant or volunteer the Department shall be notified immediately. This plan shall include the after hours phone numbers of individuals designated within the Department.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 03A .0501 COMPLIANCE MONITORING

Compliance with the provisions of this Subchapter shall be monitored by on-site visits conducted by or authorized by the Department and by review of periodic reports documenting the provisions of the contractual agreement between the program and the Department.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 03A .0502 CORRECTIVE ACTION AND PENALTIES

- (a) When any of the terms of the contract are documented to have been violated through the monitoring and evaluation of program requirements, the Department shall take measures to correct the violation.
 - (1) Where violations of state or federal law are documented the Department shall notify law enforcement officials; and
 - (2) Where conditions or practices are found within a program that create a threat or danger to students or staff the following measures shall be taken:
 - (A) Notification to local Division of Social Services and if appropriate law enforcement;
 - (B) Notification to designated Departmental officials;

- (C) Discontinuation of all funding and request for complete fiscal audit of the program; and
- (D) Maintenance of detailed written records of all actions taken until any issues of harm or danger are resolved.

(b) Where allegations or information indicates that conditions or practices may exist which constitute a threat or danger to staff or students within a program the Department shall conduct an on-site visit to the program. Additionally the following measures shall be taken:

- (1) Notification to designated Departmental officials; and
- (2) Maintenance of detailed written records of all actions taken until any issues regarding harm or danger are resolved.

(c) Where the program refuses to make good faith efforts to correct violations identified in the monitoring and evaluation process and where such refusal adversely impacts or affects the quality of services or reduces the number being served, the Department may:

- (1) Impose the penalties provided for in the contractual agreement; or
- (2) Without notice, terminate the contract.

History Note: Authority G.S. 143B-516(b)(4); 143B-516(b)(5); 143B-516(b)(9); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 04A .0101 DEFINITIONS

In this Subchapter the following term has the listed meaning: Complaint. A written allegation that a juvenile is delinquent or undisciplined with a signature verifying that the allegation is true. A complaint initiates the intake process.

History Note: Authority G.S. 7B-1701; 143B-516(b)(5); 143B-516(b)(6); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 04A .0102 INTAKE

(a) Complaints - Complaints alleging that a juvenile is undisciplined or delinquent are accepted by a juvenile court counselor for evaluation. All complaints shall be in writing and must contain the following:

- (1) The juvenile's name;
- (2) The juvenile's age and date of birth;
- (3) The name of the juvenile's parents, guardians, or custodians;
- (4) The juvenile's home address;
- (5) The facts supporting any allegation that a juvenile is undisciplined or delinquent;
- (6) The date the complaint is received by the court counselor;
- (7) The complainant's name, address, and telephone number; and
- (8) The complainant's signature, verified before an official authorized to administer oaths.

(b) Intake evaluation - In order to determine whether a complaint shall be filed as a petition, the juvenile court

counselor in the best interest of the juvenile shall consider the following factors:

- (1) Protection of the community;
- (2) The seriousness of the offense;
- (3) The juvenile's previous record of involvement in the legal system including previous diversions;
- (4) The ability of the juvenile and the juvenile's family to use community resources;
- (5) Consideration of the victim;
- (6) The juvenile's age; and
- (7) The juvenile's culpability in the alleged complaint.

(c) Diverted and retained complaints:

- (1) The juvenile court counselor shall retain a complaint and develop a diversion plan with the juvenile and the juvenile's parents, guardians or custodians if it is determined that intervention related to the offense is needed and may be accomplished without court involvement.
- (2) A diversion plan may include a diversion contract as set out in G.S. 7B-1706.
- (3) The complaint including a diversion plan or contract must be resolved within six months after a decision to divert and retain a complaint is made; and
 - (A) Written notice of the diversion plan is provided to the juvenile and the juvenile's parents, guardians or custodians; or
 - (B) A diversion contact has been entered.
- (4) If the juvenile agrees to pay damages or restitution as part of a diversion plan or contact, payment shall be made directly to the victim or through a program set up to account for payment of such damages or restitution.

History Note: Authority G.S. 143B-516(b)(5); 143B-516(b)(6); 7B-1701; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 04A .0104 COMMITMENT TO THE DEPARTMENT

(a) Juvenile court counselors shall provide services to juveniles committed to the Department and their families during the commitment which includes:

- (1) Serving as a liaison between the Department staff, the juvenile, and his family, community agencies and the court;
- (2) Assisting in treatment planning during the commitment; and
- (3) Participating in planning for post-release supervision.

(b) When a juvenile is committed to the Department for an offense that would have been a Class A or B1 felony if committed by an adult, the chief court counselor shall notify the victim or the victim's immediate family that they may request in writing to be notified in advance of the juvenile's schedule release date. The chief court counselor shall provide the victim or the victim's immediate family:

- (1) The name of the juvenile; and
- (2) The name, address and telephone number of the chief court counselor who is to receive the request to be notified.

History Note: Authority G.S. 7B-2513; Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

28 NCAC 04A .0106 SUBSTANCE ABUSE TESTING

(a) The Department shall contract for testing services and shall provide supplies for testing juveniles for use of alcohol and controlled substances.

(b) Alternate drug and alcohol testing services may be used for individual juveniles at the expense of the parent or another agency if approved by the court.

(c) Other entities may be used to provide alcohol or drug testing services in a district if the chief court counselor submits a plan to the Department insuring that testing services that are at least equal to the services provided through the Department are readily available to the court for juveniles under the court's jurisdiction.

(d) Juvenile court counselors shall administer drug and alcohol tests only if ordered by the court.

History Note: Authority G.S. 143B-516(b)(7); Temporary Adoption Eff. July 15, 2002; Eff. April 1, 2003.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, January 16, 2003, 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, February 14, 2003 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

February 20, 2003
March 20, 2003 April 17, 2003
May 15, 2003 June 19, 2003

RULES REVIEW COMMISSION

January 16, 2003

MINUTES

The Rules Review Commission met on Thursday morning, January 16, 2003, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Chairman Paul Powell, Jim Funderburk, Walter Futch, Jeffrey Gray, Jennie Hayman, Thomas Hilliard, John Tart, and Robert Saunders.

Staff members present were: Joseph DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

Brad Gunn	NC Wildlife Resources Commission
Kelly Douglass	NC Wildlife Resources Commission
Joan Troy	NC Wildlife Resources Commission
Norman Young	NC Wildlife Resources Commission
Tom West	Poyner & Spruill, LLP/NC Deer/Elk Farmers Assoc.
Henry Hampton	NC Deer/Elk Farmers Assoc.
Sammy Varnam	NC Deer/Elk Farmers Assoc.
Gene Ballard	NC Deer/Elk Farmers Assoc.
Martin Whitener	NC Deer/Elk Farmers Assoc.
Rita Whitener	NC Deer/Elk Farmers Assoc.
Scott Ruals	NC Deer/Elk Farmers Assoc.
James Bass	NC Deer/Elk Farmers Assoc.
Jean Stanley	NC Board of Nursing
Ellie Sprengel	Department of Insurance
Robert A. Potter	Department of Insurance
Frank Folger	Department of Insurance
Karen Long	Health and Wellness Trust Fund Commission
Dedra Alston	DENR
Alice Lenihan	DHHS-DPH
Cory Menees	DHHS-DPH
David McLeod	Board of Agriculture
Fred Kirkland	Board of Agriculture/State Veterinarian

APPROVAL OF MINUTES

The meeting was called to order at 10:09 a.m. with Chairman Powell presiding. Chairman Powell asked for any discussion, comments, or corrections concerning the minutes of the December 19, 2002, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

- 2 NCAC 52C .0701: Department of Agriculture – There was no response from the agency. The Commission took no action on this rule.
- 8 NCAC 1 .0101: Board of Elections – The Commission extended the period of review.
- 8 NCAC 2 .0101-.0113: Board of Elections – The Commission extended the period of review.
- 8 NCAC 4 .0101-.0109; .0201-.0208; .0301-.0307: Board of Elections – The Commission extended the period of review.
- 8 NCAC 6B .0101-.0105: Board of Elections – The Commission extended the period of review.
- 8 NCAC 7B .0101; .0102: Board of Elections – The Commission extended the period of review.
- 8 NCAC 9 .0101-.0109: Board of Elections – The Commission extended the period of review.
- 8 NCAC 10B .0101-.0108: Board of Elections – The Commission extended the period of review.
- 8 NCAC 12 .0101-.0111: Board of Elections – The Commission extended the period of review.
- 10 NCAC 3D .2508; .2521; .2522; .2601; .2602; .2701; .2901; .2902; .2905; .2908; .2909; .3001; .3002; .3003; .3101: DHHS/Medical Care Commission – There was no response from the agency. The Commission took no action on these rules.
- 10 NCAC 26H .0211; .0213; .0215; .0304; .0506: Department of Health and Human Services – There was no response from the agency. The Commission took no action on these rules.
- 21 NCAC 16E .0101: NC State Board of Dental Examiners – There was no response from the agency. The Commission took no action on this rule.
- 21 NCAC 36 .0221: Board of Nursing – The Commission approved the rewritten rule submitted by the agency.
- 21 NCAC 46 .1812; .2504: Board of Pharmacy – Since no response has been received from OSBM, the Commission could not take action on these rules. The Commission voiced no objection to returning the rules to the agency prior to the meeting if the rules have a substantial economic impact.
- 21 NCAC 46 .2502: Board of Pharmacy – There was no response from the agency. The Commission took no action on this rule.
- 21 NCAC 50 .0103: Board of Examiners for Plumbing, Heating & Fire Sprinkler Contractors – There was no response from the agency. The Commission took no action on this rule.

LOG OF FILINGS

Chairman Powell presided over the review of the log and all rules were approved unanimously with the following exceptions:

- 11 NCAC 11F .0205: Department of Insurance – The Commission objected to the rule due to lack of statutory authority or ambiguity. In Rule .0205(b)(1), page 2 lines 32-34 in the last paragraph before (b)(1)(D), reference is made to the use of “morbidity standard ... adjustments.” It is specified that these adjustments initially must be “appropriate to the [specific type] of underwriting” and they must be “acceptable” to the Commissioner. There are no standards set out for what would constitute “acceptability” to the commissioner. There is no authority to set the standard outside rulemaking. If it is set somewhere else, either in this or other rules, then that is not clear and thus those standards are not clear.
 - 11 NCAC 11F .0207: Department of Insurance – The Commission objected to the rule due to lack of statutory authority or ambiguity. It is unclear because in (b)(1)(A), page 4 lines 30 – 34, items (i) and (ii) appear to contain different reserve requirements depending on when the contracts were issued. However, because they both use the same basis date to determine the different reserve requirements, it is unclear what those requirements are.
 - 15A NCAC 10F .0318: Wildlife Resources Commission – The Commission objected to the rule based on lack of statutory authority or ambiguity. In paragraphs (c) and (d) the rule requires the approval of the Executive Director to establish mooring areas and restricted swimming areas. There are no standards set out for granting that approval. If the standards are set outside rulemaking, there is no authority for doing that. If the standards are elsewhere within these rules, that is not clear and it is not clear that those particular standards would apply.
- Commissioner Hayman recused herself from the following Wildlife Resources Commission rules. After an extensive presentation by opponents and the proponent of these rules, the Commission approved these rules as follows:
- 15A NCAC 10B .0101: Wildlife Resources Commission – The Commission approved this rule with Commissioners Gray, Powell and Saunders opposed.
 - 15A NCAC 10H .0301; .0302; .0303: Wildlife Resources Commission – The Commission approved these rules with Commissioners Gray and Powell opposed.
 - 15A NCAC 21D .0202: Commission for Health Services – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (5), it is not clear what individuals are “qualified” or what the standards for approval are. In (16), it is not clear what is in the WIC Venders Manual, and there is no authority to set requirements by Manual, not rule. This objection applies to existing language in the rule.
 - 15A NCAC 21D .0410: Commission for Health Services – The Commission objected to the rule due to ambiguity. In (c), it is not clear how the state agency will determine a repayment schedule is “satisfactory.” There is the same problem in (e), (f) and (h). In (d),

RULES REVIEW COMMISSION

it is not clear what standards the state or local agency will use in approving the designation of a proxy. There is the same problem in (e), (f), (g) and (h).

15A NCAC 21D .0501: Commission for Health Services – The Commission objected to the rule due to ambiguity. Paragraph (c) is unclear because there is nothing in .0601 about the purpose of the program. The objection applies to existing language in the rule.

15A NCAC 21D .0702: Commission for Health Services – The Commission objected to the rule due to ambiguity. In (b), it is not clear what is meant by “adequate” security and documentation. In (d), it is not clear what would constitute an “undue” burden. The objection applies to existing language in the rule.

15A NCAC 21D .0703: Commission for Health Services – The Commission objected to the rule due to ambiguity. In (a), it is not clear how the “participant must use by” date is determined. The objection applies to existing language in the rule.

15A NCAC 21D .0704: Commission for Health Services – The Commission objected to the rule due to ambiguity. In the last sentence in (a), it is not clear what type justification or correction will satisfy the agency. Paragraph (b) could be the answer, but it is not clear that it is the entire answer. In (b)(2), it is not clear when the State WIC office will give approval to revalidate. The objection applies to existing language in the rule.

15A NCAC 21D .0706: Commission for Health Services – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (b)(3)(A), it is not clear what the factor is to reflect fluctuations in wholesale prices. In (c)(2), it is not clear what foods, specifications and production identification are described in the WIC Vender Manual. There is no authority to set any standards or requirements by manual rather than rule. In (c)(21), it is not clear what would constitute “secure” storage. 7 CFR 262.12(I)(1) makes a clear distribution between a “single instance” and “pattern.” As written, (g)(2)(A) appears to only require one instance of a violation. There is no authority to designate this as a “pattern” with stiffer penalties. The objection applies to existing language in the rule.

20 NCAC 10 .0101; .0102; .0201; .0202; .0203; .0204; .0205; .0206; .0207; .0208; .0209; .0210; .0301; .0302: Health and Wellness Trust Fund Commission - The Commission extended the period of review.

23 NCAC 2E .0201: NC State Board of Community Colleges – The Commission objected to this rule based on lack of statutory authority and ambiguity. In (b) it is unclear what constitutes “justification” for granting a request for an extension of time to extend a curriculum program. It is also unclear whether there are other standards, besides “justification” for granting the request. And finally it is unclear who, the state board or the system president, grants the request. In (d), lines 24-25, it is unclear whether there are approval standards for the state board to allow an exception to permit a program to “exceed the maximum length of programs as set by the curriculum standards.” In order to grant an exception or waiver, there must be specific standards set in the rule. If there are standards, then it is unclear what those standards are. There is no authority to set any such approval standards outside rulemaking. In lines 26-27, as part of this exception process, it is unclear what is meant by “agree with the conditions of the request for the exception.” It is unclear what, exactly, is being agreed to, if there are standards for this agreement, or what those standards are.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca updated the Commission on the status of the Pharmacy Board lawsuit. A trial date of March 17, 2003 has been set. The Commission did not authorize any individual to make any settlement of the lawsuit.

The next meeting of the Commission is Thursday, February 20, 2003 at 10:00 a.m.

The meeting adjourned at 2:00 p.m.

Respectfully submitted,
Lisa Johnson

AGENDA Rules Review Commission February 20, 2003

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. Department of Administration – 1 NCAC 35 .0101; .0103; .0201-.0205; .0301; .0302; .0304-.0306; .0308; .0309 Carried over to February from 12/19/02 (DeLuca)
 - B. Department of Agriculture – 2 NCAC 52C .0701 Objection 12/19/02 (DeLuca)
 - C. Board of Elections – Extend Period of Review 01/16/03 (DeLuca)
 - D. DHHS/Medical Care Commission – 10 NCAC 3D .2508; .2521; .2522; .2601; .2602; .2701; .2901; .2902; .2905; .2908; .2909; .3001; .3002; .3003; .3101 Objection 11/21/02 (Bryan)
 - E. Department of Health and Human Services – 10 NCAC 26H .0211; .0213; .0215; .0304; .0506 Objection 12/19/02 (Bryan)
 - F. Department of Insurance – 11 NCAC 11F .0205 and .0207 Objection 01/16/03 (DeLuca)
 - G. Wildlife Resources Commission – 15A NCAC 10F .0318 Objection 01/16/03 (DeLuca)

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- H. Commission for Health Services – 15A NCAC 21D .0202; .0410; .0501; .0702; .0703; .0704; .0706 Objection 01/16/03 (Bryan)
- I. Health and Wellness Trust Fund Commission – 20 NCAC 10 .0101; .0102; .0201-.0210; .0301; .0302 Extend Period of Review 01/16/03 (DeLuca)
- J. NC State Board of Dental Examiners – 21 NCAC 16E .0101 Objection 11/21/02 (DeLuca)
- K. Board of Pharmacy – 21 NCAC 46 .1812; .2504 Referred to OSBM 11/21/02
- L. Board of Pharmacy – 21 NCAC 46 .2502 Objection 11/21/02 (DeLuca)
- M. Board of Examiners for Plumbing, Heating & Fire Sprinkler Contractors – 21 NCAC 50 .0103 Objection 12/19/02 (Bryan)
- N. NC State Board of Community Colleges – 23 NCAC 2E .0201 Objection 01/16/03 (DeLuca)
- IV. Commission Business
- V. Next meeting: March 20, 2003

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>
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Jana Washington v Department of Corrections (Central Prison)	01 OSP 2224	Wade	12/19/02	
Joseph Kevin McKenzie v. 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	
Theresa Truner v. Albemarle Mental Health Center	01 OSP 2331	Gray	07/11/02	
Mark Wayne Faircloth v. Forest Service	01 OSP 2374	Conner	06/20/02	
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	01 OSP 2385 ²	Elkins	08/07/02	
James Donoghue v. Department of Correction	02 OSP 0011	Mann	08/26/02	
Robert N. Roberson v. DOC, Div. of Community Corrections	02 OSP 0059	Conner	10/14/02	
Lashaundon Smith v. Neuse Correctional Institution	02 OSP 0064	Elkins	07/03/02	17:03 NCR 329
Stacey Joel Hester v. Dept. of Correction	02 OSP 0071	Gray	10/18/02	
Gwendolyn Gordon v. Department of Correction	02 OSP 0103	Gray	10/24/02	17:14 NCR 1218
Gwendolyn Gordon v. NC Department of Correction	02 OSP 0103	Gray	11/25/02	17:14 NCR 1223
Angel J. Miyares v. Forsyth Co. Dept of Public Health & Forsyth Co. Board of Health	02 OSP 0110 ²	Elkins	08/07/02	
Susan Luke aka Susan Luke Young v. Gaston-Lincoln-Cleveland Area Mental Health "Pathways"	02 OSP 0140	Conner	06/06/02	
Mark P. Gibbons v. NC Department of Transportation	02 OSP 0147	Conner	06/14/02	
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Cathy L. White v. NC Department of Corrections	02 OSP 0246	Elkins	05/31/02	
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William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm	02 OSP 0270	Elkins	06/25/02	
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Pamela C. Williams v. Secretary of State	02 OSP 0348	Chess	08/26/02	
Ronald P Covington v. NC DOC, Dept. of Prisons	02 OSP 0404	Morrison	11/07/02	
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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	
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Harold Phillips v. Durham Co. Dept. of Social Services	02 OSP 0503	Chess	07/30/02	
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Ella Fields-Bunch v. Martin-Tyrrell-Washington Dist. Health Dept.	02 OSP 1037	Conner	10/16/02	
JoAnn A Sexton v. City of Wilson	02 OSP 1041	Morrison	07/25/02	
Karen C. Weaver v. State of NC Dept. of Administration	02 OSP 1052	Lassiter	10/25/02	
Alex Craig Fish v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1060	Morrison	08/09/02	
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John C Candillo v. Roselyn Powell, Jud. Div Chief, NC DOCC, Jud Div. 3	02 OSP 1067	Conner	10/21/02	
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Carolyn Pickett v. Nash-Rocky Mt. School Systems, Nash-Rocky Mt. Board of Education	02 OSP 1136	Morrison	07/29/02	
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Sharon Reed v. UNC Hospitals

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02 UNC 1284

Conner
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