

NORTH CAROLINA

IN THIS ISSUE



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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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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
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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
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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.

**EXECUTIVE ORDER NO. 41
SUSPENSION OF RULES AND REGULATIONS
LIMITING THE HOURS OPERATORS OF
COMMERCIAL VEHICLES MAY DRIVE**

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

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

WHEREAS, the North Carolina Emergence Management Act (Chapter 166A of the North Carolina General Statutes) authorizes the Governor, with the concurrence of the Council of State, to procure, transport, store, maintain or distribute materials for emergency management without regard to the limitation of any existing law; and

WHEREAS, the uninterrupted supply of Liquefied Petroleum Gas (propane), kerosene and fuel oil to residential and commercial establishments is an essential need of the public during the winter and any interruption threatens the public welfare; and

WHEREAS, the continued period of cold weather has increased the demand for Liquefied Petroleum Gas, kerosene and fuel oil and threatened the uninterrupted delivery of Liquefied Petroleum Gas, kerosene and fuel oil to residential and commercial customers; and

WHEREAS, the Federal Motor Carrier Safety regulations, 49 CFR 390 through 399, limit the hours operators of commercial vehicles may drive; and

WHEREAS, 49 CFR 390.23 allows the Governor to suspend the rules and regulations limiting the hours operators of commercial vehicles may drive for the duration of the motor carrier's or driver's direct assistance in providing emergency relief, or thirty (30) days from the date of the initial declaration of the emergency, whichever is less, if the Governor declares a state of emergency.

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

Section 1. Carriers transporting Liquefied Petroleum gas, kerosene and fuel oil hereby are exempted from the provisions from Parts 390 through 399 of Title 49 of the Code of Federal Regulations as authorized by federal law.

Section 2. This exemption does not apply to carriers transporting gasoline or diesel fuel for highway use.

Section 3. This emergency shall not exceed the duration of the motor carrier's or driver's direct assistance in providing emergency relief.

Section 4. This executive order is effective immediately, and shall remain in effect until 5:00 p.m. Monday, January 27, 2003.

Done in the Capitol City of Raleigh, North Carolina, this the 24th day of January, 2003.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 42
EXTENDING EXECUTIVE ORDER NO. 41**

By the power vested in me as Governor by the Constitution and laws of the State of North Carolina, IT IS ORDERED:

Executive Order No. 41 regarding Suspension of Rules and Regulations Limiting the Hours Operators of Commercial Vehicles May Drive is hereby extended until February 3, 2003.

This order is effective immediately.

Done in the Capitol City of Raleigh, North Carolina, this 27th day of January 2003.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE F. MARSHALL
SECRETARY OF STATE

**EXECUTIVE ORDER NO. 43
ESTABLISHMENT OF STATEWIDE
CITIZEN CORPS COUNCIL**

WHEREAS, this Administration continues to be committed to encouraging all people, organizations, agencies, businesses, faith groups, and institutions in North Carolina to help solve our most critical problems by volunteering their time,

effort, energy and service in times of prosperity as well as in emergencies or disasters; and

WHEREAS, the need for homeland security, community health and public safety have increased and have led to the need to call upon the compassion and spirit of all people in North Carolina to help solve many of the problems facing their communities; and

WHEREAS, it is the standing reputation of this Administration to discover and to encourage new community service leaders, to promote individuals, organizations, and institutions that serve as outstanding examples of a commitment to serving others, and to convince all people in North Carolina that a successful life includes serving others; and

WHEREAS, significant issues facing the nation and state continue to be addressed by the collaborative efforts of committed people volunteering their time and talents through volunteer centers, national service programs, schools, community organizations, government agencies, businesses, labor groups, and a host of other community and state efforts, and

WHEREAS, North Carolina has established a comprehensive, intricate and effective community-based and community-driven infrastructure for state-sponsored national and community service through the North Carolina Commission on Volunteerism and Community Service and its public-and private-sector partnering organizations; and

WHEREAS, the North Carolina Department of Crime Control and Public Safety has established a comprehensive, intricate and effective Division of Emergency Management with a state and local infrastructure committed to enhancing the quality of life in North Carolina by assisting people to effectively prepare for, respond to, recover from, and mitigate against all hazards and disasters; and

WHEREAS, the North Carolina Commission on Volunteerism and Community Service and the North Carolina Department of Crime Control and Public are partnering agencies in Citizen Corps in North Carolina;

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

Section 1. Definitions

- A. "North Carolina Citizen Corps" means the North Carolina initiative created under the federal USA Freedom Corps program.
- B. "North Carolina Citizen Corps Council" ("Council") means the body created within the Office of the Governor that will foster collaboration.
- C. "North Carolina Commission on Volunteerism and Community Service" (Commission") means the entity established by Executive Order # 48 issued by Governor James B. Hunt on 12 May 1994.

- D. "USA Freedom Corps" means the federal interagency initiative created under the terms of Executive Order 13254 of January 29, 2002, (67 CFT 4869) and the Citizen Service Act of 2002, a legislative proposal submitted to the United States Congress by President George W. Bush.

Section 2. North Carolina Citizen Corps Council

- A. Consistent with the provisions of Executive Order 13254 and any act of Congress enacted to implement Executive Order 13254, the North Carolina Citizen Corps Council is created as a body that will foster collaboration in a statewide volunteer effort focused on homeland security, disaster preparedness and response, public health, and public safety.
- B. The Council is not intended as an advisory or governing body, nor to set state policy.
- C. The Council shall consist of the leadership of appropriate collaborative organizations and/or agencies necessary to promote volunteerism focused on homeland security, disaster preparation and response, public health and public safety by promoting Citizen Corps programs and activities.
- D. Members of the Council shall serve by invitation of the Governor of the State of North Carolina.
- E. When there is a change in leadership of a Council member organization/ agency, the new leadership of the organization/agency will become a replacement member of the Council.

Section 3. Activities of the Council

- A. The Council shall identify opportunities for local, tribal and state organizations to collaborate to accomplish the shared goals of the Citizen Corps programs.
- B. The Council shall assist with the establishment of an implementation plan to develop and support local Citizen Corps Councils.
- C. The Council shall assist in the development of initiatives to promote public awareness and community service in coordination with existing Citizen Corps programs including, but not limited to, Volunteers in Police Service, Neighborhood Watch, Medical Reserve Corps, and Community Emergency Response Teams.
- D. The Council shall develop and disseminate messages on safety and emergency preparedness that will be effective in engaging communities and individuals in Citizen Corps.
- E. The Council shall serve as a catalyst for engaging others within their areas of expertise to promote the Citizen Corps mission and programs.
- F. The Council shall promote the USA Freedom Corps initiative in North Carolina.

Section 4. Operations of the Council

- A. The Governor shall designate one (1) member of the Council to serve as Chairperson.
- B. The Council may promulgate bylaws, not inconsistent with law and with this Order,

EXECUTIVE ORDERS

- governing its organization, operation and procedure.
- C. Members of the Council may delegate their membership responsibility to a designee only if the designee has authoritative powers to act on behalf of, and made decisions for, the organization/agency.
 - D. A majority of the serving members constitutes a quorum for the transaction of business at a meeting. The Council shall act by a majority vote of its serving members.
 - E. The Council shall meet at the call of the Chairperson and as may be provided in the bylaws of the Council. Meetings of the Council may be held at any location within the State of North Carolina. The Council shall meet at least once per quarter year. Meetings may be in person or via conference call.
 - F. The Council may establish committees, subcommittees, and ad hoc committees as appropriate to ensure the success of Citizen Corps in North Carolina.
 - G. Members of the Council shall serve without compensation. Members of the Council may receive reimbursement for necessary travel and related travel expenses according to relevant

statutes, rules, and procedures of the North Carolina Office of Management and Budget.

- H. The Council shall be staffed by the Director of Citizen Corps in North Carolina (the Deputy Executive Director of the Commission).
- I. Subject to applicable laws, the Council may receive monies from any source, public or private, including but not limited to, gifts, grants, donations of monies and government appropriations. These monies will be managed by the Director of Citizen Corps.

This Order is effective immediately.

Done in Raleigh, North Carolina, this 30th day of January, 2003.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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

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

Cape Fear Soccerplex, LLC

Pursuant to N.C.G.S. 130A-310.34, Cape Fear Soccerplex, 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 Wilmington, New Hanover County, North Carolina. The Property consists of approximately 65 acres of land located at the western terminus of Flemington Drive, just west of US Highway 421 in Wilmington, New Hanover County, North Carolina. Environmental contamination exists on the Property in soil and groundwater. Cape Fear Soccerplex, LLC has committed itself to make no use of the Property, without DENR approval, other than as a recreational and competition level soccer complex. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Cape Fear Soccerplex, 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 Reference Desk of the main New Hanover County Library ((910) 341-4390) located at 201 Chestnut Street, Wilmington, NC 28401; or at 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919)733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

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

U.S. Department of Justice

Civil Rights Division

JDR:TCH:ALF:jdh
DJ 166-012-3
2002-5321

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

December 18, 2002

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

Dear Mr. Bartlett:

This refers to Session Law 2002-158, which creates the North Carolina Public Campaign Financing Fund for elections to the Supreme Court and the Court of Appeals, including limitations on contributions; repeals the North Carolina Candidates Financing Fund; adopts the nonpartisan election method under Article 25 for elections to the Supreme Court and the Court of Appeals, including procedures for candidate filing, plurality elections, tie votes, vacancies, and write-in candidacies; and clarifies the ballot format for nonpartisan elections for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on October 29, 2002.

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

Session Law 2002-158 includes provisions that are enabling in nature. Therefore, any changes affecting voting that are adopted pursuant to this legislation require Section 5 review (e.g., state board of elections rules regarding campaign finance matters). See 28 C.F.R. 51.15.

Sincerely,

Joseph D. Rich
Chief, Voting Section

U.S. Department of Justice

Civil Rights Division

JDR:TCH:ALF:nj
DJ 166-012-3
2002-5152

Voting Section – NWB.
950 Pennsylvania Ave., NW, Room 7254
Washington, D.C. 20530

December 16, 2002

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

Dear Mr. Bartlett:

This refers to Sections 21(a)-(h), 35(n), 52, 55(a)-(p), 56, 57(a)-(b), 57.1(a)-(b), 57.3(a)-(c), 58, and 92, of Session Law 2002-159, which freeze election precinct boundaries from October 1, 2002, to December 31, 2003 (with limited exceptions), revise the process of requesting absentee ballots, clarify the deadline and responsibility for printing absentee ballots, clarify the responsibility for printing primary ballots, require that voted ballots be kept confidential, allow vacancies in district court judgeships elected on a partisan basis to be filled by the Governor on a partisan basis, repeal the requirement that presidential nominating petitions be accompanied by payment for verification, revise the procedures for general election participation and campaign reporting for new political parties, require that petitions for unaffiliated candidates state the office sought, revise petition procedures for sanitary and rural fire protection districts, specify the opening date of candidate qualification for soil and water conservation districts, provide that city council organizational meetings be held no later than November 2002, allow political committees to incorporate to protect participants from liability arising outside of the state election code, provide procedures for the state board of elections to keep confidential certain information in campaign finance reports, clarify responsibility between state and local boards of elections for campaign finance reporting, provide that the state board of elections may seek agreement with the Federal Election Commission on sharing of information reports filed by candidates for federal office, add provisions relating to non-cash campaign contributions, clarify pre-election reporting requirements, recodify Article 13A of Chapter 163 as Article 14A, and make stylistic and conforming changes in election code provisions, for the State of North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on October 17, 2002; supplemental information was received on October 23, 2002.

Except as noted below, 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. See the Procedures for the Administration of Section 5 (28 C.F.R. 51.41).

Session Law 2002-159 includes provisions that are enabling in nature. Therefore, any changes affecting voting that are adopted pursuant to this legislation require Section 5 review (e.g., state board of elections rules regarding written requests for absentee ballots, and reporting and verification of campaign contribution payments). See 28 C.F.R. 51.15.

With regard to the precinct freeze set forth in Section 56 of Session Law 2002-159, our analysis indicates that the information sent is insufficient to enable us to determine that the proposed change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race, color, or membership in a language minority group, as required under Section 5. The following information is necessary so that we may complete our review of your submission:

1. A detailed explanation of the reason(s) for the proposed precinct freeze. In particular, please explain: 1) why the state chose not to incorporate the exceptions included in earlier legislation, such as, N.C. Gen. Stat. 163-132.1(d)(1), which allows county boards of elections to divide precincts along census block boundaries; and 2) what effect, if any, the freeze will have on the process of redistricting of election boundaries by state and local governing bodies during the time it is in effect, for example, if a state or local governing body determines during the redistricting process that splitting election precincts is necessary to comply with federal law, impact the freeze will have in this situation.

IN ADDITION

2. A detailed chronology of the process leading to the legislative adoption of Section 56 of Session Law 2002-159, including: (a) identification of the person(s) who initiated, suggested, and/or proposed the change; (b) the legislative history of the change, including all amendments or alternatives that were proposed and votes taken; and (c) all events, meetings, hearings, discussions, and legislative deliberations and debates, whether formal or informal, involving any state or local official, legislator, committee or staff member, or any other individual(s) regarding the relative merits and demerits of the proposed change and any alternatives.

3. Copies of all documents relating to Section 56 of Session Law 2002-159, including: (a) notes, summaries, memoranda, video and/or audio tapes, minutes, and transcripts of all events, meetings, hearings, discussions, and legislative deliberations and debates, whether formal or informal; (b) correspondence with or between state or local officials, legislators, committee or staff members, or any other individual(s); (c) copies of public notices that describe the proposed change and/or that invite public comment or participation in the legislative process, and description of where such notices appeared (e.g., newspaper, radio, television, posted in public buildings, or sent to individuals or groups); (d) copies of comments from the general public; (e) any reports, studies, analyses, summaries, or other documents or publications, prepared by or for any state or local official, legislator, committee or staff member, or any other individual(s) in connection with the adoption of the proposed change. Also, include any newspaper articles, editorials, letters to the editor, advertisements, public notices, or any other publicity that address the proposed change.

4. An identification of those jurisdictions, if any, currently scheduled or expected to undertake the redistricting of their election district boundaries during the time that the precinct freeze is scheduled to be in effect. If an exact count is not possible, please provide an estimate by identifying those entities in the state that will conduct elections during the remainder of the scheduled precinct freeze as well as during 2004, including the dates of candidate qualifying and registration periods for all such elections, with references to the state laws which impose the applicable deadlines.

The Attorney General has sixty days to consider a completed submission pursuant to Section 5. This sixty-day review period will begin when we receive the information specified above. See the Procedures for the Administration of Section 5 (26 C.F.R. 51.37). However, if no response is received within sixty days of this request, the Attorney General may object to the proposed change consistent with the burden of proof placed upon the submitting authority. See 28 C.F.R. 51.40 and 51.52(a) and (c). Changes which affect voting are legally unenforceable unless Section 5 preclearance has been obtained. *Clark v. Roemer*, 500 U.S. 646 (1991); 28 C.F.R. 51.10. Therefore, please inform us of the action the State of North Carolina plans to take to comply with this request.

If you have any questions concerning this letter or if we can assist you in obtaining the requested information, you should call Mr. Chris Herren (202-514-1416) of our staff. Refer to File No. 2002-5152 in any response to this letter so that your correspondence will be channeled properly.

Sincerely,

Joseph D. Rich
Chief, Voting Section

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

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

CHAPTER 43 - MARKETS

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

Citation to Existing Rule Affected by this Rule-making: 02 NCAC 43L - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 106-6.1

Statement of the Subject Matter: These Rules establish fees for use of facilities at farmers markets operated by the Department of Agriculture and Consumer Services. Proposed changes would modify these fees.

Reason for Proposed Action: Operating costs at the farmers markets have continued to increase, requiring an increase in fees in order to maintain the same level of service. The Department also proposes to modify the fee structure to make fees more equitable and to make fees more uniform among the various markets.

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 02 – ENVIRONMENTAL MANAGEMENT

Notice of Rule-making Proceedings is hereby given by the 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.

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 02D .0103, .0509, .0511, .0519, .1205, .1208; 02Q .0102 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 143-215.3(a)(1); 143-215.107(a)(3),(4),(5),(10); 143-215.108; 150B-21.6; S.L. 2002, c. 24, s. 2

Statement of the Subject Matter:

15A NCAC 02D .0103 – To update the address of several regional offices in this Rule.

15A NCAC 02D .0509-.0511 – To clarify in these Rules wet suppression is to be used at the crushers at all times.

15A NCAC 02D .0519 – To correct a cross-reference in this Rule.

15A NCAC 02D .1205 – To change the compliance date for small municipal waste combustors (MWC) in this Rule.

15A NCAC 02D .1208 – To correct a cross-reference in this Rule.

15A NCAC 02Q .0102 – To revise the permit exemption for emergency generators in this Rule.

Reason for Proposed Action:

15A NCAC 02D .0103 – The addresses of several regional offices in this Rule have changed and need to be updated.

15A NCAC 02D .0509-.0511 – These Rules can be read such that wet suppression need not be used at crushers at all times as long as the opacity standard is not being exceeded. Historically crushers have been operated with and required to be operated using wet suppression systems (spray bars). These Rules need to be amended to clarify that wet suppression is to be used at crushers at all times. The only exception would be if the material being crushed is naturally wet. (A material is naturally wet if it is noticeably saturated with water as mined.)

15A NCAC 02D .0519 – In this Rule, Paragraph (a) limits emissions of nitrogen dioxide from nitric and sulfuric acid plants. Paragraph (b) limits emissions of nitrogen oxides from large boilers. Oil and gas-fired boilers have a different allowable emission rate from coal-fired boilers. Paragraph (c) describes how the allowable emission rate is determined when a boiler burns coal and oil or gas. Paragraph (c) references both Paragraph (a) and (b). It should only reference Paragraph (b).

15A NCAC 02D .1205 – The municipal waste combustor (MWC) rule currently requires small MWC to be in compliance by March 1, 2003. This date was set in response to a statute enacted by the General Assembly last year requiring the Environmental Management Commission to require MWC to be in compliance no later than March 1, 2003. This year the General Assembly enacted a statute directing the Environmental Management Commission to change the final compliance date to be on or after December 1, 2004.

15A NCAC 02D .1208 – In Subparagraph (b)(1) of this Rule, the reference to Rule. 0525 should be to Rule .0524.

15A NCAC 02Q .0102 – The exemption currently in this Rule is based on the assumption that the generator will be operated for 8760 hours per year. However, EPA has issued a policy statement that 500 hours may be used to compute potential

emissions from emergency generators. The rule change would revise the exemption level to reflect 500 hours of operation.

Comment Procedures: *Comments will be accepted by Thomas Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, (919) 733-1489, fax (919) 715-7476, and email thom.allen@ncmail.net.*

Authority for the Rule-making: *G.S. 113-134; 1130182; 113-182.1; 113-221; 143B-289.52*

Statement of the Subject Matter: *Striped Bass FMP, Shellfish Certification, and Land and Sell License*

Reason for Proposed Action: *Implementation of the Striped Bass Fishery Management Plan, require Shellfish Sanitation Shellstock Certification before issuing any North Carolina Division of Marine Fisheries fish dealer license category that allows the dealing in oysters and clams, and clarification of the Land or Sell License Rule.*

CHAPTER 03 – MARINE FISHERIES

Notice of Rule-making Proceedings *is hereby given by the North Carolina 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.*

Comment Procedures: *Comments from the public shall be directed to Belinda Loftin, NC Marine Fisheries Commission, PO Box 769, Morehead City, NC 28557, phone (252) 726-7021, fax (252) 726-0254, and email Belinda.loftin@ncmail.net (accepted only with name, address, and telephone number of commenter).*

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.*

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

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to adopt the rule cited as 02 NCAC 38 .0705. Notice of Rule-making Proceedings was published in the Register on January 2, 2003.

Proposed Effective Date: August 1, 2004

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing no later than March 18, 2003, to David S. McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

Reason for Proposed Action: The North Carolina Department of Agriculture and Consumer Services is responsible for enforcing the Liquefied Petroleum Gas law, G.S. 119-54 et seq. This law requires registration of LP Gas dealers and authorizes the Board of Agriculture to adopt rules for the safe use of LP Gas and related equipment and facilities. The Department's LP-Gas Section has received increasing numbers of complaints from liquefied petroleum gas suppliers that they were not receiving notice prior to the disconnection of service when a consumer selects a new supplier. Generally, when there is a disconnection of service, the new supplier disconnects the former supplier's tank from the service system and connects the new supplier's tank. G.S. 119-58 requires a new supplier to provide the former supplier with notice, but does not specify when and how such notice must be given, and these standards are contained in the proposed rule. Without standards for the notification procedures, administration and enforcement of the statutory notice requirement is difficult, if not impossible. The proposed rule creates a verifiable means of notification and places the responsibility on the new supplier to notify the former supplier in a timely fashion consistent with the chosen means of communication. The LP Gas industry is experiencing growth in the number of customers and number of retail dealers. This has created a situation in which the competition for customers is much greater and the probability that a disconnect will occur at any customer's location is much greater than it used to be. The majority of the disconnects in a given year will occur in the late fall and early winter. Without prior notice, the former supplier cannot take measures to ensure that its equipment is safely disconnected, sealed, and properly stored or promptly removed from the premises, all of which is essential to protect the public from harm. With prior notice, the former supplier can arrange to disconnect its own equipment, and is therefore knowledgeable of any damage to the equipment that could impair the safety of its later use. Prior notice allows for coordination between the involved parties to lessen the possibility for an emergency situation where the consumer may be without fuel during the

transition. Many times the consumer does not know whether or not the supplier owns the equipment at the time of disconnection of service, and prior notice to the former supplier enables the new supplier to provide whatever equipment is necessary to ensure continuous service to the consumer.

Comment Procedures: Comments from the public shall be directed to David S. McLeod, Sec., NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611, phone (919) 733-7125, fax (919) 716-0105, and email david.mcleod@ncmail.net. Comments shall be received through April 2, 2003.

Fiscal Impact

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

CHAPTER 38 - STANDARDS DIVISION

SECTION .0700 - STANDARDS FOR STORAGE, HANDLING AND INSTALLATION OF LP GAS

02 NCAC 38 .0705 NOTIFICATION FOR DISCONNECTION OF SERVICE

(a) This Rule contains additional standards relating to the requirements for disconnection of service contained in G.S. 119-58(b).
(b) To "notify the former supplier before disconnecting the former service and connecting the new service," as required by G.S. 119-58(b), means that the new supplier shall provide the former supplier with written notice containing the new supplier's name, address and telephone number, the consumer's name and address, and stating the date and time after which service is to be disconnected. The notice may be sent by mail, overnight mail, facsimile, or by hand-delivery, so long as it is received prior to the disconnection of the former service.

Authority G.S. 119-55.

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Agriculture intends to adopt the rule cited as 02 NCAC 52C .0603. Notice of Rule-making Proceedings was published in the Register on January 2, 2003.

Proposed Effective Date: August 1, 2004

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing no later than March 18, 2003, to David S.

PROPOSED RULES

McLeod, Secretary, North Carolina Board of Agriculture, PO Box 27647, Raleigh, NC 27611.

Reason for Proposed Action: In response to the continuing threat of terrorist attacks on the United States, the General Assembly enacted S.L. 2002-179 to improve management of public health threats resulting from terrorist incidents, including bioterrorism. Included in this was an amendment to G.S. 106-307.2 requiring the Board of Agriculture to establish by rule a list of animal diseases and conditions to be reported by veterinarians and the time and manner of reporting. The diseases listed are those which are transmissible to humans, are foreign animal diseases, or those which could have serious economic effects. Veterinarians would be required to report those diseases to the State Veterinarian within two hours after detection.

Comment Procedures: Comments from the public shall be directed to David S. McLeod, Sec., NC Board of Agriculture, PO Box 27647, Raleigh, NC 27611, phone (919) 733-7125, fax (919) 716-0105, and email david.mcleod@ncmail.net. Comments shall be received through April 2, 2003.

Fiscal Impact

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

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52C - CONTROL OF LIVESTOCK DISEASES: MISCELLANEOUS PROVISIONS

SECTION .0600 - DISEASE REPORTS

02 NCAC 52C .0603 REPORTABLE DISEASES

All persons practicing veterinary medicine in North Carolina shall report the following diseases and conditions to the State Veterinarian's office by telephone within two hours after the disease is reasonably suspected to exist:

- (1) Anthrax;
- (2) Avian Chlamydiosis (Psitticosis, Ornithosis);
- (3) Avian Encephalomyelitis;
- (4) Avian Influenza (High Pathogenic);
- (5) Avian Influenza (Low Pathogenic);
- (6) Brucellosis (livestock only);
- (7) Classical Swine Fever (Hog Cholera);
- (8) Contagious Equine Metritis;
- (9) Echinococcus;
- (10) Equine Encephalomyelitis (including Eastern Equine Encephalomyelitis, Venezuelan Equine Encephalomyelitis, Western Equine Encephalomyelitis, and St. Louis Encephalomyelitis);
- (11) Equine Infectious Anemia;
- (12) Exotic Newcastle Disease;
- (13) Foreign Animal Diseases (including, in addition to those listed in this Rule, any disease believed to be absent from the United States and its territories);

- (14) Fowl Typhoid (Salmonella gallinarum);
- (15) Infectious Laryngotracheitis (other than vaccine induced);
- (16) Leishmaniasis;
- (17) Mycoplasma gallisepticum/Mycoplasma synoviae;
- (18) Paramyxovirus (other than Newcastle; includes menangle virus);
- (19) Plague (Yersinia pestis);
- (20) Pseudorabies;
- (21) Pullorum (Salmonella pullorum);
- (22) Q fever (Coxiella burnetii);
- (23) Rabies (equine and livestock only);
- (24) Scabies (cattle and sheep only);
- (25) Screw Worm (Exotic myiasis);
- (26) Transmissible spongiform encephalopathies (including Bovine Spongiform Encephalopathy, Chronic Wasting Disease, and scrapie);
- (27) Tuberculosis;
- (28) Tularemia (Francisella tularensis);
- (29) Vesicular Disease (Foot and Mouth, Vesicular Stomatitis, Vesicular Exanthema, Swine Vesicular Disease); and
- (30) West Nile (domestic animals only).

Authority G.S. 106-307.2.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rule cited as 15A NCAC 20D .0243. Notice of Rule-making Proceedings was published in the Register on January 2, 2003.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: March 26, 2003

Time: 1:00-3:00 p.m.

Location: Room G-1A, 1330 St. Mary's St., Raleigh, NC

Reason for Proposed Action: To amend North Carolina regulations to more closely follow US EPA requirements. This amendment will reduce paper work burden, thus allowing this office more time to concentrate on core activities such as on-site evaluations. The amendment will not affect contaminants considered acute health hazards.

Comment Procedures: Comments from the public shall be directed to Chris G. Hoke, 1915 Mail Service Center, Raleigh, NC 27699-1915, phone (919) 715-4168, and email Chris.Hoke@ncmail.net. Comments shall be received through April 2, 2003.

Fiscal Impact

- State
- Local
- Substantive (≥\$5,000,000)

None

CHAPTER 20 - LABORATORY SERVICES

SUBCHAPTER 20D - CERTIFICATION AND IMPROVEMENT

SECTION .0200 - LABORATORY CERTIFICATION

15A NCAC 20D .0243 CHEMISTRY QUALITY ASSURANCE

(a) The following general requirements for chemistry quality assurance (QA) shall be met:

- (1) All quality control information shall be available for inspection by the certification officer;
- (2) A manual of analytical methods and the laboratory's QA plan shall be available to the analysts;
- (3) Class S weights or higher quality weights shall be available to make periodic checks on the accuracy of the balances. Checks shall be within range of the manufacturer's guidelines. A record of these checks shall be available for inspection. The specific checks and their frequency shall be as prescribed in the laboratory's QA plan or the laboratory's operations manual. These checks shall be performed at least once a month.
- (4) Color standards or their equivalent, such as built-in internal standards, shall be available to verify wavelength settings on spectrophotometers. These checks shall be within the manufacturer's tolerance limits. A record of the checks shall be available for inspection. The specific checks and their frequency shall be as prescribed in the laboratory's QA plan or the laboratory's operations manual. These checks shall be performed at least every six months.

(b) The laboratory shall analyze performance samples as follows:

- (1) ~~United States Environmental Protection Agency performance samples shall be analyzed semi-annually. Results shall be within control limits established by EPA for each analyte for which the laboratory is or wishes to be certified.~~ US EPA approved performance evaluation samples shall be analyzed annually in the first calendar quarter for each analyte, and by each method, for which the laboratory is or wishes to be certified. Additionally, US EPA approved performance samples for nitrate and nitrite shall be analyzed annually in the first and third calendar quarters by each method for which the laboratory is or wishes to be certified. All result shall be within the control limits established by the sample providers. For any unacceptable result analyzed in the first quarter, a make-up sample shall be analyzed

for that analyte in the second quarter. For any unacceptable result analyzed in the third quarter, a make-up sample shall be analyzed for that analyte in the fourth quarter.

- (2) Double blind and blind samples shall be analyzed when submitted to a certified laboratory and results shall be within established control limits; these data shall be of equal weight to the EPA performance sample data and on site quality control sample data in determining the laboratory's certification status.
- (3) On-site quality control samples shall be analyzed when presented to the laboratory by the certification evaluator and results shall be within established control limits. These data shall be of equal weight to the EPA performance evaluation sample data and the double blind sample data in determining the laboratory's certification status.
- (4) A laboratory shall have correctly analyzed two out of the last three performance samples for each analyte for which it is certified. In the event that a laboratory is decertified for failing to correctly analyze two out of the last three performance samples, the laboratory shall correctly analyze two consecutive performance samples to have their certification reinstated. The performance samples shall be analyzed no less than 30 days apart. A laboratory with less than three performance samples shall have successfully analyzed a minimum of two performance samples before their certification status may be determined.
- (5) Unacceptable performance on any of the samples in Paragraph (b) of this Rule shall be corrected and explained in writing within 30 days and submitted to the certification evaluator.

(c) The minimum daily quality control (QC) for chemistry shall be as follows:

- (1) Inorganic Contaminants:
 - (A) At the beginning of each day that samples are to be analyzed, a standard curve composed of at least a reagent blank and three standards covering the sample concentration range shall be prepared. A standard curve is not required on each day of analysis for samples analyzed for Nitrate by manual cadmium reduction or for Cyanide. The standard curve shall be verified each day by analyzing a calibration standard and a reagent blank. The calibration standard must be within ± 10 percent of its true value in order to use the standard curve. If it is not within 10 percent of the true value, a new standard curve shall be prepared.

- (B) The laboratory shall analyze a QC sample (EPA QC sample or equivalent) at the beginning of the sample run, at the end of the sample run, and every 20 samples, with recoveries not to exceed ± 10 percent of the true concentration. The source of this QC sample shall be different from the source used for the calibration standards in Part (c)(1)(A) of this Rule.
 - (C) The laboratory shall run an additional standard or QC check at the laboratory's lowest detectable limit for the particular analyte. The laboratory shall not report a value lower than the lowest standard or QC check analyzed.
 - (D) The laboratory shall add a known spike to a minimum of 10 percent of the routine samples (except when the method specifies a different percentage, i.e. fumace methods) to determine if the entire analytical system is in control. The spike concentration shall not be substantially less than the background concentration of the sample selected for spiking. The spike recoveries shall not exceed ± 10 percent of the true value.
 - (E) All compliance samples analyzed by graphite furnace shall be spiked to determine absence of matrix interferences with recoveries ± 10 percent of the true value of the spike concentration.
 - (F) The laboratory shall run a duplicate sample every 10 samples with duplicate values within ± 10 percent of each other.
 - (G) Precision and accuracy data may be computed from the analyses of check samples of known value used routinely in each analytical procedure. This data shall be available for inspection by the laboratory evaluator.
- (2) Organic Contaminants:
- (A) Quality control specified in the approved methods referenced in Rule .0241 of this Section shall be followed.
 - (B) Analysis for regulated volatile organic chemicals under 15A NCAC 18C .1515 shall only be conducted by laboratories that have received conditional approval by EPA or the Department according to 40 C.F.R. 141.24(g)(10) and (11) which is hereby incorporated by reference including any subsequent amendments and editions. A copy is available for inspection at the

Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina. Copies of 40 C.F.R. 141-143 may be obtained by contacting the EPA Drinking Water Hotline at 800-426-4791 at no charge.

- (C) Analysis for unregulated volatile organic chemicals under 15A NCAC 18C .1516 shall only be conducted by laboratories approved under Part (c)(2)(B) of this Rule. In addition to the requirements of Part (c)(2)(B) of this Rule, each laboratory analyzing for EDB and DBCP shall achieve a method detection limit for EDB of 0.00001 mg/l and DBCP of 0.00002 mg/l, according to the procedures in Appendix B of 40 C.F.R. Part 136 which is hereby incorporated by reference including any subsequent amendments and editions. A copy may be obtained at no charge by contacting the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina.

- (D) The laboratory shall achieve the method detection limits as listed in 40 CFR 141.24(f)(18) according to the procedures in Appendix B of 40 CFR Part 136 which is hereby incorporated by reference including any subsequent amendments and editions. A copy may be obtained at no charge by contacting the Department of Environment, Health, and Natural Resources, Division of Laboratory Services, 306 North Wilmington Street, Raleigh, North Carolina.

Authority G.S. 130A-315.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to amend the rules cited as 15A NCAC 21A .0817-.0818, .0822. Notice of Rule-making Proceedings was published in the Register on March 15, 2002.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: March 26, 2003

Time: 1:00-3:00 p.m.

Location: Room G-1A, 1330 St. Mary's St., Raleigh, NC

PROPOSED RULES

Reason for Proposed Action: The Commission for Health Services elected to modify these Rules for Teen Pregnancy Prevention Initiatives.

Comment Procedures: Comments from the public shall be directed to Chris G. Hoke, JD, 1915 Mail Service Center, Raleigh, NC 27699-1915, phone (919) 715-4168, and email Chris.Hoke@ncmail.net. Comments shall be received through April 1, 2003.

Fiscal Impact

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

CHAPTER 21 - HEALTH: PERSONAL HEALTH

SUBCHAPTER 21A - WOMEN'S PREVENTIVE HEALTH

SECTION .0800 - TEEN PREGNANCY PREVENTION

15A NCAC 21A .0817 GRANT APPLICATIONS

(a) All programs receiving TPPI grants shall demonstrate through a competitive application process that their proposed strategies reflect best practice models for teen pregnancy prevention and strong collaboration of local agencies within their communities. Community agencies in counties ranking in the top quartile relative to pregnancy rates among girls aged 15 to 19 shall receive requests for application (RFAs) 30 days prior to the mailing to agencies in other counties. All community agencies that apply for this funding shall receive technical assistance. Individual consultations with those counties receiving the RFA earlier due to their teen pregnancy rankings shall have access to technical assistance from staff of the Division of Public Health for 45 additional days.

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

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

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

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

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

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

- (1) Each agency shall have a plan of action that extends throughout their funding cycle.
(2) Each agency shall have realistic, specific, and measurable goals and objectives for the prevention of adolescent pregnancy.
(3) Each agency, before submitting its application, shall send a representative to the pre-application conference held by the Department.

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

15A NCAC 21A .0818 MAXIMUM FUNDING LEVEL

The maximum level of funding for any one project shall be: be seventy-five thousand dollars (\$75,000).

- (1) Fifty thousand dollars (\$50,000), provided that local participants contribute a minimum of ten thousand dollars (\$10,000) in-kind match annually.
(2) Sixty-five thousand dollars (\$65,000), provided that local participants contribute a minimum of eighteen thousand dollars (\$18,000) in-kind match annually and that active leadership or financial support is annually demonstrated from at least three of the following groups:
(a) local public school system;
(b) local health department;
(c) local social services department;
(d) local mental health authority;
(e) local Workforce Board; or
(f) corporations and businesses.
(3) Seventy-five thousand dollars (\$75,000), provided that local participants contribute a minimum of twenty-five thousand dollars (\$25,000) in-kind match annually and:
(a) that active leadership or financial support is annually demonstrated from at least four of the following groups:
(i) Local public school system;
(ii) local health department;
(iii) local social services department;
(iv) local mental health authority;
(v) local Workforce Board; or
(vi) corporations and businesses; and
(b) that links the target population participants in the TPPI projects with:
(i) academic support programs such as Communities in Schools (CIS) or Save Our Students (SOS);
(ii) health related programs such as physical fitness and nutrition related activities;
(iii) child care, economic assistance, and other social services programs;

- (iv) ~~counseling or other therapeutic services;~~
- (v) ~~career counseling and job shadowing using such programs as the local JobLink Center; or~~
- (vi) ~~mentoring by local businesses or organizations.~~

~~Local projects shall contribute a minimum of \$10,000 in-kind match annually.~~

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

15A NCAC 21A .0822 CRITERIA FOR PROJECT SELECTION

(a) The Department shall present funding recommendations to the Commission from among the applicants that meet the minimum standards in Rule .0817 of this Subchapter. A multi-disciplinary committee of public and private health and human services providers who are familiar with adolescent health issues shall review applications based upon the criteria set out in this Rule. ~~Funding decisions shall be made by the Department~~ Recommendations shall also be based upon the best selection of projects according to the following criteria:

- (1) Degree of need of the locality, including that the service area has ~~an~~ a significant adolescent pregnancy problem as evidenced by its adolescent pregnancy rate, adolescent birth rate, attributable risk score, and ~~or~~ percentage of repeat adolescent births;
- (2) Evidence of selection of ~~a~~ an appropriate program model that has documented success in

- (3) the prevention of teen pregnancy;(3) A statewide program evaluation plan that addresses the administration of pre-tests and post-tests that measure participants' knowledge, attitudes, and behaviors as compared to a control group and ~~addresses~~ submission of data ~~and in~~ an Internet-based database;
- (4) ~~Qualifications~~ Adequacy of agency and staff to meet project objectives;
- (5) Level of community support. There shall be documentation such as letters or statements of commitment from partnering organizations to show support for the application;
- (6) Evidence that the proposed budget does not exceed the costs of the planned program activities;
- (7) Existing or formerly TPPI-funded projects shall demonstrate that they have provided an effective intervention for reducing adolescent pregnancy rates among their participants. ~~reduced pregnancy rates among their participants over the four year funding period.~~

(b) The Commission shall provide input regarding the proposed funding decisions made by the Department. The Department shall consider the input ~~from~~of the Commission, but shall not be bound by it. ~~By June 1 of each year the~~ The Department shall notify the projects that are to be ~~funded~~funded by June 1 of each year.

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

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

TITLE 10 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Division of Medical Assistance*

Rule Citation: *10 NCAC 26H .0506, .0509*

Effective Date: *January 13, 2003*

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

Authority for the rulemaking: *G.S. 108A-25(b); 108A-54; 108A-55; 131D-4.2; S.L. 1995; c. 507, s. 23.10; S.L. 2001-424, s. 21.19(t); 42 C.F.R. 440.80; 42 C.F.R. 440.170(f)*

Reason for Proposed Action: *Adherence to notice and hearing requirements would be contrary to the public interest because additional spending, above the proposed payment rate, would occur. The proposed amendments are necessary in order not to exceed Medicaid expenditures greater than that approved by the General Assembly. This action is in accordance with Session Law 2001-424, Section 21.19(t) to reduce Medicaid expenditures. Additional wording has been added to the rule in order to incorporate language approved by the Centers for Medicare and Medicaid Services (CMS).*

Comment Procedures: *Written comments should be submitted to Kris M. Horton, 1985 Umstead Drive, 2504 Mail Service Center, Raleigh, NC 27699-2504. Phone: (919) 733-6608.*

CHAPTER 26 – MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0500 - REIMBURSEMENT FOR SERVICES

10 NCAC 26H .0506 PERSONAL CARE SERVICES

(a) Payment for personal care services in recipient's home, prescribed in accordance with a plan of treatment and provided by a qualified person under supervision of a registered nurse, shall be based on a negotiated hourly fee not to exceed reasonable cost. The rates may not result in funding greater than amounts budgeted by the North Carolina General Assembly. The state assures that payments for services are sufficient to enlist enough providers so that services under Medicaid are available to the general population and that payment for services are consistent with efficiency, economy, and quality of care stipulated at Section 1902 (a) (30) (A) of the Act and Federal regulations at 42 CFR 447.204.

(b) The Division of Medical Assistance will enter into contracts with private and public non-medical inpatient institutions using 42 CFR 434-12 for the provision of personal care services for State/County Special Assistance clients residing in adult care homes.

(1) Effective August 1, 1995 reimbursement for private providers shall be determined by the Division of Medical Assistance based on a capitation per diem fee (fee) derived from review of industry costs and determination of reasonable costs with annual inflation adjustments. The initial fee is based on one hour of services per patient day. Additional payments may be made utilizing the one hour fee as a factor, for Medicaid eligibles that have a demonstrated need for additional care. The initial one hour fee is computed by adding together the estimated salary, fringes, direct supervision and allowable overhead. Effective January 1, 2000 the cost of medication administration and additional personal care services direct supervision shall be added to the fee. The fee(s) may be recalculated each year based on the most current annual cost report available to the state. This annual adjustment shall not exceed the amount approved by the North Carolina General Assembly. The rates may not result in funding greater than amounts budgeted by the North Carolina General Assembly. Payments may not exceed the limits set in 42 CFR 447.361. Effective January 1, 2000, private provider payments shall be cost settled with any overpayment repaid to the Division of Medical Assistance. No additional payment to the provider shall be made due to cost settlement. The first cost settlement period shall be the nine months ended September 30, 2000. Subsequently, the annual cost settlement shall be the 12 months ended September 30.

(2) Effective January 1, 1996 public providers shall be paid on an interim basis using the above method. Payments shall be cost settled with any overpayment repaid to the Division of Medical Assistance. No additional payments to the provider shall be made due to cost settlement.

(c) Changes to the Payment for Services Prospective Plan for Personal Care Services will become effective when the Centers for Medicare and Medicaid Services (CMS), U.S. Department of Health and Human Services, approves amendment submitted to CMS by the Director of the Division of Medical Assistance as #TN ~~01-14~~ 02-11.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 131D-4.1; 131D-4.2; 1995 S.L. c.507, s. 23.10; 42 C.F.R. 440.170(f); Eff. January 1, 1986; Temporary Amendment Eff. April 22, 1996; January 9, 1997;

Amended Eff. August 1, 1998;
Temporary Amendment Eff. January 1, 2000;
Temporary Amendment Expired on October 28, 2000;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. August 1, 2002;
Temporary Amendment Eff. January 13, 2003.

10 NCAC 26H .0509 PRIVATE DUTY NURSING

(a) Private duty nursing services shall be reimbursed at the lower of billed customary charges or an established hourly rate.

~~The rate shall be derived from the average billed charges per hour in the base year and, beginning July 1, 1990, Effective October 1, 2002 this hourly rate is \$33.60. Effectively July 1, 2003, this rate~~ shall be adjusted annually by the percentage change in the rate for a skilled nursing visit by a home health agency. The rate may not result in funding greater than amounts budgeted by the North Carolina General Assembly. The state assures that payments for services are sufficient to enlist enough providers so that services under Medicaid are available to the general population and that payment for services are consistent with efficiency, economy, and quality of care stipulated at Section 1902 (a) (30) (A) of the Act and Federal regulations at 42 CFR 447.204.

(b) Effective October 1, 1993, payment for Private Duty Nursing Medical Supplies, except those related to provision and use of DME, shall be reimbursed at the lower of a provider's billed customary charges or the maximum fee established for certified home health agencies. The maximum amount for each item shall be determined by multiplying the prevailing Medicare Part B allowable amount by 145 percent to account for the allocation of overhead costs and by 80 percent to encourage maximum efficiency. Fees shall be established based on average, reasonable charges if a Medicare allowable amount cannot be obtained for a particular supply item. The Medicare allowable amounts shall be those amounts available to the Division of Medical Assistance as of July 1 of each year. This reimbursement limitation shall become effective in accordance with the provisions of G.S. 108A-55(c).

History Note: Authority G.S. 108A-25(b); 108A-54;
42 C.F.R. 440.80;
Eff. January 1, 1994;
Temporary Amendment Eff. December 20, 2002; July 1, 2002.

TITLE 11 – DEPARTMENT OF INSURANCE

Rule-making Agency: *NC Department of Insurance*

Rule Citation: *11 NCAC 11A .0501, .0503-.0506*

Effective Date: *February 15, 2003*

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

Authority for the rulemaking: *G.S. 58-2-40; 58-2-205; 150B-21.1(a3)*

Reason for Proposed Action: *An exception to adherence to the prior notice and hearing requirements has been made by the General Assembly in G.S. 58-2-205 and G.S. 150B-21.1(a3).*

Those statutes authorize the Commissioner of Insurance to amend these Rules to keep them current with the model regulation on CPA audits of insurer financial statements, which is promulgated by the National Association of Insurance Commissioners.

Comment Procedures: *Comments from the public shall be directed to Ray Martinez, NC Department of Insurance, PO Box 26387, Raleigh, NC 27611 and phone (919) 733-5633.*

CHAPTER 11 - FINANCIAL EVALUATION DIVISION

SUBCHAPTER 11A - GENERAL PROVISIONS

SECTION .0500 - CPA AUDITS

11 NCAC 11A .0501 PURPOSE AND SCOPE

(a) The purpose of this Section is to improve the Department's surveillance of the financial condition of insurers by requiring an annual examination by CPAs of the financial statements reporting the financial condition and the results of operations of insurers.

(b) This Section applies to all insurers; provided that insurers having direct premiums written in North Carolina of less than two hundred fifty thousand dollars (\$250,000) in any year and having less than 500 policyholders in North Carolina at the end of any year are exempt from this Section for such year unless the Commissioner makes a specific finding that compliance is necessary for the Commissioner to carry out statutory responsibilities. Insurers must notify the Department on or before ~~March-October~~ March-October 1 of each year of their exempt status.

(c) Foreign insurers filing audited financial reports in another state, pursuant to such other state's requirement of audited financial reports are exempt from this Section if:

- (1) A copy of the Audited Financial Report and Report on Internal Control Structure Related Matters noted in an audit are filed with such other state.
- (2) A copy of any Notification of Adverse Financial Condition Report filed with such other state is filed with the Commissioner within the time specified by such other state.

This Section does not prohibit, preclude, or in any way limit the Commissioner from ordering, conducting, or performing examinations of insurers under the General Statutes or this Title.

History Note: Authority G.S. 58-2-40; 58-2-205;
150B-21.1(a3);
Eff. December 1, 1990;
Amended Eff. April 1, 1993;
Temporary Amendment Eff. February 15, 2003.

11 NCAC 11A .0503 FILING AND EXTENSIONS FOR FILING REPORTS

(a) All insurers shall have an annual audit by a CPA and shall file an audited financial report with the Commissioner on or before May 10 for the previous calendar year. The Commissioner may require an insurer to file an audited financial report earlier than May 10 with 90 days advance notice to the insurer. Two copies of this report shall be filed in the office of

the Chief Examiner, ~~Field Audit Examination~~ Section of the Department.

(b) An extension of the May 10 filing date may be granted by the Commissioner for a period of up to 45 days upon a showing by the insurer and its CPA of the reasons for requesting such extension and a determination by the Commissioner of good cause for an extension. The request for extension must be submitted in writing not less than 15 days prior to the due date and must be in sufficient detail to permit the Commissioner to make an informed decision with respect to the requested extension.

History Note: Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3); Eff. December 1, 1990; Amended Eff. April 1, 1993; Temporary Amendment Eff. February 15, 2003.

11 NCAC 11A .0504 CONTENTS OF ANNUAL AUDITED FINANCIAL REPORT

(a) The annual Audited Financial Report shall report the financial position of the insurer as of the end of the most recent calendar year and the results of its operations, cash flows, and changes in capital and surplus for such year in conformity with statutory accounting practices prescribed, or otherwise permitted, by the Department.

(b) The annual Audited Financial Report shall include the following:

- (1) Report of CPA.
- (2) Balance sheet reporting admitted assets, liabilities, capital and surplus.
- (3) Statement of operations.
- (4) Statement of cash flows.
- (5) Statement of changes in capital and surplus.
- (6) Notes to financial statements. These notes shall be those required by the annual statement and the appropriate notes under generally accepted accounting principles and shall also include:
 - (A) A reconciliation of differences, if any, between the audited statutory financial statements and the Annual Statement filed pursuant to G.S. 58-2-165 with a written description of the nature of these ~~differences, differences; and~~
 - (B) A narrative explanation of all significant intercompany transactions and ~~balances, and balances.~~
 - ~~(C) The analysis of assets exhibit of the Annual Statement.~~
- (7) The financial statements included in the Audited Financial Report shall be prepared in a form and using language and groupings the same as the relevant sections of the Annual Statement of the insurer filed with the Commissioner, and:
 - (A) The financial statement shall be comparative, presenting the amounts as of December 31 of the current year and the amounts as of the

immediately preceding December 31; provided, however, in the first year in which an insurer is required to file an audited financial report, the comparative data may be omitted.

- (B) Amounts may be rounded to the nearest dollar.
- (C) Upon written application of any insurer, the Commissioner may permit the filing of consolidated statutory financial statements provided columnar consolidating worksheets are included in the filing, showing each company separately, and including a listing and description of intercompany eliminations.

History Note: Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3); Eff. December 1, 1990; Temporary Amendment Eff. February 15, 2003.

11 NCAC 11A .0505 DESIGNATION OF CPA

(a) Each insurer required by this Section to file an annual audited financial report must within 60 days after becoming subject to such requirement, ~~register with file with~~ the Commissioner a Designation of CPA letter indicating writing the name and address of the CPA retained to conduct the annual audit set forth in this Section. Insurers not retaining a CPA on the effective date of this Section shall provide the Designation of CPA letter register the name and address of their retained CPA not less than two months before the date when the first certification is to be filed.

(b) The insurer shall obtain ~~a-an Accountant's Appointment Letter letter~~ from such CPA, and file a copy with the Commissioner stating that the accountant is aware of the provisions of the North Carolina General Statutes and Administrative Code that relate to accounting and financial matters and affirming that he will express his opinion on the financial statements in the terms of their conformity to the statutory accounting practices prescribed or otherwise permitted by the Department, specifying such exceptions as he may believe appropriate. In addition, the CPA must affirm that he is aware of and will comply with the provisions of 11 NCAC 11A .0511.

(c) If a CPA who was not the CPA for the immediately preceding filed audited financial report is engaged to audit the insurer's financial statements, the insurer shall within 30 days of the date the CPA is engaged notify the Department of this event. The insurer shall also furnish the Commissioner with a separate letter stating whether in the 24 months preceding such engagement there were any disagreements with the former CPA on any matter of accounting principles or practices, financial statement disclosure, or auditing scope or procedure, which disagreements, if not resolved to the satisfaction of the former accountant, would have caused him to make reference to the subject matter of the disagreement in connection with his opinion. The insurer shall also in writing request such former CPA to furnish a letter addressed to the insurer stating whether the CPA agrees with the statements contained in the insurer's

letter, and, if not, stating the reasons for which he does not agree; and the insurer shall furnish such responsive letter from the former CPA to the Commissioner together with its own.

History Note: Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3); Eff. December 1, 1990; Amended Eff. April 1, 1993; Temporary Amendment Eff. February 15, 2003.

11 NCAC 11A .0506 QUALIFICATIONS OF INDEPENDENT CPA

- (a) The Commissioner shall not recognize recognize: (1) Any person or firm as a CPA that is not in good standing with the American Institute of Certified Public Accountants and in all states in which the CPA is licensed to practice.practice: or (2) Has either directly or indirectly entered into an agreement of indemnity or release from liability (collectively referred to as indemnification) with respect to the audit of the insurer.

(b) Except as otherwise provided in this Section, a CPA shall be recognized as independent as long as he or she conforms to the standards of his or her profession, as contained in the Code of Professional Ethics of the American Institute of Certified Public Accountants and Rules and Regulations and Code of Ethics and Rules of Professional Conduct of the North Carolina State Board of Certified Public Accountant Examiners, or similar code.

(c) The Commissioner shall not recognize as a qualified independent certified public accountant, nor accept an annual audited financial report, prepared in whole or part by, a natural person who:

- (1) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U. S. C. Sections 1961 to 1968k, or any dishonest conduct or practices under federal or state law; (2) Has been found to have violated the insurance laws of this state with respect to any previous reports submitted under this regulation; or (3) Has demonstrated a pattern or practice of failing to detect or disclose material information in previous reports filed under the provisions of this regulation.

(d) The Commissioner may hold a hearing to determine whether a CPA is independent and, considering the evidence presented, may rule that the CPA is not independent for purposes of expressing an opinion on the financial statements in the annual Audited Financial Report made pursuant to this Section and require the insurer to replace the CPA with another whose relationship with the insurer is independent within the meaning of this Section.

History Note: Authority G.S. 58-2-40; 58-2-205; 150B-21.1(a3); Eff. December 1, 1990; Amended Eff. April 1, 1993; Temporary Amendment Eff. February 15, 2003.

TITLE 15A – ENVIRONMENT AND NATURAL RESOURCES

Editor's Note: This notice will serve as a publication of a Temporary Rule and as Notice of Text for permanent rulemaking.

Rule-making Agency: Commission for Health Services

Rule Citation: 15A NCAC 19A .0101

Effective Date for Temporary Rule: February 13, 2003

Findings Reviewed and Approved by: Beecher R. Gray

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

Reason for Proposed Action: Bioterrorism threats have led to recommendations of smallpox vaccinations. This would utilize a live virus vaccine that may result in adverse medical conditions that would need to be closely monitored. The infection caused by this virus, the vaccinia virus, is communicable which necessitates adding it to the list of reportable conditions. Text shown in bold are the changes affected by this temporary action. The other changes shown by underlines and strikeouts were approved by the Rules Review Commission in December 2002 and are pending 30 legislative days of the current Session of the General Assembly. Proposed effective date of these changes is April 1, 2003.

Proposed Effective Date for permanent rule: August 1, 2004

Public Hearing: Date: March 26, 2003 Time: 1:00 p.m.- 3:00 p.m. Location: Room G-1A, 1330 St. Mary's Street, Raleigh, NC

Comment Procedures: Written comments should be submitted to Chris G. Hoke, JD, 1915 MSC, Raleigh, NC 27699-1915. Phone: (919) 715-4168; email: Chris.Hoke@ncmail.net. Comments should be submitted by April 2, 2003.

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

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0100 - REPORTING OF COMMUNICABLE DISEASES

15A NCAC 19A .0101 REPORTABLE DISEASES AND CONDITIONS

TEMPORARY RULES

(a) The following named diseases and conditions are declared to be dangerous to the public health and are hereby made reportable within the time period specified after the disease or condition is reasonably suspected to exist:

- (1) acquired immune deficiency syndrome (AIDS) - 7 days;
- (2) anthrax - 24 hours;
- (3) botulism - 24 hours;
- (4) brucellosis - 7 days;
- (5) campylobacter infection - 24 hours;
- (6) chancroid - 24 hours;
- (7) chlamydial infection (laboratory confirmed) - 7 days;
- (8) cholera - 24 hours;
- (9) Creutzfeldt-Jakob disease - 7 days;
- ~~(9)~~(10) cryptosporidiosis - 24 hours;
- ~~(10)~~(11) cyclosporiasis - 24 hours;
- ~~(11)~~(12) dengue - 7 days;
- ~~(12)~~(13) diphtheria - 24 hours;
- ~~(13)~~(14) ~~*E. coli* 0157:H7 infection~~ *Escherichia coli*, shiga toxin-producing - 24 hours;
- ~~(14)~~(15) ehrlichiosis - 7 days;
- ~~(15)~~(16) encephalitis, arboviral - 7 days;
- ~~(16)~~(17) enterococci, vancomycin-resistant, from normally sterile site - 7 days;
- ~~(17)~~(18) foodborne disease, including but not limited to *Clostridium perfringens*, staphylococcal, and *Bacillus cereus* - 24 hours;
- ~~(18)~~(19) gonorrhea - 24 hours;
- ~~(19)~~(20) granuloma inguinale - 24 hours;
- ~~(20)~~(21) *Haemophilus influenzae*, invasive disease - 24 hours;
- (22) Hantavirus infection - 7 days;
- ~~(21)~~(23) Hemolytic-uremic syndrome/thrombotic thrombocytopenic purpura - 24 hours;
- (24) Hemorrhagic fever virus infection - 24 hours;
- ~~(22)~~(25) hepatitis A - 24 hours;
- ~~(23)~~(26) hepatitis B - 24 hours;
- ~~(24)~~(27) hepatitis B carriage - 7 days;
- ~~(25)~~(28) hepatitis C, acute - 7 days;
- ~~(26)~~(29) human immunodeficiency virus (HIV) infection confirmed - 7 days;
- ~~(27)~~(30) legionellosis - 7 days;
- ~~(28)~~(31) leptospirosis - 7 days;
- (32) listeriosis - 24 hours;
- ~~(29)~~(33) Lyme disease - 7 days;
- ~~(30)~~(34) lymphogranuloma venereum - 7 days;
- ~~(31)~~(35) malaria - 7 days;
- ~~(32)~~(36) measles (rubeola) - 24 hours;
- ~~(33)~~(37) meningitis, pneumococcal - 7 days;
- ~~(34)~~(38) meningococcal disease - 24 hours;
- ~~(35)~~(39) mumps - 7 days;
- ~~(36)~~(40) nongonococcal urethritis - 7 days;
- ~~(37)~~(41) plague - 24 hours;
- ~~(38)~~(42) paralytic poliomyelitis - 24 hours;
- ~~(39)~~(43) psittacosis - 7 days;
- ~~(40)~~(44) Q fever - 7 days;
- ~~(41)~~(45) rabies, human - 24 hours;
- ~~(42)~~(46) Rocky Mountain spotted fever - 7 days;
- ~~(43)~~(47) rubella - 24 hours;
- ~~(44)~~(48) rubella congenital syndrome - 7 days;

- ~~(45)~~(49) salmonellosis - 24 hours;
- ~~(46)~~(50) shigellosis - 24 hours;
- ~~(47)~~(51) smallpox - 24 hours;
- ~~(48)~~(52) streptococcal infection, Group A, invasive disease - 7 days;
- ~~(49)~~(53) syphilis - 24 hours;
- ~~(50)~~(54) tetanus - 7 days;
- ~~(51)~~(55) toxic shock syndrome - 7 days;
- ~~(52)~~(56) toxoplasmosis, congenital - 7 days;
- ~~(53)~~(57) trichinosis - 7 days;
- ~~(54)~~(58) tuberculosis - 24 hours;
- ~~(55)~~(59) tularemia - 24 hours;
- ~~(56)~~(60) typhoid - 24 hours;
- ~~(57)~~(61) typhoid carriage (*Salmonella typhi*) - 7 days;
- ~~(58)~~(62) typhus, epidemic (louse-borne) - 7 days;
- (63) vaccinia - 24 hours;**
- ~~(59)~~(64) vibrio infection (other than cholera) - 24 hours;
- ~~(60)~~(65) whooping cough - 24 hours;
- (66) yellow fever - 7 days.

(b) For purposes of reporting; confirmed human immunodeficiency virus (HIV) infection is defined as a positive virus culture; repeatedly reactive EIA antibody test confirmed by western blot or indirect immunofluorescent antibody test; positive polymerase chain reaction (PCR) test; or other confirmed testing method approved by the Director of the State Public Health Laboratory conducted on or after February 1, 1990. In selecting additional tests for approval, the Director of the State Public Health Laboratory shall consider whether such tests have been approved by the federal Food and Drug Administration, recommended by the federal Centers for Disease Control and Prevention, and endorsed by the Association of State and Territorial Public Health Laboratory Directors. Laboratories.

(c) In addition to the laboratory reports for *Mycobacterium tuberculosis*, *Neisseria gonorrhoeae*, and syphilis specified in G.S. 130A-139, laboratories shall report:

- (1) Isolation or other specific identification of the following organisms or their products from human clinical specimens:
 - (A) Any hantavirus or hemorrhagic fever virus.
 - (B) Arthropod-borne virus (any type).
 - ~~(B)~~(C) *Bacillus anthracis*, the cause of anthrax.
 - ~~(C)~~(D) *Bordetella pertussis*, the cause of whooping cough (pertussis).
 - (E) *Borrelia burgdorferi*, the cause of Lyme disease (confirmed tests).
 - ~~(D)~~(F) *Brucella spp.*, the causes of brucellosis.
 - ~~(E)~~(G) *Campylobacter spp.*, the causes of campylobacteriosis.
 - (H) *Chlamydia trachomatis*, the cause of genital chlamydial infection, conjunctivitis (adult and newborn) and pneumonia of newborns.
 - ~~(F)~~(I) *Clostridium botulinum*, a cause of botulism.
 - ~~(G)~~(J) *Clostridium tetani*, the cause of tetanus.

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- ~~(H)~~(K) *Corynebacterium diphtheriae*, the cause of diphtheria.
- ~~(H)~~(L) *Coxiella burnetii*, the cause of Q fever.
- ~~(H)~~(M) *Cryptosporidium parvum*, the cause of human cryptosporidiosis.
- ~~(K)~~(N) *Cyclospora cayetanensis*, the cause of cyclosporiasis.
- ~~(K)~~(O) *Ehrlichia spp.*, the causes of ehrlichiosis.
- ~~(M)~~(P) ~~*Escherichia coli* 0157:H7, a Shiga toxin-producing *Escherichia coli*, a cause of hemorrhagic colitis, hemolytic uremic syndrome, and thrombotic thrombocytopenic purpura.~~
- ~~(N)~~(Q) *Francisella tularensis*, the cause of tularemia.
- ~~(O)~~(R) Hepatitis B virus or any component thereof, such as hepatitis B surface antigen.
- ~~(P)~~(S) Human Immunodeficiency Virus, the cause of AIDS.
- ~~(Q)~~(T) *Legionella spp.*, the causes of legionellosis.
- ~~(R)~~(U) *Leptospira spp.*, the causes of leptospirosis.
- (V) *Listeria monocytogenes*, the cause of listeriosis.
- (W) *Plasmodium falciparum*, *P. malariae*, *P. ovale*, and *P. vivax*, the causes of malaria in humans.
- (X) Poliovirus (any), the cause of poliomyelitis.
- ~~(S)~~(Y) Rabies virus.
- ~~(T)~~(Z) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
- (AA) Rubella virus.
- ~~(U)~~(BB) *Salmonella spp.*, the causes of salmonellosis.
- ~~(V)~~(CC) *Shigella spp.*, the causes of shigellosis.
- (DD) Smallpox virus, the cause of smallpox.
- ~~(W)~~(EE) *Trichinella spiralis*, the cause of trichinosis.
- (FF) Vaccinia virus.**
- ~~(X)~~(GG) *Vibrio spp.*, the causes of cholera and other vibrioses.
- (HH) Yellow fever virus.

(2)

- Isolation or other specific identification of the following organisms from normally sterile human body sites:
- (A) Group A *Streptococcus pyogenes* (group A streptococci).
 - (B) *Haemophilus influenzae*, serotype b.
 - (C) *Neisseria meningitidis*, the cause of meningococcal disease.
 - (D) Vancomycin-resistant *Enterococcus spp.*

- (3) Positive serologic test results, as specified, for the following infections:
 - (A) Fourfold or greater changes or equivalent changes in serum antibody titers to:
 - (i) Any arthropod-borne viruses associated with meningitis or encephalitis in a human.
 - (ii) Any hantavirus or hemorrhagic fever virus.
 - (iii) *Chlamydia psittaci*, the cause of psittacosis.
 - (iv) *Coxiella burnetii*, the cause of Q fever.
 - (v) Dengue virus.
 - (vi) *Ehrlichia spp.*, the causes of ehrlichiosis.
 - (vii) Measles (rubeola) virus.
 - (viii) Mumps virus.
 - (ix) *Rickettsia rickettsii*, the cause of Rocky Mountain spotted fever.
 - (x) Rubella virus.
 - (xi) Yellow fever virus.
 - (B) The presence of IgM serum antibodies to:
 - (i) Chlamydia psittaci
 - ~~(i)~~(ii) Hepatitis A virus.
 - ~~(ii)~~(iii) Hepatitis B virus core antigen.
 - ~~(iii)~~(iv) Rubella virus.
 - ~~(iv)~~(v) Rubeola (measles) virus.
 - (vi) Yellow fever virus.

History Note: Authority G.S. 130A-134; 130A-135; 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 1, 1990; Temporary Amendment Eff. July 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. February 13, 2003; October 1, 2002; February 18, 2002; June 1, 2001.

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

Rule-making Agency: *Commission for Health Services*

Rule Citation: *15A NCAC 19A .0208*

Effective Date for Temporary Rule: *February 13, 2003*

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

Authority for the rulemaking: *G.S. 130A-144*

TEMPORARY RULES

Reason for Proposed Action for Temporary Rule: The same rules change will be processed as a permanent change during 2003; a public hearing is scheduled for as part of that process.

Public Hearing:

Date: March 26, 2003

Time: 1:00 p.m.

Location: Room G-1A, 1330 St. Mary's Street, Raleigh, NC

Proposed Effective Date for Permanent Rule: August 1, 2004

Reason for Proposed Action: Bioterrorism threats have led to recommendations of smallpox vaccinations. This would utilize a live virus vaccine that may result in adverse medical conditions that would need to be closely monitored. The infection caused by this virus, the vaccinia virus, is communicable which necessitates establishing control measures.

Comment Procedures: Written comments should be submitted to Chris G. Hoke, JD, 1915 MSC, Raleigh, NC 27699-1915. Phone: (919) 715-4168; email: Chris.Hoke@ncmail.net. Comments should be submitted by April 2, 2003.

Fiscal Impact

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

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19A - COMMUNICABLE DISEASE CONTROL

SECTION .0200 - CONTROL MEASURES FOR COMMUNICABLE DISEASES

15A NCAC 19A .0208 CONTROL MEASURES - SMALLPOX; VACCINIA DISEASE

(a) Guidelines and recommended actions for prevention of the spread of smallpox and for prevention of the spread of vaccinia published by the Center for Disease Control and Prevention (CDC) shall supercede those contained in the control of Communicable Disease Manual and are incorporated by reference, including subsequent amendments and editions. Copies of CDC guidelines contained in the Morbidity and Mortality weekly reports may be purchased from the Superintendent of Documents, US Government Printing Office, Washington DC 20402 for a total cost of three dollars and fifty cents (\$3.50) each.

(b) The attending physician of a person vaccinated against smallpox shall report to the local health department the existence of any of the following:

- (1) autoinnoculation;
(2) generalized vaccinia;
(3) eczema vaccinatum;
(4) progressive vaccinia; and
(5) post vaccination encephalitis.

The attending physician shall make the report to the local health department within 24 hours. The local health department shall notify the division of Public Health within 24 hours.

(c) The physician responsible for vaccinating a person against smallpox and the physician diagnosing a person with vaccinia disease shall instruct the patient to follow CDC guidelines for the prevention of the spread of vaccinia adopted by reference in Paragraph (a) of this Rule. The patient shall follow these guidelines.

(d) The State Health Director or a local health director may use isolation authority pursuant to G.S. 130A-145 when necessary to prevent the spread of smallpox or vaccinia virus.

History Note: Authority G. S. 130A-144; Temporary Adoption Eff. February 13, 2003.

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

Rule-making Agency: Department of Health and Human Services

Rule Citation: 15A NCAC 19G .0102

Effective Date for Temporary Rule: February 24, 2003

Findings Reviewed and Objected to by: Julian Mann

Authority for the rulemaking: G.S. 130A-190

Reason for Proposed Action for Temporary Rule: This rule authorizes the Secretary of the Department of Health and Human Services to establish a fee of fifty cents (\$0.50) to be added to the sale of the "I Care" rabies tags. The fee is to be credited to the Spay/Neuter Account.

Public Hearing:

Date: April 16, 2003

Time: 1:30 p.m.

Location: 1330 St. Mary's Street, Room G1A, Raleigh, NC

Proposed Effective Date for Permanent Rule: August 1, 2004

Reason for Proposed Action: This rule authorizes the Secretary of the Department of Health and Human Services to establish a fee of fifty cents (\$0.50) to be added to the sale of the "I Care" rabies tags. The fee is to be credited to the Spay/Neuter Account.

Comment Procedures: Comments, statements, data and other information may be submitted in writing within 30 days of publication of this issue of the NC Register. Copies of the proposed rules and information packets may be obtained by contacting the Occupational and Environmental Epidemiology Branch, Veterinary Public Health Program at (919) 733-3140. Written comments should be sent to Chris Hoke, 1915 Mail Service Center, Raleigh, NC 27699-1915. Comments will be accepted through April 16, 2003.

Fiscal Impact

- State

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

CHAPTER 19 - HEALTH: EPIDEMIOLOGY

SUBCHAPTER 19G - VETERINARY PUBLIC HEALTH

SECTION .0100 - VETERINARY PUBLIC HEALTH PROGRAM

15A NCAC 19G .0102 FEES FOR RABIES TAGS, LINKS, AND RIVETS

(a) The Division of Epidemiology shall charge a fee to be paid by veterinarians or local health departments for the provision of rabies tags, links, and rivets. This fee shall be determined on the basis of actual cost plus transportation, and an additional five cents (\$0.05) per tag to be used to fund rabies education and prevention programs.

(b) The Division of Epidemiology shall charge a fee to be paid by veterinarians or local health departments for the provision of I Care rabies tags. This fee shall be determined on the basis of actual cost plus transportation, an additional five cents (\$0.05) per tag to be used to fund rabies education and prevention programs plus an additional fifty cents (\$0.50) per tag. The fifty cents fee (\$0.50) per tag shall be credited to the Spay/Neuter fund established in G.S. 19A-52.

History Note: Authority G.S. 130A-190; Eff. January 1, 1982; Amended Eff. September 1, 1990; Temporary Amendment Eff. July 22, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. May 4, 2001; Temporary Amendment Expired February 26, 2002; Codifier Objected to findings of need on February 11, 2003; Temporary Amendment Eff. February 24, 2003.

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting January 16, 2003, 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
11	NCAC	11F	.0201*	17:10 NCR
15A	NCAC	02P	.0408*	17:09 NCR
15A	NCAC	10B	.0101*	17:07 NCR
15A	NCAC	10H	.0301-.0303*	17:07 NCR
15A	NCAC	21D	.0411*	17:07 NCR
15A	NCAC	21D	.0503	17:07 NCR
15A	NCAC	21D	.0802	17:07 NCR
15A	NCAC	21D	.0804-.0806	17:07 NCR
15A	NCAC	21D	.0902-.0903	17:07 NCR
15A	NCAC	21D	.0904-.0906*	17:07 NCR
15A	NCAC	21D	.0907	17:07 NCR
15A	NCAC	21D	.0908-.0911*	17:07 NCR
21	NCAC	36	.0221*	17:04 NCR

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 11F .0201 DEFINITIONS

As used in this section and in the Statement of Actuarial Opinion required by the NAIC Annual Statement Instructions pursuant to G.S. 58-2-165:

- (1) "Annual claim cost" means the net annual cost per unit of benefit before the addition of expenses, including claim settlement expenses, and a margin for profit or contingencies. For example, the annual claim cost for a one hundred dollar (\$100.00) monthly disability benefit, for a maximum disability benefit period of one year, with an elimination period of one week, with respect to a male at age 35, in a certain occupation might be twelve dollars (\$12.00), while the gross premium for this benefit might be eighteen dollars (\$18.00). The additional six dollars (\$6.00) would cover expenses and profit or contingencies.
- (2) "Claims accrued" means that portion of claims incurred on or before the valuation date that result in liability of the insurer for the payment of benefits for medical services that have been rendered on or before the valuation date, and for the payment of benefits for days of hospitalization and days of disability that have occurred on or before the valuation date, that
- (3) "Claims reported" means when an insurer has been informed that a claim has been incurred, if the date reported is on or before the valuation date, the claim is considered as a reported claim for annual statement purposes.
- (4) "Claims unaccrued" means that portion of claims incurred on or before the valuation date that result in liability of the insurer for the payment of benefits for medical services expected to be rendered after the valuation date, and for benefits expected to be payable for days of hospitalization and days of disability occurring after the valuation date. This liability is sometimes referred to as a liability for "unaccrued" benefits. A claim reserve, which represents an estimate of the unaccrued claim payments expected to be made (that may or may not be discounted with interest), must be established.
- (5) "Claims unreported" means when an insurer has not been informed, on or before the valuation date, concerning a claim that has

the insurer has not paid as of the valuation date, but for which it is liable, and will have to pay after the valuation date. This liability is sometimes referred to as a liability for "accrued" benefits. A claim reserve, which represents an estimate of this accrued claim liability, must be established.

- been incurred on or before the valuation date, the claim is considered as an unreported claim for annual statement purposes.
- (6) "Date of disablement" means the earliest date the insured is considered as being disabled under the definition of disability in the contract, based on a doctor's evaluation or other evidence. Normally this date will coincide with the start of any elimination period.
- (7) "Elimination period" means a specified number of days, weeks, or months starting at the beginning of each period of loss, during which no benefits are payable.
- (8) "Gross premium" means the amount of premium charged by the insurer. It includes the net premium (based on claim-cost) for the risk, together with any loading for expenses, profit or contingencies.
- (9) "Group insurance" means blanket insurance and franchise insurance and any other forms of group insurance.
- (10) "Level premium" means a premium calculated to remain unchanged throughout either the lifetime of the policy, or for some shorter projected period of years. The premium need not be guaranteed; in which case, although it is calculated to remain level, it may be changed if any of the assumptions on which it was based are revised at a later time. Generally, the annual claim costs are expected to increase each year and the insurer, instead of charging premiums that correspondingly increase each year, charges a premium calculated to remain level for a period of years or for the lifetime of the contract. In this case the benefit portion of the premium is more than needed to provide for the cost of benefits during the earlier years of the policy and less than the actual cost in the later years. The building of a prospective contract reserve is a natural result of level premiums.
- (11) "Long-term care insurance" has the same meaning as in G.S. 58-55-20(4); and also means a policy or certificate that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.
- (12) "Modal premium" means the premium paid on a contract based on a premium term that could be annual, semi-annual, quarterly, monthly, or weekly. Thus if the annual premium is one hundred dollars (\$100.00) and if, instead, monthly premiums of nine dollars (\$9.00) are paid then the modal premium is nine dollars (\$9.00).
- (13) "Negative reserve" means a terminal reserve that has a value of less than zero resulting from benefits that decrease with advancing age or duration.
- (14) "Preliminary term reserve method" means the method of valuation under which the valuation net premium for each year falling within the preliminary term period is exactly sufficient to cover the expected incurred claims of that year, so that the terminal reserves will be zero at the end of the year. As of the end of the preliminary term period, a new constant valuation net premium (or stream of changing valuation premiums) becomes applicable such that the present value of all such premiums is equal to the present value of all claims expected to be incurred following the end of the preliminary term period.
- (15) "Qualified Actuary" means an individual who:
- (a) is a member in good standing of the American Academy of Actuaries; and
 - (b) is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements; and
 - (c) is familiar with the valuation requirements applicable to life and health insurance companies; and
 - (d) has not been found by the Commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing to have:
 - (i) violated any provision of, or any obligation imposed by, the insurance law or other law in the course of his or her dealings as a qualified actuary; or
 - (ii) been found guilty of fraudulent or dishonest practices; or
 - (iii) demonstrated his or her incompetency, lack of cooperation, or untrustworthiness to act as a qualified actuary; or
 - (iv) submitted to the Commissioner during the past five years, pursuant to this rule, an actuarial opinion or memorandum that the Commissioner rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board; or
 - (v) resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on

- examination or as a result of failure to adhere to generally acceptable actuarial standards; and
- (e) has not failed to notify the Commissioner of any action taken by any commissioner of any other state similar to that under Sub-item (15)(d) of this Paragraph.
- (16) "Rating block" means a grouping of contracts determined by the valuation actuary based on common characteristics filed with the Commissioner, such as a policy form or forms having similar designs.
- (17) "Reserve" means all items of benefit liability, whether in the nature of incurred claim liability or in the nature of contract liability relating to future periods of coverage, and whether the liability is accrued or unaccrued. An insurer under its contracts promises benefits that result in:
- (a) Claims that have been incurred, that is, for which the insurer has become obligated to make payment, on or before the valuation date. On these claims, payments expected to be made after the valuation date for accrued and unaccrued benefits are liabilities of the insurer that should be provided for by establishing claim reserves; or
- (b) Claims that are expected to be incurred after the valuation date. Any present liability of the insurer for these future claims should be provided for by the establishment of contract reserves and unearned premium reserves.
- (18) "Terminal reserve" means the reserve at the end of a contract year, and is defined as the present value of benefits expected to be incurred after that contract year minus the present value of future valuation net premiums.
- (19) "Unearned premium reserve" means the value of that portion of the premium paid or due to the insurer that is applicable to the period of coverage extending beyond the valuation date. Thus if an annual premium of one hundred twenty dollars (\$120.00) was paid on November 1, twenty dollars (\$20.00) would be earned as of December 31 and the remaining one hundred dollars (\$100.00) would be unearned. The unearned premium reserve could be on a gross basis as in this example, or on a valuation net premium basis.
- (20) "Valuation net modal premium" means the modal fraction of the valuation net annual premium that corresponds to the gross modal premium in effect on any contract to which contract reserves apply. Thus if the mode of

payment in effect is quarterly, the valuation net modal premium is the quarterly equivalent of the valuation net annual premium.

History Note: Authority G.S. 58-2-40; 58-58-50(k); Temporary Adoption Eff. January 21, 1994 For a Period of 180 Days or Until the Permanent Rule Becomes Effective, Whichever is Sooner; Eff. April 1, 1994; Amended Eff. August 1, 2004.

TITLE 15A - DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 02P .0408 PERFORMANCE-BASED CLEANUPS

- (a) The Division shall solicit competitive bids and award contracts for performance-based cleanups in accordance with G.S. 143, Article 3 and 1 NCAC 05B.
- (b) To be considered by the Division for performance-based cleanups, an environmental services firm shall provide documentation that the firm and any subcontracted individuals and firms it utilizes can perform the necessary services described in the solicitation documents. Any professional engineering firm selected by an environmental services firm to perform engineering services for a performance-based cleanup must comply with G.S. 89C.

History Note: Authority G.S. 143-215.94B(f); 143-215.94D(f); S.L. 2001, c. 442, s. 6b; Temporary Adoption Eff. July 2, 2002; Eff. July 1, 2004.

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

- (a) Before any live wild bird or wild animal is imported into North Carolina for any purpose, a permit shall be obtained from the Executive Director of the North Carolina Wildlife Resources Commission authorizing the importation, using application forms provided by the Commission.
- (b) No deer, elk, or other species in the family Cervidae may be imported into the state of North Carolina for any purpose until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test to detect Chronic Wasting Disease along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm on which the tested animal has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are recommended for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.
- (c) Cervids imported into North Carolina shall be individually identified by tags provided by the Wildlife Resources Commission that shall be affixed by the licensee to each cervid as set forth in these Rules.

History Note: Authority G.S. 113-134; 113-274; 113-291.3; 113-292; 106.549-97(b); Eff. February 1, 1976; Temporary Amendment Eff: October 8, 2002; May 17, 2002;

Amended Eff. August 1, 2004.

15A NCAC 10H .0301 GENERAL REQUIREMENTS

(a) Captivity Permit or License Required

- (1) Requirement. The possession of any species of wild animal that is or once was native to this State or any species of wild bird, native or migratory, that naturally occurs or historically occurred in this State or any member of the family Cervidae is unlawful unless the institution or individual in possession obtains from the Wildlife Resources Commission a captivity permit or a captivity license as provided by this Rule.
- (2) Injured, Crippled or Orphaned Wildlife. When an individual has taken possession of an injured, crippled or orphaned wild animal or wild bird, that individual shall contact the Wildlife Resources Commission within 24 hours of taking possession in order to apply for a captivity permit, provided, however, that under no circumstances shall an individual take possession of an injured, crippled or orphaned wild turkey, black bear, deer, elk or any other member of the family Cervidae.

(b) Captivity Permit. A captivity permit shall be requested by mail, phone, facsimile or electronic transmission or in person. A captivity permit shall authorize possession of the animal or bird only for such period of time as may be required for the rehabilitation and release of the animal or bird to the wild; or to obtain a captivity license as provided by Paragraph (c) of this Rule, if such a license is authorized; or to make a proper disposition of the animal or bird if the application for such license is denied, or when an existing captivity license is not renewed or is terminated. Captivity permits shall not be issued for wild turkey, black bear, deer, elk or any other member of the family Cervidae.

(c) Captivity License.

- (1) The purpose of captivity license is to provide humane treatment for certain wild animals or wild birds that are unfit for release. For purposes of this Rule wild animals are considered "unfit" if they are incapacitated by injury or otherwise; if they are a non-native species that poses a risk to the habitat or to other species in that habitat; or if they have been rendered tame by proximity to humans to the extent that they cannot feed or care for themselves without human assistance. Persons interested in obtaining a captivity license shall contact the Wildlife Resources Commission for an application.
- (2) Denial of captivity license. Circumstances or purposes for which a captivity license shall not be issued include but are not limited to the following:
 - (A) For the purpose of holding a wild animal or wild bird that was acquired unlawfully.
 - (B) For the purpose of holding the wild animal or wild bird as a pet. For

purposes of this Rule, the term "pet" means an animal kept for amusement or companionship. The term shall not be construed to include cervids held in captivity for breeding for sale to another licensed operator.

- (C) For the purpose of holding wild animals or wild birds for hunting in North Carolina.
- (D) For the purpose of holding wild turkey or black bear.
- (E) For the purpose of holding deer, elk or any other member of the family Cervidae on a facility licensed after May 17, 2002, until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test to detect Chronic Wasting disease along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm with which the tested cervid has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are recommended for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.
- (3) Required Facilities. No captivity license shall be issued until the applicant has constructed or acquired a facility for keeping the animal or bird in captivity that complies with the standards set forth in Rule .0302 of this Section and the adequacy of such facility has been verified on inspection by a representative of the Commission.
- (4) Term of License
 - (A) Dependent Wildlife. If the wild animal or wild bird has been permanently rendered incapable of subsisting in the wild, the license authorizing its retention in captivity shall be an annual license terminating on December 31 of the year for which issued.
 - (B) Rehabilitable Wildlife. When the wild animal or wild bird is temporarily incapacitated, and may be rehabilitated for release to the wild, any captivity license that is issued shall be for a period less than one year as rehabilitation may require
 - (C) Concurrent Federal Permit. No State captivity license for an endangered or threatened species or a migratory bird, regardless of the term specified, shall operate to authorize retention thereof for a longer period than is

- allowed by any concurrent federal permit that may be required for retention of the bird or animal.
- (5) Holders of Captivity License for cervids.
- (A) Inspection of records. The licensee shall make all records pertaining to tags, licenses or permits issued by the Wildlife Resources Commission available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of CWD is suspected or confirmed within five miles of the facility or within the facility itself.
- (B) Tagging Required. Effective upon receipt of tags from the Commission, each licensee shall implement the tagging requirement using only the tags provided by the Commission as follows:
- (i) All cervids newborn within a facility, with the exception of Muntjac and Axis deer, shall be tagged by October 1 following the birthing season each year. Newborn Muntjac and Axis deer shall be tagged within four months of birth.
- (ii) All cervids transferred to a facility shall be tagged within five days of the cervid's arrival at the licensee's facility. However, no cervids shall be transported from one facility to another until restrictions on importation (10B .0101) and transportation (Paragraph (f) of this Rule) no longer apply.
- (iii) All cervids in the possession of a licensee as of October 8, 2002 shall be tagged within six months of the licensee's receipt of the tags.
- (C) Application for Tags.
- (i) Application for tags for newborn cervid. Application for tags for cervids born at the facility site shall be made by the licensee by August 1 following the birthing season of each year, except that application for tags for Muntjac and Axis newborns shall be made within six weeks of birth. The licensee shall provide the following information, along with a statement and licensee's signature verifying that the information is accurate:
- (I) Owner name, mailing address, phone number;
- (II) Facility name and site address;
- (III) QBSP [Quad Block Square Point] facility number listed on licensee's captivity license;
- (IV) Species;
- (V) Sex; and
- (VI) Date of cervid birth.
- (ii) Application for tags for cervids that were not born at the facility site shall be made by written request for the appropriate number of tags along with the licensee's application for transportation of the cervid, along with a statement and licensee's signature verifying that the information is accurate. These tag applications shall not be processed unless accompanied by a completed application for transportation. However, no transportation permits shall be issued nor shall cervids be transported from one facility to another until restrictions on importation (10B .0101) and transportation (Paragraph (f) of this Rule) no longer apply.
- (D) Placement of Tags.
- (i) A single button ear tag provided by the Commission shall be permanently affixed by the licensee onto either the right or left ear of each cervid, provided that the ear chosen to bear the button tag shall not also bear a bangle tag, so that each ear of the cervid bears only one tag.
- (ii) A single bangle ear tag provided by the Commission shall be permanently affixed by the licensee onto the right or left ear of each cervid, provided that the ear bearing the bangle tag does not also bear the button tag, so that

- each ear of the cervid bears only one tag.
- (iii) Once a tag is affixed in the manner required by this Rule, it shall not be removed.
- (E) Reporting Tags Requirement. For all cervids not in the possession of a licensee as of October 8, 2002, the licensee shall submit a Cervidae Tagging Report within 30 days receipt of the tags. With regard to all cervids in the possession of a licensee as of October 8, 2002, the licensee shall submit a Cervidae Tagging report to the Wildlife Resources Commission within seven months of the licensee's receipt of the tags. A Cervidae Tagging Report shall provide the following information and be accompanied by a statement and licensee's signature verifying that the information is accurate.
- (i) Owner's name, address and telephone number;
 - (ii) Facility name and site address, including the County in which the site is located;
 - (iii) QBSP [Quad Block Square Point] facility number listed on licensee's captivity license;
 - (iv) Button tag number;
 - (v) Bangle tag number;
 - (vi) Species;
 - (vii) Sex; and
 - (viii) Birth year of cervid.
- (F) Replacement of Tags. The Wildlife Resources Commission shall replace tags that are lost or unusable and shall extend the time within which a licensee shall tag cervids consistent with time required to issue a replacement.
- (i) Lost Tags. The loss of a tag shall be reported to the Wildlife Resources Commission and application shall be made for a replacement upon discovery of the loss. Application for a replacement shall include the information required by Subparagraph (c)(5)(C) of this Rule along with a statement and applicant's signature verifying that the information is accurate.
 - (ii) Unusable Tags. Tags that cannot be properly affixed to the ear of a cervid or that cannot be read because of malformation or damage to the tags or obscurement of the tag numbers shall immediately be returned to the Wildlife Resources Commission along with an application for a replacement tag with a statement and applicant's signature verifying that the information in the application is accurate.
- (6) Renewal of captivity license for cervids. Existing captivity licenses for the possession of cervids at existing facilities shall be renewed as long as the applicant for renewal continues to meet the requirements of this Section for the license, provided however, no renewal of an existing license shall permit the expansion of pen size or number of pens on the licensed facility to increase the holding capacity of that facility. No renewals shall be issued for a license that has been allowed to lapse by the former licensee.
- (7) Provision for licensing the possession of cervids in an existing facility. If the licensee of an existing facility voluntarily surrenders his or her captivity license or dies, a person who has obtained lawful possession of the facility from the previous licensee or that licensee's estate, may apply for and may receive a captivity license to operate the existing facility. Any license issued under this provision shall be subject to the same terms and conditions imposed on the original licensee at the time of his or her surrender or death and shall be valid only for the purpose of holding the cervids of the existing facility within that existing facility. In addition, any actions pending from complaint, investigation or other cause shall be continued notwithstanding the termination of the original license.
- (d) Nontransferable. No license or permit or tag issued pursuant to this Rule shall be transferable, either as to the holder or the site of a holding facility.
 - (e) (Sale, Transfer or Release of Captive Wildlife).
 - (1) It is unlawful for any person to transfer or receive any wild animal or wild bird that is being held under a captivity permit issued under Paragraph (b) of this Rule, except that any such animal or bird may be surrendered to an agent of the Wildlife Resources Commission.
 - (2) It is unlawful for any person holding a captivity license issued under Paragraph (c) of this Rule to sell or transfer the animal or bird held under such license, except that such animal or bird may be surrendered to an agent

of the Commission, and any such licensee may sell or transfer the animal or bird to another person who has obtained a license to hold it in captivity. Upon such a sale or transfer, the seller or transferor shall obtain a receipt for the animal or bird showing the name, address, and license number of the buyer or transferee, a copy of which shall be provided to the Wildlife Resources Commission.

- (3) It is unlawful for any person to release into the wild for any purpose or allow to range free any species of deer, elk or other members of the family Cervidae or any wolf, coyote, or other non-indigenous member of the family canidae.

(f) Transportation Permit.

- (1) Except as otherwise provided herein, no transportation permit shall be required to move any lawfully held wild animal or wild bird within the State.
- (2) No person shall transport black bear or Cervidae for any purpose without first obtaining a transportation permit from the North Carolina Wildlife Resources Commission.
- (3) Except as provided in Subparagraph (f)(4) of this Rule, no transportation permits shall be issued for deer, elk, or other species in the family Cervidae until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test to detect Chronic Wasting Disease, along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm on which the tested animal has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are recommended for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.
- (4) Cervid Transportation. A permit to transport deer, elk, or other species in the family Cervidae may be issued by the Commission to an applicant for the purpose of transporting the animal or animals for export out of state, to a slaughterhouse for slaughter or to a veterinary medical facility for treatment provided that the animal for which the permit is issued does not exhibit clinical symptoms of Chronic Wasting Disease. No person shall transport a cervid to slaughter or export out of state without bearing a copy of the transportation permit issued by the Wildlife Resources Commission authorizing that transportation. No person shall transport a cervid for veterinary treatment without having obtained approval from the Commission as provided by Subparagraph (f)(4)(C) of this Rule. Any person transporting a cervid shall present the transportation permit to any law enforcement officer or any

representative of the Wildlife Resources Commission upon request, except that a person transporting a cervid by verbal authorization for veterinary treatment shall provide the name of the person who issued the approval to any law enforcement officer or any representative of the Wildlife Resources Commission upon request.

- (A) Slaughter. Application for a transportation permit for purpose of slaughter shall be submitted in writing to the North Carolina Wildlife Resources Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:
 - (i) Owner's name, address and telephone number;
 - (ii) Facility site address;
 - (iii) QBSP [Quad Block Square Point] facility number listed on applicant's captivity license;
 - (iv) Name, address, county and phone number of the slaughter house to which the cervid will be transported;
 - (v) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
 - (vi) Name and location of the North Carolina Department of Agriculture Diagnostic lab where the head of the cervid is to be submitted for CWD testing;
 - (vii) Date of transportation;
 - (viii) Species and sex; and
 - (ix) Bangle and button tag numbers for the cervid.
- (B) Exportation. Application for a transportation permit for purpose of exportation out of state shall be submitted in writing to the North Carolina Wildlife Resources Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:
 - (i) Owner's name, address and telephone number;
 - (ii) Facility site address;
 - (iii) QBSP [Quad Block Square Point] facility number listed on applicant's captivity license;

- (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
 - (v) Name, site address, county, state and phone number of the destination facility to which the cervid is exported;
 - (vi) A copy of the importation permit from the state of the destination facility that names the destination facility to which the animal is to be exported;
 - (vii) Date of departure;
 - (viii) Species and sex; and
 - (ix) Bangle and button tag numbers for the cervid.
- (C) Veterinary treatment. No approval shall be issued for transportation of a cervid to a veterinary clinic out of the state of North Carolina, or for transportation from a facility out of the state of North Carolina to a veterinary clinic in North Carolina. An applicant from a North Carolina facility seeking to transport a cervid for veterinary treatment to a facility within North Carolina shall contact the Wildlife Telecommunications Center or the Wildlife Management Division of the Wildlife Resources Commission to obtain verbal authorization to transport the cervid to a specified veterinary clinic and to return the cervid to the facility. Verbal approval to transport a cervid to a veterinary clinic shall authorize transport only to the specified veterinary clinic and directly back to the facility, and shall not be construed to permit intervening destinations. To obtain verbal authorization to transport, the applicant shall provide staff of the Wildlife Resources Commission the applicant's name and phone number, applicant's facility name, site address and phone number, the cervid species, sex and tag numbers, and the name, address and phone number of the veterinary facility to which the cervid shall be transported. Within five days of transporting the cervid to the veterinary facility for treatment, the licensee shall provide the following information in writing to the Wildlife Resources Commission, along with a statement and applicant's signature
- verifying that the information is correct:
 - (i) cervid owner's name, address and telephone number;
 - (ii) Facility name and site address;
 - (iii) QBSP facility number on captivity license;
 - (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
 - (v) Date of transportation;
 - (vi) Species and sex;
 - (vii) Bangle and button tag numbers for the cervid;
 - (viii) Name, address and phone number of the veterinarian and clinic that treated the cervid;
 - (ix) Symptoms for which cervid received treatment; and
 - (x) Diagnosis of veterinarian who treated the cervid.
- (g) No provision within this Rule other than those that permit transport for export, slaughter or veterinary treatment shall be construed to permit transportation of cervids until restrictions on transportation provided within this Rule, 15A NCAC 10B .0101 or anywhere else within these rules no longer apply.

History Note: Authority G.S. 106-549.97(b); 113-134; 113-272.5; 113-274; Eff. February 1, 1976; Amended Eff. April 1, 1991; September 1, 1990; June 1, 1990; July 1, 1988; Temporary Amendment Eff. October 8, 2002; May 17, 2002; July 1, 2001; Amended Eff. August 1, 2004.

15A NCAC 10H .0302 MINIMUM STANDARDS

- (a) Exemptions. Publicly financed zoos, scientific and biological research facilities, and institutions of higher education are exempt from the minimum standards set forth in this Rule for all birds and animals except the black bear.
- (b) All holders of captivity licenses other than those named in Paragraph (a) of this Rule shall comply with the following requirements:
 - (1) Deer, Elk and other species of the family Cervidae
 - (A) Enclosure.
 - (i) Description. The enclosure shall be on a well-drained site containing trees or brush for shade. The minimum size of the enclosure shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional

animal held. The enclosure shall be surrounded by a fence of sufficient strength to contain the animal at least 10 feet high, dog-proof to a height of at least six feet. No exposed barbed wire or protruding nails shall be permitted within the enclosure. A roofed building large enough to provide shelter in both a standing and a lying position for each deer shall be provided. This building shall be closed on three sides. It shall be constructed at least 10 feet from the fence.

(ii) Inspection. The licensee shall make all enclosures at each licensed facility and the record-book documenting required monitoring of the outer fence of the enclosure(s) available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of CWD is suspected or confirmed within five miles of the facility or within the facility itself.

(iii) Fence Monitoring Requirement.

(I) The fence surrounding the enclosure shall be inspected by the licensee or licensee's agent once a week during normal weather conditions to verify its stability and to detect the existence of any conditions or activities that threaten its stability. In the event of severe weather or any other condition that presents potential for damage to the fence, inspection shall occur every three hours until cessation of the

threatening condition, except that no inspection shall be required under circumstances that threaten the safety of the person conducting the inspection.

(II) A record-book shall be maintained to record the time and date of the inspection, the name of the person who performed the inspection, and the condition of the fence at time of inspection. The person who performs the inspection shall enter the date and time of detection and the location of any damage threatening the stability of the fence. If damage has caused the fence to be breachable, the licensee shall enter a description of measures taken to prevent ingress or egress by cervids. Each record-book entry shall bear the signature or initials of the licensee attesting to the veracity of the entry. The record-book shall be made available to inspection by a representative of the Wildlife Resources Commission upon request during normal business operating hours.

(iv) Maintenance. Any opening or passage through the enclosure fence resulting from damage shall be sealed or otherwise secured from

enough for the animal to completely submerge itself. If more than one animal is kept, the pool must be large enough for all animals to be able to submerge themselves at the same time. A land area with both horizontal dimensions at least as long as the animal shall also be provided. In case of more than one animal, the land area shall have both horizontal dimensions at least as long as the longest animals to occupy the land area at the same time without overlap.

- (B) Sanitation and Care. The water area shall be kept clean and adequate food provided. Protection shall be provided at all times from extremes in temperature.

(5) Black Bear

(A) Educational Institutions and Zoos Operated or Established by Governmental Agencies

- (i) Enclosure. A permanent, stationary metal cage, at least eight feet wide by 12 feet long by six feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor in which a drainable pool one and one-half feet deep and not less than four by five feet has been constructed. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage must contain a den at least five feet long by five feet wide by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.
- (ii) Sanitation and Care. Adequate food shall be

provided daily; and clean, clear drinking water shall be available at all times. In hot weather, the floor of the cage and the food trough shall be flushed with water and the water in the pool changed daily. The den shall be flushed and cleaned at least once each week in hot weather. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. Brush, canvas, or other suitable material shall be placed over the cage to provide additional shade when necessary. The use of collars, tethers or stakes to restrain the bear is prohibited, except as a temporary safety device.

- (B) Conditions Simulating Natural Habitat. Black bears held in captivity by other than educational institutions or governmental zoos shall be held without caging under conditions simulating a natural habitat. All of the following conditions must exist to simulate a natural habitat in a holding facility:

- (i) The method of confinement is by chain link fence, wall, moat, or a combination of such, without the use of chains or tethers.
- (ii) The area of confinement is at least one acre in extent for one or two bears and an additional one-eighth acre for each additional bear.
- (iii) Bears are free, under normal conditions, to move throughout such area.
- (iv) At least one-half of the area of confinement is wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind.
- (v) The area of confinement contains a pool not less than one and one-half feet deep and not less than four by five feet in size.
- (vi) Provision is made for a den for each bear to which the bear may retire for rest, shelter from the elements, or

respite from public observation.

(vii) The area of confinement presents an overall appearance of a natural habitat and affords the bears protection from harassment or annoyance.

(viii) Provisions are made for adequate food and water and for maintenance of sanitation.

(ix) The applicant shall document that the applicant owns or has a lease of the real property upon which the holding facility is located, provided that if the applicant is a lessee, the lease is for a duration of at least five years from the point of stocking the facility.

(6) Cougar

(A) Educational or scientific research institutions and zoos supported by public funds.

(i) Enclosure. A permanent, stationary metal cage, at least nine feet wide by 18 feet long by nine feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage shall contain a den at least five feet long by five feet wide by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.

(ii) Sanitation and Care. Adequate food shall be

provided daily; and clean, clear drinking water shall be available at all times. In hot weather, the floor of the cage and the food trough shall be flushed with water and the water in the pool changed daily. The den shall be flushed and cleaned at least once each week in hot weather. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. Brush, canvas, or other suitable material shall be placed over the cage to provide additional shade when necessary. The use of collars, tethers or stakes to restrain the cougar is prohibited, except as a temporary safety device.

(B) Cougars held in captivity by other than educational or scientific institutions or publicly supported zoos shall be held without caging under conditions simulating a natural habitat. Applicants for a captivity license to hold cougar shall apply to the Wildlife Resources Commission on forms provided by the Commission, and shall provide plans that describe how the applicant's facility will comply with the requirement to simulate a natural habitat. All of the following conditions must exist to simulate a natural habitat in a holding facility.

(i) The method of confinement is by chain link fence, without the use of chains or tethers, provided that:

(I) Nine gauge chain link fencing shall be at least 12 feet in height with a four foot fence overhang at a 45 degree angle on the inside of the pen to prevent escape from climbing and jumping.

(II) Fence posts and at least six inches of the fence skirt shall be permanently imbedded in a six inch wide by one

- (ii) The area of confinement shall be at least one acre for two cougars with an additional one-eighth acre for each additional cougar, except that smaller areas containing terrain and topographical features that offer escape cover and refuge and meeting all other specifications may be permitted following site evaluation by the Wildlife Resources Commission.
 - (iii) Cougars shall be free under normal conditions to move throughout the area of confinement.
 - (iv) At least one-half of the area of confinement shall be wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind; and a 20 foot wide strip along the inside of the fence shall be maintained free of trees, shrubs and any other obstructions which could provide a base from which escape through leaping could occur.
 - (v) The area of confinement shall contain a pool not less than one and one-half feet deep and not less than four by five feet in size.
 - (vi) Each cougar shall be provided a den to which the cougar may retire for rest, shelter from the elements, or respite from public observation. Each den shall be four feet wide by four feet high by four feet deep. Each den shall be enclosed entirely within at least an eight feet wide by ten feet deep by 12 feet high security cage. The security cage shall be completely within the confines of the facility, cement-floored, shall have nine gauge fencing on all sides and the top, and shall have a four foot, 45 degree fence overhang around the outside top edge to prevent foot deep concrete footer to prevent escape by digging.
- (vii) The area of confinement shall protect the cougar from harassment or annoyance.
- (C) Provisions shall be made for ample food and water and for maintenance of sanitation.
 - (D) The applicant shall document that the applicant owns or has a lease of the real property upon which the holding facility is located, provided that if the applicant is a lessee, the lease is for a duration of at least five years from the point of stocking the facility.
- (7) Other Wild Animal Enclosures.
- (A) General Enclosure Requirements.
 - (i) The enclosure shall provide protection from excessive sun, weather and free-ranging animals.
 - (ii) A den area in which the animal can escape from view and large enough for the animal to turn around and lie down shall be provided for each animal within the enclosure.
 - (iii) No tethers or chains shall be used to restrain the animal.
 - (iv) Either a tree limb, exercise device, or shelf large enough to accommodate the animal shall be provided to allow for exercise and climbing.
 - (v) Sanitation and Care. Fresh food shall be provided daily, and clean water shall be available at all times.
 - (vi) An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.
 - (B) Single Animal Enclosures for certain animals. The single-animal enclosure for the animals listed in this Subparagraph shall be a cage with the following minimum dimensions and horizontal areas:

Dimensions in Feet					
Animal	Length	Width	Height	Per Animal	
Bobcat, Otter	10	5	5	50	
Raccoon, Fox, Woodchuck	8	4	4	32	
Opossum, Skunk,	6	3	3	18	
Rabbit	4	2	2	8	
Squirrel	4	2	2	8	

- (C) Single Enclosure Requirements for animals not mentioned elsewhere in this Rule. For animals not listed above or mentioned elsewhere in this Rule, single animal enclosures shall be a cage with one horizontal dimension being at least four times the nose-rump length of the animal and the other horizontal dimension being at least twice the nose-rump length of the animal. The vertical dimensions shall be at least twice the nose-rump length of the animal. Under no circumstances shall a cage be less than four feet by two feet by two feet.
- (D) Multiple Animal Enclosures. The minimum area of horizontal space shall be determined by multiplying the required square footage for a single animal by a factor of 1.5 for one additional animal and the result by the same factor, successively, for each additional animal. The vertical dimension for multiple animal enclosures shall remain the same as for single animal enclosures.
- (E) Young animals. The young of any animal may be kept with the parent in a single-animal enclosure only until weaning. After weaning, if the animals are kept together, the requirements for multiple-animal enclosures shall apply.

History Note: Authority G.S. 19A-11; 106-549.97(b); 113-134; 113-272.5
Eff. February 1, 1976;
Amended Eff. December 1, 1990; June 1, 1990; July 1, 1988;
November 9, 1980;
Temporary Amendment Eff. October 8, 2002;
Amended Eff. August 1, 2004.

15A NCAC 10H .0303 FORFEITURE

(a) The Executive Director of the Wildlife Resources Commission may issue a warning or revoke the holder's permit or license and a holder of a permit or license to keep wildlife in captivity may forfeit the right to keep that wildlife, lose custody of that wildlife, and be required to turn that wildlife over to a representative of the Wildlife Resources Commission upon request of the Commission as authorized by G.S. 150B-3 and G.S. 113-276.2. The determination whether to issue a warning or revoke a license or permit and require forfeiture shall be based upon the seriousness of the violation. Violations include but are not limited to the following circumstances or conditions:

- (1) The licensee or permittee fails to maintain the captive animal or bird in good health or to treat conditions that warrant medical attention. Chronic or acute instances of the following that are untreated may be considered evidence

that the licensee is failing to keep the animal or bird in good health:

- (A) weakness or instability in balance;
 - (B) bare spots in fur or feather covering that do not result from that animal's behavior;
 - (C) diarrhea;
 - (D) abnormally low weight;
 - (E) unusual nasal discharges;
 - (F) sores or open wounds; or
 - (G) injury to muscles or bones.
- (2) The permittee or licensee fails to provide accurate information on records or permit or license applications submitted to the Wildlife Resources Commission.
 - (3) The licensee of a facility holding captive cervid(s) fails to comply with tagging requirements for cervids as provided by rules in this Section.
 - (4) The licensee of a facility holding captive cervid(s) fails to comply with requirements for maintaining the enclosure fence as provided by rules in this Section.
 - (5) The licensee fails to comply with monitoring or record-keeping requirements as provided by rules in this Section.
 - (6) The permittee or licensee fails to keep in captivity the wildlife for which the facility is licensed.
 - (7) The licensee of a facility holding captive cervid(s) fails to permit the Wildlife Resources Commission to inspect the licensed facility or records as provided by rules in this Section.

(b) The Executive Director of the Wildlife Resources Commission shall revoke the holder's permit or license and a holder of a permit or license to keep wildlife in captivity shall forfeit the right to keep that wildlife, lose custody of that wildlife and be required to turn that wildlife over to a representative of the Wildlife Resources Commission upon request of the Commission under any of the following circumstances or conditions:

- (1) The licensee of a facility holding captive cervid(s) fails to report symptoms of chronic wasting disease in a cervid to the Wildlife Resources Commission as provided by rule(s) in this Section;
- (2) The licensee of a facility holding captive cervid(s) fails to transport and submit a cervid carcass to a North Carolina Department of Agriculture diagnostic lab for CWD evaluation within 48 hours of that cervid's death or close of the next business day, whichever is later, as provided by rule(s) in this Section;
- (3) A cervid in possession of the licensee has been transported without a permit; or
- (4) Chronic Wasting Disease has been confirmed in a cervid at that facility.

History Note: G.S. 106-549.97(b); 113-131; 113-134; 113-272.5; 113-276.2; 113-292; 150B-3;
Eff. February 1, 1976;

Amended Eff. February 7, 1979;
Temporary Amendment Eff. October 8, 2002;
Amended Eff. August 1, 2004.

15A NCAC 21D .0411 DUAL PARTICIPATION

(a) A participant shall not participate simultaneously in the WIC Program in one or more than one WIC clinic, or participate in the WIC Program and the Commodity Supplemental Food Program ("CSFP") during the same period of time. For purposes of this Rule, participate means certification as a WIC participant for the receipt of WIC food instruments or certification as a CSFP participant for the receipt of CSFP food.

(b) The state agency shall immediately terminate the participation in one of the clinics or Programs, or the simultaneous participation in a single clinic, in accordance with 7 C.F.R. 246.7(l)(1)(iii) when a participant is found to be in violation of Paragraph (a) of this Rule.

(c) In the case of dual participation resulting from intentional misrepresentation, the participant, parent or caretaker of an infant or child participant, or proxy shall repay Program benefits improperly issued as a result of the dual participation, and the participant shall be disqualified from participation in both Programs or clinic(s) in accordance with 7 C.F.R 246.7(l)(1)(iv) and Paragraph (b) of Rule .0410 of this Section. For purposes of this Paragraph, receiving WIC food instruments under two or more participant identities in a single WIC clinic during the same issuance period and transacting one or more of the food instruments received under two or more of the identities constitutes dual participation based on intentional misrepresentation. Receiving WIC food instruments from more than one WIC clinic during the same issuance period and transacting one or more of the food instruments received from two or more of the clinics constitutes dual participation based on intentional misrepresentation. Additionally, receiving WIC food instruments and CSFP food during the same time period and transacting one or more of the WIC food instruments constitutes dual participation based on intentional misrepresentation.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786;
Temporary Adoption Eff. July 1, 2002;
Eff. July 1, 2004.

15A NCAC 21D .0904 NOTIFICATION OF THE RIGHT TO A FAIR HEARING

(a) Every current or potential WIC participant shall be informed by the local WIC agency of his or her right to a fair hearing:

- (1) in writing at the time of application;
- (2) in writing whenever he or she is determined ineligible;
- (3) in writing if disqualified due to abuse of the program;
- (4) in writing at the time of assessment of a claim for repayment of the cash value of improperly issued Program benefits; and
- (5) orally or in writing at least 15 days before the expiration of each certification period.

(b) The content of the notice of fair hearing shall include:

- (1) a statement of the right to a fair hearing;
- (2) the method by which a fair hearing may be requested, including the time limit; and

- (3) who may represent the individual.

(c) In order to notify current and potential participants of the fair hearing process, a simplified summary of the steps involved in obtaining a fair hearing shall be posted in a visible place at every WIC site where certifications are performed, food instruments are issued or applications are accepted. This notification shall contain:

- (1) notice of right to a fair hearing;
- (2) a simplified explanation of the definition and purpose of a fair hearing;
- (3) the method by which a fair hearing may be requested, including the time limit; and
- (4) who may represent the individual at the fair hearing and in requesting a fair hearing.

History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786;
Eff. July 1, 1981;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. July 1, 2004.

15A NCAC 21D .0905 REQUEST FOR A FAIR HEARING

(a) A request for a fair hearing is any expression that conveys a desire to present a case contesting an action that results in an individual's denial of participation, or disqualification from the program or a claim against an individual for repayment of the cash value of improperly issued Program benefits. This request may be made to any of the following:

- (1) the agency official;
- (2) the agency director of the local WIC agency;
- (3) the WIC director of the local WIC agency;
- (4) any person serving in one of the above three roles in the absence of the agency official, agency director or WIC director.

(b) If the request is not made directly to the agency official, the individual receiving the request shall immediately notify the agency official of the request by telephone.

(c) All requests shall be documented in writing.

- (1) If the original request is made in writing, the individual receiving the request shall retain a photocopy and send the original to the agency official immediately following the telephone call.
- (2) If a verbal request is received, the individual receiving the request shall document the request in writing, including:
 - (A) the applicant's or participant's name;
 - (B) the name of the individual making the request:
 - (i) their mailing address;
 - (ii) telephone number; and
 - (iii) relation to the applicant or participant;
 - (C) the date of the request; and
 - (D) the cause for the request along with the name, title, and signature of the person writing the documentation.

The original copy of this documentation shall be sent to the agency official immediately following the telephone call with a copy being retained by the sender.

(d) The request for a fair hearing may be made by the individual affected by the action or the individual's parent, caretaker, or any other person acting on his or her behalf.

(e) If an individual or an individual's parent, caretaker, or any other person acting on his or her behalf expresses verbally the desire for a fair hearing to a state or local agency staff member not authorized to accept a request, that staff member shall provide assistance in contacting the individuals who can accept a fair hearing request.

(f) The request for a fair hearing must be made within 60 days from the date the applicant or participant is given notice of the action. If the notification is mailed, this time period shall begin on the date the notification was mailed.

History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. November 1, 1990; Temporary Amendment Eff. July 1, 2002; Amended Eff. July 1, 2004.

15A NCAC 21D .0906 DENIAL OR DISMISSAL OF A REQUEST

The hearing officer shall deny or dismiss a hearing if:

- (1) the request is not received within 60 days of the date of notification of the action;
- (2) the request is withdrawn in writing by the appellant or his or her representative;
- (3) the request is verbally withdrawn by the appellant or the appellant's parent, caretaker, or any other person acting on his or her behalf during conversation with the agency Official. Within 10 days of this verbal withdrawal request the agency official shall send a letter to the appellant and the local WIC agency summarizing the events which lead to the withdrawal of the request. This letter shall include notification of the appellant's right to reinstate the request for a fair hearing;
- (4) the appellant or the appellant's parent, caretaker, or any other person acting on his or her behalf fails to appear at the scheduled hearing, unless the failure to appear was due to circumstances beyond the control of the appellant or his or her representative;
- (5) the request is made in reference to the tailoring of the food package; or
- (6) the initial action assessing a claim for the cash value of improperly issued Program benefits or denying participation or disqualifying from the program has been reversed by the local WIC agency or the state agency, resulting in the provision of program benefits to the appellant.

History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. November 1, 1990; Temporary Amendment Eff. July 1, 2002; Amended Eff. July 1, 2004.

15A NCAC 21D .0908 NOTICE OF HEARING

(a) The agency official shall notify the aggrieved party, the local WIC agency and the Nutrition Services Branch in writing that a request for a hearing has been received and shall appoint a time, date, and place for the hearing within 10 days of receipt of the request.

(b) Notice shall be given to all parties at least 10 days in advance of the hearing.

(c) The notice to the aggrieved party shall include a stamped envelope with the return address of the agency official with a request that it be returned indicating whether the time and place for the hearing is satisfactory. If a response is not received at least 24 hours prior to the time proposed for the hearing, it shall be assumed that the time and place are satisfactory.

(d) The notice shall contain:

- (1) a simplified explanation of the procedure for the hearing;
- (2) a statement of the date, hour, place and nature of the hearing;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short and plain statement of the factual allegations.

(e) If the aggrieved party indicates that he-she desires another time and date, the agency official shall set a new time and date for the hearing. The hearing shall be accessible to the appellant.

(f) The hearing shall be held within three weeks from the date of the receipt of the request.

History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. November 1, 1990; Temporary Amendment Eff. July 1, 2002; Amended Eff. July 1, 2004.

15A NCAC 21D .0909 HEARING OFFICER

The Director of the Division of Public Health shall designate a representative who did not participate in taking the action under appeal to be the hearing officer. The hearing officer shall:

- (1) preside over the informal proceeding;
- (2) ensure that all relevant issues are considered;
- (3) request, receive and insert into the hearing record all evidence determined necessary to reach a decision;
- (4) conduct the meeting in accordance with due process and ensure an orderly hearing;
- (5) order, if relevant and necessary, an independent medical assessment or professional evaluation for the appellant from a source mutually satisfactory to all parties to the hearing; and
- (6) issue a decision.

History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. July 1, 1995; July 1, 1987; Temporary Amendment Eff. July 1, 2002; Amended Eff. July 1, 2004.

15A NCAC 21D .0910 HEARING PROCEDURE AND RIGHTS OF THE AGGRIEVED PARTY

- (a) Any party to the hearing may be assisted or represented by an attorney or other person.
- (b) Any party to the hearing may examine, prior to and during the hearing, the documents and records presented to support the action under appeal.
- (c) The hearing shall be open to the public, and the aggrieved party and the state and local agency may have witnesses.
- (d) Any party to the hearing may present any oral or documentary evidence and arguments.
- (e) Any party to the hearing may question or refute any testimony or other evidence.
- (f) Any party to the hearing may submit evidence to establish pertinent facts and circumstances in the case.
- (g) The appellant or his or her representative may obtain a continuance by notifying the hearing officer by telephone or in writing at least 48 hours before the original hearing date. If the appellant or representative fails to attend the scheduled hearing without requesting a continuance from the hearing officer by telephone or in writing at least 48 hours before the original hearing date, the appellant waives any right to a hearing and the original action of the agency shall become final, unless the failure to attend the hearing without requesting a continuance was due to circumstance beyond the control of the appellant or his or her representative.

History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. July 1, 1987; October 1, 1985; Temporary Amendment Eff. July 1 2002; Amended Eff. July 1, 2004.

15A NCAC 21D .0911 DECISION

- (a) The fair hearing decision shall be made by the hearing official and shall be based only on the oral and documentary evidence presented at the hearing and applicable state statutes and rules, and federal laws and regulations and shall be made a part of the hearing record by the hearing officer.
- (b) The hearing official shall notify in writing the aggrieved party, any designated representative of the aggrieved party, the local WIC agency and the Nutrition Services Branch of the decision within 45 days from the date of the request for the hearing.
- (c) If the decision is in favor of the aggrieved party and benefits were denied or discontinued, benefits shall begin within two business days after issuance of the decision.
- (d) If the decision is in favor of the agency, as soon as administratively feasible any continued benefits shall be terminated as decided by the hearing official.
- (e) The hearing officer shall prepare a recording of testimony and exhibits, or an official report containing the substance of what transpired at the hearing which, together with all papers and requests filed in the proceeding and the written fair hearing decision, shall constitute the exclusive hearing record.
- (f) The decision shall be binding on the local WIC agency.
- (g) All hearing records shall be retained for three years.
- (h) Upon request by any member of the public a copy of all hearing records and decisions in a form that does not identify individuals (appellant or local agency) shall be prepared by the

Nutrition Services Branch and be available for inspection and copying.

History Note: Authority G.S. 130A-361; 150B-22; 7 C.F.R. 246.9; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. December 6, 1991; Temporary Amendment Eff. July 1, 2002; Amended Eff. July 1, 2004.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

21 NCAC 36 .0221 LICENSE REQUIRED

- (a) No cap, pin, uniform, insignia or title shall be used to represent to the public, that an unlicensed person is a registered nurse or a licensed practical nurse as defined in G.S. 90-171.43.
- (b) The repetitive performance of a common task or procedure which does not require the professional judgment of a registered nurse or licensed practical nurse shall not be considered the practice of nursing for which a license is required. Tasks that may be delegated to the Nurse Aide I and Nurse Aide II shall be established by the Board of Nursing pursuant to 21 NCAC 36 .0403. Tasks may be delegated to an unlicensed person which:
 - (1) frequently recur in the daily care of a client or group of clients;
 - (2) are performed according to an established sequence of steps;
 - (3) involve little or no modification from one client-care situation to another;
 - (4) may be performed with a predictable outcome; and
 - (5) do not inherently involve ongoing assessment, interpretation, or decision-making which cannot be logically separated from the procedure(s) itself.

Client-care services which do not meet all of these criteria shall be performed by a licensed nurse.

- (c) The registered nurse or licensed practical nurse shall not delegate the professional judgment required to implement any treatment or pharmaceutical regimen which is likely to produce side effects, toxic effects, allergic reactions, or other unusual effects; or which may rapidly endanger a client's life or well-being and which is prescribed by a person authorized by state law to prescribe such a regimen. The nurse who assumes responsibility for implementing a treatment or pharmaceutical regimen shall be accountable for:
 - (1) recognizing side effects;
 - (2) recognizing toxic effects;
 - (3) recognizing allergic reactions;
 - (4) recognizing immediate desired effects;
 - (5) recognizing unusual and unexpected effects;
 - (6) recognizing changes in client's condition that contraindicates continued administration of the medication;
 - (7) anticipating those effects which may rapidly endanger a client's life or well-being; and
 - (8) making judgments and decisions concerning actions to take in the event such untoward effects occur.

APPROVED RULES

(d) When health care needs of an individual are incidental to the personal care needs of the individual, nurses shall not be accountable for care performed by clients themselves, their families or significant others, or by caretakers who provide personal care to the individual.

History Note: Authority G.S. 90-171.23(b); 90-171.43; 90-171.83; Eff. May 1, 1982; Amended Eff. July 1, 2004; April 1, 2002; December 1, 2000; July 1, 2000; January 1, 1996; February 1, 1994; April 1, 1989; January 1, 1984.

This Section contains information for the meeting of the Rules Review Commission on Thursday, March 20, 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, March 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

March 20, 2003 April 17, 2003
May 15, 2003 June 19, 2003

**RULES REVIEW COMMISSION
FEBRUARY 20, 2003
MINUTES**

The Rules Review Commission met on Thursday morning, February 20, 2003, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present: Jim Funderburk, Walter Futch, Thomas Hilliard, Robert Saunders, John Tart, and David Twiddy.

Staff members present were: Joseph DeLuca, Staff Director; Bobby Bryan, Rules Review Specialist; and Lisa Johnson.

The following people attended:

David Cobb	Wildlife Resources Commission
Dick Hamilton	Wildlife Resources Commission
Joan Troy	Wildlife Resources Commission
Norman Young	Department of Justice
Alice Lenihan	DHHS-DPH
Craig Forsythe	DHHS
Tom West	Poyner & Spruill, LLP
Pam Scott	Poyner & Spruill, LLP
Henry Hampton	NC Deer/Elk Farmers Assoc.
Mrs. Henry Hampton	NC Deer/Elk Farmers Assoc.
Cari Hampton	NC Deer/Elk Farmers Assoc.
Karen Long	NC Department of Justice
Ellie Sprengel	Department of Insurance
Frank Folger	Department of Insurance
Bob Potter	Department of Insurance
Andy Ellen	NC Retail Merchants
Kris Horton	DHHS/DMA

APPROVAL OF MINUTES

The meeting was called to order at 10:11 a.m. with Commissioner Funderburk presiding. Mr. Funderburk was asked to chair the meeting due to Chairman Paul Powell and Vice Chairman Jennie Hayman not being present. Mr. Funderburk asked for any discussion, comments, or corrections concerning the minutes of the January 16, 2003, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

- 1 NCAC 35 .0101; .0103; .0201-.0205; .0301; .0302; .0304-.0306; .0308; .0309 – The Commission took no action on these rules at the request of the agency.
- 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 took no action on these rules at the request of the agency.
- 8 NCAC 2 .0101-.0113: Board of Elections – The Commission took no action on these rules at the request of the agency.
- 8 NCAC 4 .0101-.0109; .0201-.0208; .0301-.0307: Board of Elections – The Commission took no action on these rules at the request of the agency.
- 8 NCAC 6B .0101-.0105: Board of Elections – The Commission took no action on these rules at the request of the agency.
- 8 NCAC 7B .0101; .0102: Board of Elections – The Commission took no action on these rules at the request of the agency.
- 8 NCAC 9 .0101-.0109: Board of Elections – The Commission took no action on these rules at the request of the agency.
- 8 NCAC 10B .0101-.0108: Board of Elections – The Commission took no action on these rules at the request of the agency.
- 8 NCAC 12 .0101-.0111: Board of Elections – The Commission took no action on these rules at the request of the agency.
- 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: Department of Health and Human Services – The agency requested that the Commission take no action on these rules this month.
- 10 NCAC 26H .0215; .0304; .0506: Department of Health and Human Services – The Commission approved the rewritten rules submitted by the agency.
- 11 NCAC 11F .0205; .0207: Department of Insurance – The Commission approved the rewritten rules submitted by the agency. Commissioner Twiddy recused himself from this matter.
- 15A NCAC 10F .0318: Wildlife Resources Commission – The Commission approved the rewritten rule submitted by the agency.
- 15A NCAC 21D .0202; .0410; .0501; .0702; .0703; .0704; .0706: Commission for Health Services – The Commission approved the rewritten rules submitted by the agency.
- 20 NCAC 10 .0101; .0102; .0201-.0210; .0301; .0302: Health and Wellness Trust Fund Commission – The Commission approved the revised rules submitted by the agency. The rules were revised based upon comments and written requests from the staff and commissioner.
- 21 NCAC 16E .0101: NC State Board of Dental Examiners – At the request of the agency, the Commission will return the rule to the agency.
- 21 NCAC 46 .1812: Board of Pharmacy – OSBM found that this rule did not have a substantial economic impact. The agency requested to postpone further consideration of the rule until the April meeting. The agency intends to confer with opponents of the rule prior to the April meeting. The Commission did not object and took no action on this rule.
- 21 NCAC 46 .2504: Board of Pharmacy – OSBM found that this rule did have a substantial economic impact and therefore the commission returned the rule to the agency to further comply with the APA’s requirements concerning rules with a substantial economic impact.
- 21 NCAC 46 .2502: Board of Pharmacy – The agency requested to postpone further consideration of the rule until the April meeting. The agency intends to confer with opponents of the rule prior to the April meeting. The Commission did not object and took no action on this rule.
- 21 NCAC 50 .0103: Board of Examiners for Plumbing, Heating & Fire Sprinkler Contractors – Agency requested to continue rule. The Commission took no action on this rule.
- 23 NCAC 2E .0201: State Board of Community Colleges – There was no response from the agency. The Commission took no action on these rules.

LOG OF FILINGS

- Chairman Funderburk presided over the review of the log and all rules were approved unanimously with the following exceptions:
- 25 NCAC 1D .1945: State Personnel Commission – The Commission objected to this rule due to ambiguity. In (d)(1), the use of “but not limited to” makes it not clear to see whom this paragraph refers. It is also not clear what constitutes a “substantial amount of time.” The objection applies to existing language in this rule.
- 25 NCAC 1E .0805: State Personnel Commission – The Commission objected to the rule due to ambiguity. In (1), it is not clear what constitutes “infrequent” and “special.” The objection applies to existing language in this rule.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca asked the Commission about scheduling agenda items and stated that it would be helpful for the staff to be able to remove items that staff knew would not be ready to come before the Commission. Commissioner Twiddy made a motion and Commissioner Hilliard seconded it to give staff the authority to use its discretion to set the agenda items. The motion passed unanimously.

At 11:17 a.m. Commission went into Executive Session to discuss the Pharmacy Board lawsuit against the Rules Review Commission.

RULES REVIEW COMMISSION

At 11:28 a.m. the Commission came out of Executive Session.

The meeting adjourned at 11:29 a.m.

The next meeting of the Commission is Thursday, March 20, 2003 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules

Log of Filings (Log #195)

January 21, 2003 through February 20, 2003

STATE BUILDING COMMISSION

Pre-Selection 1 NCAC 30D .0302 Amend

DEPARTMENT OF AGRICULTURE/STATE MARKETING AUTHORITY

Scope 2 NCAC 09C .0701 Amend

DENR/DHHS/COMMISSION FOR HEALTH SERVICES

General 15A NCAC 13A .0101 Amend

Standards for Owners/Operators of HWTSD 15A NCAC 13A .0109 Amend

The Hazardous Waste Permit Program Part 270 15A NCAC 13A .0113 Amend

DENR/DIVISION OF FOREST RESOURCES

Grading 15A NCAC 18A .2606 Amend

SECRETARY OF STATE/SECRETARY OF STATE

Location 18 NCAC 01 .0101 Amend

Petition for Rule-Making or Declaratory Ruling 18 NCAC 01 .0103 Amend

Secretary State 18 NCAC 02 .0102 Amend

Deputy Secretary of State 18 NCAC 02 .0103 Amend

Forms 18 NCAC 02 .0302 Amend

Location and Hours 18 NCAC 03 .0101 Amend

Location and Hours of Operation 18 NCAC 03 .0701 Amend

Location and Hours 18 NCAC 04 .0101 Amend

Location and Hours 18 NCAC 06 .1101 Amend

Securities Exchanges/Auto Quotation 18 NCAC 06 .1210 Amend

Rescission Offers 18 NCAC 06 .1501 Amend

Procedure for Application for Registration 18 NCAC 06 .1602 Amend

Obtaining Certificates of Registration 18 NCAC 06 .1604 Amend

AGENDA

Rules Review Commission

March 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 March 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; Objection 12/19/02 (Bryan)
 - F. Board of Pharmacy – 21 NCAC 46 .1812 (for consideration at April meeting)
 - G. Board of Pharmacy – 21 NCAC 46 .2502 Objection 11/21/02 (for consideration at April meeting) (DeLuca)
 - H. Board of Examiners for Plumbing, Heating & Fire Sprinkler Contractors – 21 NCAC 50 .0103 Objection 12/19/02 (Bryan)

RULES REVIEW COMMISSION

- I. NC State Board of Community Colleges – 23 NCAC 2E .0201 Objection 01/16/03 (DeLuca)
- J. State Personnel Commission – 25 NCAC 1D .1945 Objection 02/20/03 (Bryan)
- K. State Personnel Commission - 25 NCAC 1E .0805 Objection 02/20/03 (Bryan)

IV. Commission Business

V. Next meeting: April 17, 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>
<u>ALCOHOL BEVERAGE CONTROL COMMISSION</u>				
NC ABC Commission v. Issa Fuad Shaikh T/A Variety Pic Up #14	01 ABC 0874	Conner	12/03/02	
NC ABC Commission v. Acme Retail, Inc. T/A Handy Pantry	01 ABC 1325	Chess	05/21/02	
Randall Ralph Casey T/A Maynards Entertainment v. NC ABC Comm.	01 ABC 1396	Wade	06/26/02	
NC ABC Commission v. Headlights, Inc. T/A Headlights	01 ABC 1473	Wade	06/28/02	
NC ABC Commission v. Jerry Lynn Johnson T/A E & J Millenium	02 ABC 0115	Conner	10/23/02	
Roy Hoyt Durham, Lisa Chambers Durham t/a Lincoln House v. NC ABC Commission	02 ABC 0157	Mann	12/03/02	
Edward L. Mumford v. NC Alcoholic Control Commission	02 ABC 0264	Conner	08/29/02	
NC ABC Commission v. WDB, Inc. T/A Twin Peeks	02 ABC 0517	Conner	07/15/02	
Jrs Nigh Hawk, James Theron Lloyd Jr v. NC ABC Commission	02 ABC 0629	Chess	11/19/02	17:13 NCR 1116
NC ABC Commission v. Cevastiano Hernandes T/A Cristy Mexican Store	02 ABC 0667	Gray	10/17/02	
NC ABC Commission v. Easy Street Bistro, Inc. T/A Raleigh Live	02 ABC 0781	Wade	10/23/02	
<u>APPRAISAL BOARD</u>				
NC Appraisal Board v. Thomas G. Hildebrandt, Jr.	02 APB 0130	Chess	08/20/02	17:06 NCR 563
<u>CEMETARY COMMISSION</u>				
Lee Memory Gardens, Inc. v. NC Cemetary Commission	02 COM 0126	Gray	09/19/02	
<u>UTILITIES COMMISSION</u>				
Tracy Woody v. State of NC Utilities Commission	02 COM 1004	Morrison	08/26/02	
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Hattie Holt v. Crime Victims Compensation Commission	00 CPS 1067	Conner	05/30/02	
Carol Peebles v. Crime Victims Compensation Commission	02 CPS 0180	Gray	02/05/03	
Linda Hawley v. Crime Victims Compensation Commission	02 CPS 0121	Conner	06/14/02	
Lial McKoy v. Crime Victims Compensation Commission	02 CPS 0394	Chess	07/26/02	
Elbert Reid, Jr. v. Crime Victims Compensation Commission	02 CPS 0431	Conner	11/13/02	
Francis Michael McLaurin on behalf of B.W. McLaurin v. Crime Victims Compensation Commission	02 CPS 0760	Chess	11/19/02	
Willie Ray Lucas v. Crime Victims Compensation Commission	02 CPS 0770	Wade	01/06/03	
Claudia White v. Crime Victims Compensation Commission	02 CPS 0894	Conner	01/08/03	
Phyllis Ponder Duren v. Crime Victims Compensation Commission	02 CPS 1173	Gray	11/06/02	
Brenda S. DuBois on behalf of victim Priscilla Bryant v. Dept. of Crime Control & Public Safety, Div. of Victim Comp. Services	02 CPS 1332	Lassiter	09/20/02	
William S. McLean v. Crime Victims Compensation Commission	02 CPS 1600	Lassiter	11/18/02	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Lisa Williams v. NC DHHS, Div. of Soc. Svc., Child Supp. Enf. Sec.	01 DCS 2351	Elkins	10/28/02	17:11 NCR 1024
Thelma Street v. NC DHHS	01 DHR 0303	Reilly	09/17/02	
Emilia E Edgar v. DHHS, Div. of Facility Services	01 DHR 1356	Hunter	09/09/02	
Joyce Jeanette Jones v. DHHS, Div. of Facility Services	02 DHR 1663	Conner	11/15/02	
Evelia Williams v. NC DHHS	01 DHR 1750	Conner	07/15/02	

CONTESTED CASE DECISIONS

Jacob Jones v. NC DHHS, Div. of Medical Assistance	01 DHR 2169	Wade	10/04/02	
Kathy Mumford v. DHHS, Div. of Facility Services	01 DHR 2253	Chess	07/26/02	
Brenda L. McQueen v. DHHS, Div. of Facility Services	01 DHR 2321	Morrison	10/17/02	
Tammy Baldwin v. DHHS, Div. of Facility Services	01 DHR 2329	Morrison	10/16/02	
Pamela S Vuncannon v. DHHS, Div of Child Development	01 DHR 2332	Chess	11/18/02	
James Bell v. NC DHHS, Div. of Facility Services	01 DHR 2340	Elkins	06/27/02	
Adam Syare v. NCDHHS, Div. of MH/DD/SAS, Southeastern Regional Mental Health Center	01 DHR 2352	Conner	06/21/02	
Ramiro Ramos v. NC DHHS and Chris Hoke, State Registrar	01 DHR 2366	Conner	09/11/02	
Effie M. Williams v. NC Department of Health and Human Services	02 DHR 0001	Gray	08/08/02	
Kathy Denise Urban v. NC DHHS, Div. of Facility Services	02 DHR 0055	Hunter	09/10/02	
Betty Carr v. DHHS, Div. of Facility Services	02 DHR 0070	Mann	09/10/02	
Sarah D. Freeman & Tony J. Freeman v. Guilford Co. Mental Health, The Guilford Center	02 DHR 0083	Chess	06/07/02	
Ursula Philomena Nwapa v. DHHS	02 DHR 0091	Wade	12/18/02	
Albemarle Home Care & Ginger Parrish, PhD v. DHHS, Div. of Medical Assistance	02 DHR 0142	Conner	07/22/02	
Shonta R. Fox v. Dept. of Health & Human Services	02 DHR 0218	Conner	11/08/02	
Birgit James v. Dept. of Health & Human Services	02 DHR 0255	Connor	07/01/02	
Geraldine Rountree Cooper v. DHHS, Div. of Facility Services	02 DHR 0267	Elkins	07/15/02	
Unieca Richardson v. DHHS, Division of Facility Services	02 DHR 0286	Chess	06/17/02	
Greg McKinney & Virgie Elaine McKinney v. DHHS	02 DHR 0301	Mann	08/01/02	
Jerry Dean Webber v. DHHS, Broughton Hospital	02 DHR 0306	Conner	08/28/02	
Donna R Anderson v. DHHS, Broughton Hospital	02 DHR 0340	Gray	08/01/02	
Notisha Utley v. DHHS, Division of Facility Services	02 DHR 0379	Conner	07/26/02	
Isa Spaine v. Department of Health & Human Services	02 DHR 0403	Chess	06/24/02	
Debra A. Browner v. DHHS, Broughton Hospital	02 DHR 0405	Conner	08/28/02	
Vernon Farley v. DHHS, Div. of Medical Assistance	02 DHR 0450	Gray	01/29/03	
NC Community Association v. DHHS, Off. of Economic Opportunity	02 DHR 0497	Morrison	12/11/02	17:14 NCR 1200
Bill & Suzy Crawford for (NEELY) Crawford v. DHHS	02 DHR 0539	Wade	12/18/02	
Mooreville Hospital Management Associates, Inc. d/b/a Lake Norman Regional Medical Center v. DHHS, Div. of Facility Services, Cert. of Need Section	02 DHR 0541	Chess	08/07/02	
Wayne Douglas Temples v. DHHS, NC Off. of Emer. Med. Svcs.	02 DHR 0543	Morrison	10/09/02	
Mark Thomas v. DHHS, Div. of Facility Services	02 DHR 0555	Chess	10/17/02	
Eli Maxwell v. DHHS, Div. of Facility Services, Health Care Registry	02 DHR 0556	Lassiter	08/08/02	
Robin Lee Arnold v. DHHS, Div. of Facility Services	02 DHR 0558	Conner	08/15/02	
Laura Sheets v. DHHS, Div. of Facility Services	02 DHR 0569	Conner	10/17/02	
Evelyn Denise Humphrey v. DHHS, Div. of Facility Services	02 DHR 0624	Morrison	08/08/02	
James Parks v. Dept. of Health and Human Services	02 DHR 0680	Morrison	08/07/02	
Andrea Green, Parent, on behalf of her minor child, Andrew Price v. The Durham Clinic	02 DHR 0682	Gray	11/07/02	
Lisa Murphy v. DHHS, Division of Facility Services	02 DHR 0694	Mann	07/26/02	
Vernessa B Pittman v. DHHS	02 DHR 0734	Chess	11/21/02	
Mary's Family Care #2, Beulah Spivey v. OAH	02 DHR 0735	Morrison	08/27/02	
Clinita Faye Hooker v. DHHS, Div. of Facility Services	02 DHR 0748	Lassiter	01/02/03	
Miranda Lynn Stewart v. DHHS, Div. of Facility Services	02 DHR 0791	Mann	11/08/02	17:12 NCR 1086
Hazel Chea v. Department of Health & Human Services	02 DHR 0795	Mann	06/11/02	
Jeffrey Wayne Radcliff v. DHHS	02 DHR 0838	Conner	12/16/02	
Mr. Mohamed Mohamed v. DHHS, Women's & Children's Health (WIC Program)	02 DHR 0866	Chess	10/02/02	
Mooreville Hospital Management Assoc, Inc. d/b/a Lake Norman Reg. Med. Ctr v. DHHS, Div. of Fac. Svcs, CON Section, Robert J Fitzgerald in his official capacity as Director of the Div of Fac Svcs, and Lee B Hoffman in her official capacity as Chief of the CON Section and The Presbyterian Hospital and the Town of Huntersville	02 DHR 0888	Morrison	11/26/02	17:13 NCR 1120
Cleon A Gibbs v. Division of Medical Assistance (DMA)	02 DHR 0901	Elkins	12/16/02	
Martha L Cox v. DHHS, Div. of Facility Services	02 DHR 0935	Morrison	10/25/02	
Tracy Woody v. Coop Ex. Svc, Coll of Ag & Life Sc Family & Consumer Svcs, In-Home Breastfeeding Support Program & Nash Co. Dept. of Social Svcs, Child Protective Svcs & State WIC Program for Nash County	02 DHR 0944	Morrison	09/25/02	
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Sheryl L Hoyle v. DHHS, Div. of Facility Services	02 DHR 1009	Conner	10/24/02	
Carmelita T. England v. Ms. Lisa Moor, Chief Advocate, Black Mtn Ctr.	02 DHR 1033	Chess	08/15/02	
Gloria Dean Gaston v. Office of Administrative Hearings	02 DHR 1081	Morrison	07/26/02	
Teresa King v. Division of Mental Health	02 DHR 1154	Chess	12/19/02	
Maria Goretti Obialor v. DHHS, Div. of Facility Services	02 DHR 1187	Mann	09/11/02	
Lashanda Skinner v. DHHS	02 DHR 1190	Lassiter	09/09/02	
Robert A. Thomas v. DHHS, Div. of Facility Services	02 DHR 1254	Lassiter	09/13/02	
Janet Cook v. Division of Medical Assistance	02 DHR 1272	Lassiter	11/15/02	
Shirley's Development Center, Shirley Campbell v. State of DHHS, Div. of Child Development	02 DHR 1309	Morrison	10/08/02	
Joann V Blakeney v. Piedmont Behavior Healthcare	02 DHR 1319	Conner	12/16/02	
Timothy W Andrews for Ridgecrest Retirement LLC v. DHHS, Div of Facility Services	02 DHR 1417	Elkins	11/26/02	
Psychiatric Solutions, Inc. d/b/a Holly Hill Hospital v. Div. of Medical Assistance, DHHS	02 DHR 1499	Elkins	12/12/02	
Evy's Group Care v. DHHS, Div. of Mental Health, Program Accountability	02 DHR 1462	Gray	01/27/03	
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Twakeena Rachel Simmons v. Office of Administrative Hearings	02 DHR 1626	Chess	01/13/03
Peggy Renee Smith v. DHHS, Div. of Facility Svcs, Hlth Care Per Reg	02 DHR 1683	Lassiter	11/13/02
Sherry D Tucker v. DHHS, Div. of Facility Services	02 DHR 1753	Mann	01/02/03
Donna Stillie v. Nurse Registry for CAN's	02 DHR 1940	Chess	01/15/03
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San Antoni Equipment Co. v. NC Department of Administration	02 DOA 0430	Chess	06/26/02
James J. Lewis v. DOA, Gov. Advocacy Council for Persons w/Disabilities	02 DOA 0545	Chess	08/26/02

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Sara E Parker v. Consumer Protection [sic] & Rosemary D. Revis	02 DOJ 1038	Gray	08/08/02
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Christopher Michael McVicker v. Alarm Systems Licensing Board	02 DOJ 0731	Gray	06/07/02
Jeffery Lee Garrett v. Alarm Systems Licensing Board	02 DOJ 0908	Morrison	08/06/02
Robert Bradley Tyson v. Alarm Systems Licensing Board	02 DOJ 1266	Morrison	10/09/02
Larry Thomas Medlin Jr. v. Alarm Systems Licensing Board	02 DOJ 1433	Lassiter	11/19/02
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Anthony Davon Webster v. Private Protective Services Board	01 DOJ 1857	Gray	06/07/02
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Randall G. Bryson v. Private Protective Services Board	02 DOJ 0730	Gray	06/07/02
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Philip Garland Cameron v. Private Protective Services Board	02 DOJ 1258	Morrison	09/06/02
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Andrew Arnold Powell Jr v. Criminal Justice & Training Stds. Comm.	01 DOJ 1771	Chess	11/26/02
Jonathan P. Steppe v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0004	Mann	06/28/02
Jeffrey Beckwith v. Criminal Justice & Training Stds. Comm.	02 DOJ 0057	Gray	07/15/02
Thomas B. Jernigan v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0089	Conner	06/25/02
Clarence Raymond Adcock v. Criminal Justice Ed. & Trng. Stds. Comm.	02 DOJ 0104	Chess	09/09/02
Joseph Garth Keller v. Criminal Justice & Trng. Stds. Comm.	02 DOJ 0170	Gray	09/11/02
Frances Sherene Hayes v. Criminal Justice & Training Stds. Comm.	02 DOJ 0171	Mann	06/04/02
Katrina L. Moore v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0304	Reilly	07/17/02
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Wanda L Grant v. Sheriffs' Education & Training Standards Comm.	02 DOJ 0602	Mann	10/18/02
Bentrell Blocker v. Sheriffs' Educ. & Training Stds. Commission	02 DOJ 0603	Chess	11/15/02
Sharon L. Joyner v. Sheriffs' Educ. & Training Stds. Commission	02 DOJ 0604	Morrison	09/05/02
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John R. Tucker v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0632	Morrison	06/26/02
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Dennis Damon Foster v. Sheriffs' Educ. & Training Stds. Comm.	02 DOJ 1162	Mann	10/18/02
Vickie Renee Kirkland v. Sheriffs' Educ. & Training Stds. Comm.	02 DOJ 1163	Gray	10/14/02
Joseph Ray Johnson v. Criminal Justice & Training Stds. Comm.	02 DOJ 1420	Wade	06/27/02
Charles S Grainger v. Criminal Justice Educ. & Training Stds. Comm.	02 DOJ 1584	Wade	02/07/03
Mark A Faucette Sr. v. Criminal Justice & Training Stds. Comm	02 DOJ 1585	Chess	01/02/03
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Melvin Quincy Etheridge v. Department of Public Instruction	02 EDC 1174	Mann	02/11/03
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Enviro-Soil, Inc. v. St. of NC DENR, Div. of Env. Management	94 EHR 1296	Gray	12/03/02
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Michael & Nancy Lindsey & Donna M Lisenby in her capacity as The	00 EHR 0365 ³	Conner	11/21/02

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Catawba Riverkeeper & Brian McCarty, Cynthia Moore Jones, Mike Glover, Hubert Rowe Hass Jr, Paula G Martin, Lynn Teeter, Mark E Sleeper, & Carol and Larry Webb v. NC DENR, Div. of Water Quality and Hydraulics, LTD.				
Michael & Nancy Lindsey & Donna M Lisenby in her capacity as The Catawba Riverkeeper & Brian McCarty, Cynthia Moore Jones, Mike Glover, Hubert Rowe Hass Jr, Paula G Martin, Lynn Teeter, Mark E Sleeper, & Carol and Larry Webb v. NC DENR, Div. of Water Quality and Hydraulics, LTD.	00 EHR 1475 ⁵	Conner	11/21/02	
Thompkenn Farms, Inc. Farm #82-683 and Thompkenn Farm, Inc. Farm #1	01 EHR 0182 ⁴	Conner	11/04/02	
Squires Enterprises, Inc. v. NC DENR (LQS00-091)	01 EHR 0300	Mann	09/23/02	
Thompkenn Farms, Inc. Farm #82-683 and Thompkenn Farm, Inc. Farm #1	01 EHR 0312 ⁴	Conner	11/04/02	
Stoneville Furniture Co., Inc. v. NC DENR, Div. of Air Quality	01 EHR 0976	Chess	07/16/02	
SRF Dev. Corp. v. NC DENR, Div. of Land Resources	01 EHR 1040 ³	Gray	10/02/02	
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Rhett & Julie Taber, Robert W. Sawyer, John T. Talbert, Stephen Bastian, Dr. Ernest Brown, Thomas Read, Keith Brown, Fred Johnston, James L. Dickens, James T. Coin, Eleanor Coin & James Vaughn v. NC DENR, Div. of Coastal Management	01 EHR 1512	Conner	09/11/02	
Lucy, Inc. George Chemall v. NC DENR, Div. of Waste Management	01 EHR 1695	Morrison	10/22/02	
Town of Ocean Isle Beach v. NC DENR	01 EHR 1885	Chess	07/31/02	17:06 NCR 557
Valley Proteins, Inc. v. NC DENR, Div. of Air Quality	01 EHR 2362	Mann	09/26/02	
Frederick M. and Anne C. Morris, et al v. NC DENR, Div. of Air Quality and Martin Marietta Materials, Inc.	02 EHR 0068	Gray	10/18/02	
Helen Smith v. NC DENR	02 EHR 0152	Morrison	08/09/02	
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Bipin B Patel Rajan, Inc. v. NC DENR, Div. of Waste Management	02 EHR 0244	Gray	06/05/02	
J.B. Hooper v. NC DENR	02 EHR 0285	Conner	08/21/02	
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J.L. Hope & wife, Ruth B. Hope v. NC DENR	02 EHR 0395	Mann	06/10/02	
Kathy Teel Perry v. Environmental Health Division	02 EHR 0576	Chess	10/09/02	
Linda L. Hamrick v. NC DENR	02 EHR 0600	Conner	07/23/02	
Mitchell Oil Company Larry Furr v. DENR	02 EHR 0676	Lassiter	08/07/02	
Johnnie Burgess v. NC DENR, Div. of Waste Management	02 EHR 0688	Morrison	10/11/02	
County of Hertford Producer's Gin, Inc. v. NC DENR, Div. of Air Quality	02 EHR 0690	Chess	06/17/02	
Michael John Barri v. New Hanover Co. Health Dept./Env. Health	02 EHR 0742	Conner	09/03/02	
Christopher L. Baker v. City of Asheville	02 EHR 0763	Gray	09/11/02	
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E Scott Stone, Env & Soil Serv. Inc v. NC DENR, Div. of Env Health	02 EHR 1305	Mann	11/20/02	
GT of Hickory, Inc, Cole Alexander Gaither v. NC DENR	02 EHR 1534	Lassiter	11/18/02	
Brian Drive LLC, Cole Alexander Gaither v. NC DENR	02 EHR 1535	Lassiter	11/18/02	
Ronald E. Petty v. Office of Administrative Hearings	02 EHR 1183	Gray	09/20/02	
Madison M Day v Environment & Natural Resources	02 EHR 1307	Mann	12/12/02	
Bobby Long v. DENR	02 EHR 2026	Lassiter	02/11/03	
Lawrence N Ferguson, Jr. (SGI) and Ready Mixed Concrete Co. (RMC) v. NC DENR Underground Storage Tank Secion, Trust Fund Branch	02 EHR 2181	Chess	01/15/03	

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TEACHERS & ST. EMP. COMP MAJOR MEDICAL PLAN

Philip M Keener v. Bd. of Trustees & Exec. Admin. for the State Health Plan	02 INS 0252	Mann	12/11/02	17:14 NCR 1205
Sandra Halperin v. Teachers' & St. Emp. Comp. Major Medical Plan	02 INS 0337	Elkins	10/02/02	
Seena Binder v. Teachers' & St. Emp. Comp. Major Medical Plan	02 INS 0766	Wade	12/18/02	
Bryan Atarian v. Teachers' & St. Emp. Comp. Major Medical Plan	02 INS 0837	Elkins	01/06/03	

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Howard A Reeves, Walter W Norris v. Swansboro Bd. of Adjustment	02 MIS 2208	Morrison	12/23/02	
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State Bd. of Examiners for Nursing Home Administrators v. Yvonne Washburn	02 NHA 0915	Morrison	09/25/02	
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Helen McIntyre v. UNC-TV, University of Chapel Hill	97 OSP 1164	Gray	12/20/02	
Robin Heavner Franklin v. Lincoln Co. Dept. of Social Services	98 OSP 1239	Conner	08/28/02	
Danny Wilson Carson v. NC DHHS, NC School for the Deaf	99 OSP 0641	Gray	11/15/02	
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Andre Foster v. Winston-Salem State University	00 OSP 1216 ¹	Mann	06/03/02	17:01 NCR 93
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Thomas Michael Chamberlin v. Dept of Crime Control & Pub. Safety	01 OSP 0479	Gray	11/19/02	

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Dennis Covington v. NC Ag. & Tech. State University	01 OSP 1045	Wade	06/28/02	
Reginald Ross v. Department of Correction	01 OSP 1122/23	Wade	06/28/02	
Bob R Napier v. Department of Correction	01 OSP 1379	Lassiter	09/26/02	17:09 NCR 914
Andre Foster v. Winston-Salem State University	01 OSP 1388 ¹	Mann	06/03/02	17:01 NCR 93
Andrew W. Gholson v. Lake Wheeler Rd. Field Lab, NCSU Unit #2	01 OSP 1405	Wade	06/28/02	
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Marshall E Carter v Department of Transportation	01 OSP 1516	Wade	12/19/02	
Demetrius J. Trahan v. EEO/Title VII, Dir. Cheryl C. Fellers, DOC	01 OSP 1559	Gray	08/13/02	
Anthony W. Price v. Eliz City State University	01 OSP 1591	Lassiter	11/05/02	
Wade Elms v. Department of Correction	01 OSP 1594	Gray	06/27/02	
Wayne G. Whisemant v. Foothills Area Authority	01 OSP 1612	Elkins	05/30/02	17:01 NCR 103
Linwood Dunn v. NC Emergency Management	01 OSP 1691	Lassiter	08/21/02	
Gladys Faye Walden v. Department of Correction	01 OSP 1741	Mann	07/12/02	
Bruce A Parsons v. Gaston County Board of Health	01 OSP 2150	Gray	11/04/02	
Barbara A. Harrington v. Harnett Correctional Institution	01 OSP 2178	Conner	09/03/02	
Joy Reep Shuford v. Department of Correction	01 OSP 2179	Overby	06/25/02	
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Thomas E Bobbitt v. NC State University	01 OSP 2196 ⁶	Reilly	11/21/02	
Thomas E Bobbitt v. NC State University	01 OSP 2197 ⁶	Reilly	11/21/02	
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	
Jana S. Rayne v. Onslow Co. Behavioral Health Care	02 OSP 0184	Morrison	08/01/02	
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Doris J. Berry v. NC Department of Transportation	02 OSP 0247	Elkins	06/17/02	
William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm	02 OSP 0270	Elkins	06/25/02	
Darrell Glenn Fender v. Avery/Mitchell Correctional Institution	02 OSP 0290	Mann	06/14/02	
Karen Lynette Smith v Dr. Steven Ashby, Dir. The Durham Center	02 OSP 0316	Elkins	12/18/02	
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Alber L. Scott v. UNC General Administration	02 OSP 0336	Elkins	06/10/02	
Pamela C. Williams v. Secretary of State	02 OSP 0348	Chess	08/26/02	
Ronald P Covington v. NC DOC, Dept. of Prisons	02 OSP 0404	Morrison	11/07/02	
Isiah A Black Jr v. NC DOC Div of Community Corrections	02 OSP 0435	Morrison	11/05/02	
Michael Forreest Peeler v. NC Department of Transportation	02 OSP 0478	Conner	07/01/02	
Shirley J. Davis v. NC Department of Correction	02 OSP 0486	Elkins	07/11/02	
Alber L. Scott v. UNC General Administration	02 OSP 0498	Elkins	06/10/02	
Harold Phillips v. Durham Co. Dept. of Social Services	02 OSP 0503	Chess	07/30/02	
Michelle G. Minstrell v. NC State University	02 OSP 0568	Chess	06/26/02	
Robert L. Swinney v. NC Dept. of Transportation	02 OSP 0570	Lassiter	10/23/02	
Janet Watson v. Nash Co. DSS, Carl Daughtry, Director	02 OSP 0702	Chess	08/13/02	
Jackie Brannon v. Durham Co. Social Services, Daniel Hudgins	02 OSP 0769	Wade	12/19/02	
Patricia Anthony v. NC Dept. of Correction (Pamlico CI)	02 OSP 0797	Lassiter	08/07/02	
Alber L. Scott v. UNC General Administration	02 OSP 0828	Gray	01/15/03	
Linda Kay Osbon v. Isothermal Community College	02 OSP 0911	Elkins	09/25/02	
Deona Renna Hooper v. NCC Police Dept, NCCU	02 OSP 0984	Lassiter	10/31/02	
Jerry J Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	08/09/02	
Jerry J. Winsett v. Cape Fear Community College	02 OSP 0998	Morrison	09/05/02	
Walter Anthony Martin, Jr. v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1002	Morrison	07/30/02	
Ella Fields-Bunch v. Martin-Tyrell-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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Juanita M Brown v. DOC, Harnett Correctional Institution	02 OSP 1104 ⁸	Wade	01/13/03	
Hoyte Phifer, Jr. v. UNC-Greensboro	02 OSP 1105	Gray	01/15/03	
Carolyn Davis v Durham Co. MHDDSAS Area Authority	02 OSP 1116	Lassiter	01/16/03	
Donald B. Smith v. NC DOC, Div. of Community Corrections	02 OSP 1117	Chess	10/03/02	
Russell V Parker v Capt Dennis Daniels Pasquotank Corr. Inst	02 OSP 1127	Lassiter	11/05/02	
Carolyn Pickett v. Nash-Rocky Mt. School Systems, Nash-Rocky Mt. Board of Education	02 OSP 1136	Morrison	07/29/02	
James J. Lewis v. Department of Correction	02 OSP 1158	Mann	08/20/02	
James J. Lewis v. Department of Commerce/Industrial Commission	02 OSP 1179	Mann	09/19/02	

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Melvin Kimble v. NC Dept. of Crime Control & Public Safety	02 OSP 1318	Lassiter	11/06/02
Gwendolyn H Abbott v. Wayne Talbert, Asst Super. NC DOC, Div. of Prisons, Dan River Work Farm (3080)	02 OSP 1334	Conner	12/03/02
Theodore M Banks v. DOC, Harnett Correctional Institute	02 OSP 1367 ⁷	Gray	12/20/02
Marie D Barrentine v. Robert William Fisher, NC Probation/Parole	02 OSP 1410	Elkins	02/11/03
Onyedika Nwaebube v. Employment Security Commission of NC	02 OSP 1443	Gray	01/24/03
Alber LScott v UNC General Administration	02 OSP 1444	Gray	01/22/03
Esther L Jordan v. Pasquotank Correctional Ins. (Ernest Sutton)	02 OSP 1453	Conner	02/06/03
Martha Ann Brooks v. State of NC Brown Creek Correctional Inst.	02 OSP 1468	Chess	10/25/02
Theodore M Banks v. DOC, Harnett Correctional Institute	02 OSP 1482 ⁷	Gray	12/20/02
James Orville Cox II v. NC DOC, Adult Probation/Parole	02 OSP 1526	Chess	10/17/02
Renee Shirley Richardson v Albert Blake, Interim Dir. of Eng Svcs, DDH	02 OSP 1551	Gray	12/20/02
Juanita M Brown v. DOC, Harnett Correctional Institution	02 OSP 1599 ⁸	Wade	01/13/03
Rashad A Rahman v. South East Region Mental Health	02 OSP 1669	Lassiter	01/09/03
Alwilda G. George v. Sanford Correctional Center	02 OSP 2317	Elkins	02/06/03

SUBSTANCE ABUSE PROFESSIONAL BOARD

NC Substance Abuse Professional Certification Board v. Lynn Cameron Gladden	00 SAP 1573	Chess	05/10/02
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UNIVERSITY OF NORTH CAROLINA

Patsy R. Hill v. UNC Hospitals	02 UNC 0458	Conner	08/21/02	17:06 NCR 571
Sharon Reed v. UNC Hospitals	02 UNC 1284	Conner	11/11/02	
Dee C Driver/Jenny Driver one and the same and Philip L Driver v. UNC Hospitals	02 UNC 1635	Gray	01/15/03	

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