



REGISTER

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

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NORTH CAROLINA REGISTER
 Publication Schedule for January 2003 – December 2003

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					end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	end of required comment period	deadline to submit to RRC for review at next meeting	first legislative day of the next regular session	
17:13	01/02/03	12/06/02	03/03/03	01/17/03	02/03/03	02/20/03	05/00/04	03/03/03	03/20/03	05/00/04	09/29/03
17:14	01/15/03	12/19/02	03/17/03	01/30/03	02/14/03	02/20/03	05/00/04	03/17/03	03/20/03	05/00/04	10/12/03
17:15	02/03/03	01/10/03	04/15/03	02/18/03	03/05/03	03/20/03	05/00/04	04/04/03	04/21/03	05/00/04	10/31/03
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17:17	03/03/03	02/10/03	05/15/03	03/18/03	04/02/03	04/21/03	05/00/04	05/02/03	05/20/03	05/00/04	11/28/03
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18:03	08/01/03	07/11/03	10/01/03	08/16/03	09/02/03	09/22/03	05/00/04	09/30/03	10/20/03	05/00/04	04/27/04
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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. 49
PROCLAMATION OF STATE OF
DISASTER FOR THE CITY OF EDEN**

WHEREAS, I have determined that a State of Disaster and State of Emergency, as defined in N.C.G.S. §§ 166A-4 and 14-288.1(10), exists in the State of North Carolina, specifically in the City of Eden as a result of severe drought conditions.

WHEREAS, on 17 December 2002, the City of Eden proclaimed a local State of Emergency;

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

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

Section 1. Pursuant to N.C.G.S. §§ 166A-6 and 14-288.15, a State of Disaster and State of Emergency is hereby declared for the City of Eden.

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

Section 3. Bryan E. Beatty, Secretary of Crime Control and Public Safety and/or his designee, is hereby delegated all power and authority granted to me and required of me by Chapter 166A and Article 36A of Chapter 14 of the General Statutes for the purpose of implementing the said

Emergency Operations Plan and to take such further action as is necessary to promote and secure the safety and protection of the populace in the above-referenced City.

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

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

Section 6 The Type I disaster declaration shall expire 30 days after the issuance of the state of disaster and state of emergency and Type I disaster proclamation for the City of Eden, issued on April 2, 2003, unless renewed by the Governor or the General Assembly. Such renewals may be made in increments of 30 days each, not to exceed a total of 120 days from the date for first issuance. The Joint Legislative Commission on Governmental Operations shall be notified prior to the issuance of any renewal of a Type I disaster declaration.

Done in the Capital City of Raleigh, North Carolina this the 2nd day of April 2003.

MICHAEL F. EASLEY
GOVERNOR

ATTEST:

ELAINE 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**

FIBER MILLS, LLC

Pursuant to N.C.G.S. 130A-310.34, Fiber Mills, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property consists of approximately 9 acres and is located at 1000 Seaboard Avenue, at its intersection with Hamilton Street. Environmental contamination exists on the Property in soil. Fiber Mills, LLC has committed itself to redevelopment of the Property for nothing other than a mixed-use project that may include industrial, commercial, retail and residential uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Fiber Mills, 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 600 East Trade Street, Neighborhood Development Key Business, Charlotte, NC, 28217 by contacting Carolyn Minnich at that address, at carolyn.minnich@ncmail.net or at (704) 336-3499; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919) 733-2801, ext. 328. Written public comments may be submitted to DENR within 60 days 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

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

General Partnership of Samuel J. Wornom and George R. Perkins, Jr.

Pursuant to N.C.G.S. 130A-310.34, the General Partnership of Samuel J. Wornom and George R. Perkins, Jr. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Sanford, Lee County, North Carolina. The Property consists of 22.8 acres located at the intersection of US-1 Bypass and Spring Lane. It is bordered to the northeast by industrial acreage, to the north and northwest by undeveloped property, to the south by commercial retail businesses, to the east by Wilkinson Cadillac car dealership, to the southeast by a State Employees Credit Union branch, and to the west by land used for residential purposes. Environmental contamination exists on the Property in soil and groundwater. The partnership of Samuel J. Wornom and George R. Perkins, Jr. has committed itself to make no use of the Property other than for commercial and retail purposes. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and the partnership of Samuel J. Wornom and George R. Perkins, Jr., 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 Suzanne B. Reeves Library, 107 Hawkins Avenue, Sanford, NC 27330, by contacting Michael Matochik at that address or at 919-774-6045; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Scott Ross at that address, at scott.ross@ncmail.net, or at (919)733-2801, ext. 328. Written 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 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 comments begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Head, Special Remediation Branch
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:MSR:ALF:par
DJ 166-012-3
2003-0462

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

March 24, 2003

Richard J. Rose, Esq.
Poyner & Spruill
P.O. Box 353
Rocky Mount, NC 27802-0353

Dear Mr. Rose:

This refers to three annexations (Ordinance Nos. 0-2002-31, 0-2002-100, and 0-2002-112) and their designation to wards of the City of Rocky Mount in Edgecombe and Nash Counties, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on February 12, 2003.

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

Sincerely,

Joseph D. Rich
Chief, Voting Section

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessment of Sales and Use)
Tax for the period of October 1, 1992 through)
September 30, 1998 by Secretary of Revenue)
)
)
vs.)
)
Capital Area Soccer League, Inc.)

ADMINISTRATIVE DECISION
NUMBER: 389
as Amended

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer, on April 16, 2002, upon a petition filed by Capital Area Soccer League, Inc. (hereinafter "Taxpayer") for administrative review of the Final Decision of the Secretary of Revenue entered on July 9, 2001, sustaining the proposed assessment of sales and use tax for the period of October 1, 1992 through September 30, 1998.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, attorney at law participating.

Attorney Robert V. Bode represented the Taxpayer at the hearing. Kay Linn Miller Hobart, Assistant Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

On October 30, 1998, the Department of Revenue completed a sales and use tax audit of the Taxpayer's records and proposed to assess additional tax, penalties and interest because Taxpayer failed to remit use tax on taxable purchases from out-of-state vendors. The Taxpayer objected to the assessment on the basis that it would be eligible for a refund of sales and use tax under N.C. Gen. Stat. 105-164.14(b). Even though the hearing before the Secretary of Revenue was a direct result of the audit assessment, the primary issue considered by the Assistant Secretary was whether the Taxpayer is eligible for a refund of sales and use tax paid pursuant to N.C. Gen. Stat. 105-164.14(b).

On July 9, 2001, the Acting Assistant Secretary issued a final decision sustaining the proposed assessment of sales and use tax for the period of October 1, 1992 through September 30, 1998. In sustaining the use tax assessment against the Taxpayer, the Assistant Secretary determined that the Taxpayer was not an educational or charitable institution within the meaning of N.C. Gen. Stat. 105-164.14(b) and was ineligible for a refund of sale and use tax paid pursuant to N.C. Gen. Stat. 105-164.14(b). The Assistant Secretary held that the Taxpayer is an amateur sports organization, established to promote soccer and to serve the interests of its teams and players. The Assistant Secretary also held that the Department of Revenue correctly denied Taxpayer's refund claims. Pursuant to N.C. Gen. Stat. 105-241.2, the Taxpayer timely filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

On July 10, 2002, the Tax Review Board entered Administrative Decision Number 389 and determined that there existed sufficient evidence in the record to show that the Taxpayer conducts charitable and educational activities which benefit the area youth and children and the Taxpayer provides an educational and charitable serve to the area youth children. Thus, the Tax Review Board ruled that Taxpayer was an educational institution and/or charitable organization within the meaning of N.C. Gen. Stat. 105-164.14(b) and ordered that the Secretary of Revenue's decision be reversed.

On August 9, 2002, the North Carolina Department of Revenue ("Department of Revenue"), through counsel, filed a Petition for Judicial Review of Administrative Decision No. 389 in Wake County Superior Court and also filed a Motion to Amend Administrative Decision No. 389 with the Tax Review Board. The Tax Review Board, at the September 5, 2002 meeting, reviewed the Department of Revenue's Motion to Amend and discussed the issue of its jurisdiction to consider the motion when the Department of Revenue had petitioned the Court for judicial review of Administrative Decision Number 389.

The Tax Review Board, having determined that it may exercise jurisdiction to consider the motion, and upon review of the administrative decision and the motion to amend, grants the Department of Revenue's motion and amends Administrative Decision Number 389 as follows. The Tax Review Board amends Administrative Decision Number 389 by striking the sentence: "Thus, the Taxpayer is not liable for use tax on its purchases of tangible personal property and is eligible for a refund of sales and use tax paid pursuant to N.C. Gen. Stat. 105-164.14(b)" and substituting that sentence with the following sentence: Thus, the Taxpayer is eligible for a refund of sales and use tax paid pursuant to N.C. Gen. Stat. 105-164.14(b).

WHEREFORE, THE TAX REVIEW BOARD ORDERS that the Department of Revenue's motion be granted and Administrative Decision Number 389 be and is hereby amended.

Made and entered into the 31st day of January 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessment of Unauthorized)
 Substance Tax Dated June 5, 2001 by the)
 Secretary of Revenue of North Carolina)
)
)
 vs.)
)
Jeffrey Robert Wellman,)
 Taxpayer)

**ADMINISTRATIVE DECISION
NUMBER: 391**

This Matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina, in the office of the State Treasurer, on Wednesday, June 12, 2002, upon **Jeffrey Robert Wellman's** (hereinafter "Taxpayer") petition for administrative review of the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings, of the North Carolina Department of Revenue entered on November 21, 2001, sustaining the assessment of unauthorized substance tax for the period of June 5, 2001.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

The Taxpayer did not appear at the hearing. David J. Adinolfi, II, Associate Attorney General, represented the North Carolina Secretary of Revenue at the hearing.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer on June 5, 2001. The notice related to a proposed assessment of tax, penalty and interest in the total amount of \$1,4000.00 based upon the possession of 61 dosages of oxycodone. The assessment alleged that on February 25, 2001, the Taxpayer possessed a total of 61 dosages of oxycodone that did not have the proper tax stamps affixed thereto. After conducting a hearing, the Assistant Secretary entered his decision sustaining the proposed assessment against the Taxpayer. Thereafter, the Taxpayer, through counsel, timely filed a notice and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

ISSUES

The issues considered by the Board upon administrative review of this matter are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of oxycodone without the proper stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance tax?

EVIDENCE

The evidence submitted to the Assistant Secretary and included in the record for the Board's review is stated as follows:

1. US-1 Form BD-10, Notice of Unauthorized Substance Tax Assessment, dated June 5, 2001.
2. US-2 Letter from the Taxpayer's attorney, dated July 2, 2001, requesting a hearing.
3. US-3 Letter to the Taxpayer's attorney, dated July 9, 2001, advising him that his client's Administrative Tax Hearing was scheduled for September 25, 2001.
4. US-4 Letter from the Taxpayer's attorney, dated July 17, 2001, requesting that the hearing be conducted by written communication.
5. US-5 Form BD-4, Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Controlled Substances, which names the Taxpayer as the possessor of the controlled substances.
6. US-6 Metropolitan Enforcement Group's investigation report.
7. US-7 Memorandum from E. Norris Tolson, Secretary of Revenue, dated May 16, 2001, delegating to Eugene J. Cella, Assistant Secretary of Administrative Hearings, the authority to hold any hearing required or allowed under Chapter 105 of the North Carolina General Statutes.

FINDINGS OF FACT

IN ADDITION

The Board reviewed the following findings of fact in the Assistant Secretary's decision in this matter:

1. Assessment of Unauthorized Substance Tax was made against the Taxpayer on June 5, 2001, in the sum of \$1,400.00 tax, \$560.00 penalty and \$31.11 interest, for a total proposed liability of \$1,991.11, based on possession of 61 dosages of oxycodone.
2. The Taxpayer made a timely objection and application for hearing.
3. An administrative tax hearing is not the appropriate forum to address constitutional issues.
4. G.S. 105-113.06(3) clearly defines a "dealer" as a person who actually or constructively possesses 10 or more dosage units of any controlled substance that is not sold by weight.
5. On February 25, 2001, the Taxpayer possessed 61 dosages of oxycodone.
6. No tax stamps were purchased for or affixed to the oxycodone as required by law.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

1. An assessment of tax is presumed to be correct.
2. The burden is upon Taxpayer who objects to an assessment to overcome that presumption.
3. Per G.S. 105-113.109, a dealer who actually or constructively possesses an unauthorized substance in this State, upon which the tax has not been paid, is required to purchase and affix the appropriate stamp. Tax is due from the dealer at the time the dealer comes into possession of the unauthorized substance.
4. The Taxpayer had actual possession of a total of 61 dosages of oxycodone on February 25, 2001, and was therefore a dealer as that term is defined in G.S. 105-113.106(3).
5. The Taxpayer is liable for \$1,400.00 tax, \$560.00 penalty and interest until date of full payment.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to G.S. 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the Taxpayer to rebut that presumption. Since the Taxpayer failed to provide any evidence to overcome the presumption, the Assistant Secretary properly determined that the Taxpayer possessed an unauthorized substance on February 25, 2001.

The Board having conducted a hearing in this matter and having considered the petition, the brief, the final decision and the documents of record, concludes that the Assistant Secretary properly determined that the Taxpayer possessed an unauthorized substance and was a dealer as that term is defined in G.S. 105-113.106(3). Since the unauthorized substance tax is levied at a rate of \$200.00 per 10 dosage units, this Board determines that the Taxpayer's tax assessment liability, regarding his possession of an unauthorized substance on February 25, 2001, was \$1,200.00, based upon the possession of 61 dosage units, rather than \$1,400.00. Thus, this Board reduces the tax assessment levied against the Taxpayer by \$200.00.

WHEREFORE, THE TAX REVIEW BOARD ORDERS that the tax assessment levied against the Taxpayer in this matter be reduced to \$1,200.00 and further orders that the Taxpayer is liable, to the North Carolina Department of Revenue, for the tax in the amount of \$1,200.00, plus penalty and interest as allowed by law.

Made and entered into the 15th day of October 2002.

TAX REVIEW BOARD

Signature _____

Richard H. Moore, Chairman
State Treasurer

Signature _____

Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessments of Additional)
Income Tax for the Taxable Years 1998, and 1999)
by the Secretary of Revenue North Carolina)

vs.)

James L. and Beverly J. Javurek,)
Taxpayers)

**ADMINISTRATIVE DECISION
NUMBER: 392**

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by **James L. and Beverly J. Javurek** (hereinafter "Taxpayer") regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the Department of Revenue (hereinafter "Assistant Secretary"), sustaining the proposed assessments of additional individual income taxes for taxable years 1998 and 1999.

Pursuant to G.S. 105-241.1, the North Carolina Department of Revenue mailed the Taxpayers Notices of Individual Income Tax Assessments dated June 12, 2001, assessing tax, penalties and accrued interest for the taxable years 1998 and 1999. The Taxpayer objected to the assessments and filed a request for hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision, on December 10, 2001, sustaining the proposed assessments of additional individual income tax liability in the total amount of \$1,936.56. Pursuant to G.S. 105-241.2, the Taxpayers filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that Taxpayers' petition for administrative review should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that Taxpayers' petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayer's petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 15th day of October 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessments of Additional)
Income Tax for the Taxable Years 1998, and 1999)
by the Secretary of Revenue)

vs.)

Richard Bryan Henning and Janice G. Henning,)
Taxpayers)

**ADMINISTRATIVE DECISION
NUMBER: 393**

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by **Richard Bryan Henning and Janice G. Henning** (hereinafter "Taxpayers") regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue, (hereinafter "Assistant Secretary"), sustaining the proposed assessment of additional individual income tax liability in the total amount of \$3,273.63 against Mr. Henning for tax year 1998 and the proposed assessment of additional individual income tax liability in total amount of \$1,964.72 for taxable year 1998 and \$644.06 for tax year 1999 against the Taxpayers.

Pursuant to G.S. 105-241.1, the North Carolina Department of Revenue mailed the Taxpayers Notices of Individual Income Tax Assessments dated August 23, 2000, assessing tax, penalties and accrued interest for the taxable years 1998, and 1999. The Taxpayers objected to the assessments and filed a request for hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a final decision sustaining the proposed assessments. Pursuant to G.S. 105-241.2, the Taxpayers filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayers' petition for administrative review should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that Taxpayers' petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayer's petition for review be and is hereby **Dismissed**.

Made and entered into the 15th day of October 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessments of Additional)
Income Tax for the Taxable Years 1994, 1995, 1996,)
1997, and 1998 by the Secretary of Revenue)
)
)
vs.)
)
Thomas Tilley,)
Taxpayer)

**ADMINISTRATIVE DECISION
NUMBER: 394**

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by **Thomas E. Tilley** (hereinafter "Taxpayer") regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (hereinafter "Assistant Secretary"), entered on July 9, 2001, sustaining the proposed assessment of additional individual income tax for taxable years 1994, 1995, 1996, 1997, and 1998.

Pursuant to G.S. 105-241.1, the North Carolina Department of Revenue mailed the Taxpayer Notices of Individual Income Tax Assessments dated May 21, 2000, assessing tax, penalties and accrued interest for the taxable years 1994, 1995, 1996, 1997, and 1998 in the total amount of \$99,355.99. The Taxpayer objected to the assessments and filed a request for hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision sustaining the proposed assessments for individual income tax liability against the Taxpayer. Pursuant to G.S. 105-241.2, the Taxpayer filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayer's petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that the Taxpayer's petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Taxpayer's petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 15th day of October 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessments of Additional)
Income Tax for the Taxable Years 1993, 1994, 1995,)
1996, 1997, 1998 and 1999 by the Secretary of)
Revenue of North Carolina)

vs.)

John C. Ainsworth,)
Taxpayer)

ADMINISTRATIVE DECISION
NUMBER: 395

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by **John C. Ainsworth** (hereinafter "Taxpayer") regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (hereinafter "Assistant Secretary"), sustaining the proposed assessment of additional individual income tax liability for taxable years 1993, 1994, 1995, 1996, 1997, 1998, and 1999.

Pursuant to G.S. 105-241.1, the North Carolina Department of Revenue mailed the Taxpayer Notices of Individual Income Tax Assessments dated March 11, 2000, February 12, 2001, and March 14, 2001, assessing tax, penalties and accrued interest for the taxable years 1993, 1994, 1995, 1996, 1997, 1998, and 1999. The Taxpayer objected to the assessments and filed a request for hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision, on February 7, 2002, sustaining the proposed assessments against the Taxpayer for individual income tax liability in the total amount of \$30,927.90. Pursuant to G.S. 105-241.2, the Taxpayer filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayer's petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that Taxpayer's petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayer's petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 15th day of October 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessments of Sales and Use Tax)
For the periods November through December 1995,)
April 1996 through March 1997, June through July)
1997, September 1997 through January 1998, March)
through April 1998, and July through August 1998,)
by the Secretary of Revenue)
vs.)
Richard M. Pearman, Jr.,)
President of Dependable Housing, Inc.)

**ADMINISTRATIVE DECISION
NUMBER: 396**

This matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, in the office of the State Treasurer on Thursday, September 5, 2002, upon a petition filed by Richard M. Pearman, Jr., President of Dependable Housing, Inc., ("Taxpayer") for administrative review of the Final Decision of the Secretary of Revenue entered on December 19, 2000, sustaining the proposed assessment of sales and use tax for the periods of November through December 1995, April 1996 through March 1997, June through July 1997, September 1997 through January 1998, March through April 1998, and July through August 1998.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, attorney at law participating.

Counsel for the Taxpayer did not appear at the hearing. George W. Boylan, Special Deputy Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

The Taxpayer appeals from an adverse Final Decision of the Secretary of Revenue entered on December 19, 2000 sustaining a proposed assessment of sales and use tax for the periods at issue. The Taxpayer was the president of Dependable Housing, Inc., trading as Westwood Homes, a North Carolina corporation engaged in the business of selling manufactured housing at retail. The corporation filed sales and use tax returns for the periods in question, reporting tax due, but sent in the reports without remittance of tax. The corporation was assessed tax, penalty and interest for the periods in question. The corporation did not protest the assessments. The corporation ceased doing business in January 1999.

On October 15, 1999, the Department of Revenue mailed Notices of Sales and Use Tax Assessment to the Taxpayer as President of Dependable Housing, Inc. The Taxpayer objected to the assessments and requested a hearing that was conducted on August 23, 2000. On December 19, 2000, the Assistant Secretary entered a final decision, which sustained the proposed assessment of sales tax, and penalties that was issued against the Taxpayer. Thereafter, Taxpayer filed a petition for administrative review of the Assistant Secretary's adverse decision with the Tax Review Board. In the petition, Taxpayer contends that the Department failed to produce sufficient evidence to show that he is a "responsible corporate officer" within the meaning of either G.S. 105-253(b)(1) or (2).

In the final decision, the Assistant Secretary made findings of fact that the Taxpayer, as president of the corporation, is a responsible officer of the corporation under G.S. 105-253. If the Taxpayer failed to make reasonable and prudent inquiry into the proper procedures for remitting sales tax, then he is personally liable under G.S. 105-253 for the sales taxes collected but not paid to the State.

ISSUE

The issue considered by the Board upon administrative review of this matter is stated as follows:

Is the Taxpayer the responsible corporate officer of the corporation and personally liable under N.C.G.S. 105-253 for sales or use tax for the periods November through December 1995, April 1996 through March 1997, June through July 1997, September 1997 through January 1998, March through April 1998, and July through August 1998?

EVIDENCE

The evidence submitted to the Assistant Secretary and included in the record for the Board's review is stated listed as follows:

1. Memorandum dated August 20, 1999 from the Secretary of Revenue to the Assistant Secretary of Revenue, designated Exhibit E-1.
2. The corporation's November 1995 sales and use tax return, designated as Exhibit E-2.
3. Notice of Sales and Use Tax Assessment against the corporation dated May 25, 1998 for November 1995, designated Exhibit E-3.
4. Letter dated June 10, 1998 from the Taxpayer's attorney to a Revenue Officer, designated Exhibit E-4.

5. Letter dated July 22, 1999 from the Taxpayer's attorney to a Revenue Officer and the following attachments:
6. Copy of complaint against Penny Jenkins.
7. Copy of Form RO-1063, Collection Information Statement for Businesses.
8. Copy of 1997 U.S. Corporation Income Tax Return, designated Exhibit E-5, E-5a, E-5b, and E-5c, respectively.
9. Notice of Sales Tax Penalty Assessment against the corporation dated July 27, 1998 for November 1995, designated Exhibit E-6.
10. Letter dated August 16, 1999 from the Sales and Use Tax Division (Division) to the Taxpayer's attorney, designated Exhibit E-7.
11. Final Notice of Tax Assessment Sales and Use Tax against the corporation dated September 27, 1998 for November 1995, designated Exhibit E-8.
12. Notice of Sales and Use Tax Assessment against Taxpayer as President of the Corporation dated October 15, 1999 for November 1995, designated Exhibit E-9.
13. Letter dated November 8, 1999 from the Taxpayer's attorney to the Division, designated Exhibit E-10.
14. Letter dated November 17, 1999 from the Division to the Taxpayer's attorney, designated Exhibit E-11.
15. Letter dated December 15, 1999 from the Taxpayer's attorney to the Division, designated Exhibit E-12.
16. Letter dated December 20, 1999 from the Division to the Taxpayer's attorney, designated Exhibit E-13.
17. Letter dated January 13, 2000 from the Taxpayer's attorney to the Division, designated Exhibit E-14.
18. Annual Report for Business Corporations received on December 11, 1998 by the Secretary of State, designated Exhibit E-15.
19. Annual Report dated December 20, 1996 filed with the Secretary of State, designated Exhibit E-16.
20. Notice of Tax Assessment dated March 11, 2000 for November 1995, designated Exhibit E-17.
21. Letter dated March 3, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit E-18.
22. Letter dated March 14, 2000 from the Taxpayer's attorney to the Assistant Secretary of Revenue, designated Exhibit E-19.
23. Letter dated March 15, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit E-20.
24. Letter dated June 14, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit E-21.
25. Memorandum dated September 15, 2000 from the Division to the Assistant Secretary of Revenue, designated Exhibit E-22.
26. Application of Extension of Time to file the Corporate Franchise and Income Tax Return, for 1998 for Dependable Housing, Incorporated, designated Exhibit E-23.
27. 1996 Corporation Franchise and Income Tax Return for Dependable Housing, Incorporated, designated Exhibit E-24.
28. 1997 Corporate Franchise and Income Tax Return for Dependable Housing, I Incorporated, designated Exhibit E-25.
29. Sales and Use Tax returns filed by Dependable Housing, Incorporated for periods November 1995 through August 1998, designated Exhibit E-26.
30. Notices of Sales and Use Tax Assessments against Dependable Housing, Incorporated for the periods November through December 1995, April 1996 through March 1997, June through July 1997, September 1997 through January 1998, March through April 1998, and July through August 1998, designated Exhibit E-27.
31. Notices of Sales and Use Tax Penalty Assessments against Dependable Housing, Incorporated, for the periods November through December 1995, April 1996 through March 1997, October 1997 through January 1998 and March 1998, designated Exhibit E-28.
32. Final Notices of Tax Assessment Sales and Use against Dependable Housing, Incorporated, for the periods of November through December 1995, April 1996 through March 1997, June through July 1997, September 1997 through January 1998, March through April 1998, and July through August 1998, designated Exhibit E-29.
33. Notices of Sales and Use Tax Assessment against Richard M. Pearman, Jr., President of Dependable Housing, Incorporated, for the periods of November through December 1995, April 1996 through March 1997, June through July 1997, September 1997 through January 1998, March through April 1998, and July through August 1998, designated Exhibit E-30.
34. Final Notices of Tax Assessment Sales and Use against Richard M. Pearman, Jr., President of Dependable Housing, Incorporated, for the periods of December 1995, April 1996 through March 1997, June through July 1997, September 1997 through January 1998, March through April 1998, and July through August 1998, designated Exhibit E-31.
35. Letter dated September 12, 2000 from the Assistant Secretary of Revenue to the Taxpayer's attorney, designated Exhibit S-1.
36. Letter dated October 20, 2000, from the Taxpayer's attorney to the Assistant Secretary of Revenue, designated Exhibit T-1.

FINDINGS OF FACT

The Board reviewed the following findings of fact in the Assistant Secretary's decision regarding this matter:

- (1) The Taxpayer was the president of Dependable Housing, Incorporated, trading as Westwood Homes, a North Carolina corporation engaged in the business of selling manufactured housing at retail.
- (2) The corporation filed sales and use tax returns for the periods in question, reporting tax due, but sent in the reports without remittance of tax.
- (3) The corporation was assessed tax, penalty and interest for the relevant periods.
- (4) The corporation did not protest the assessments for the relevant periods and the assessments against the corporation became final and conclusive on September 27, 1998.
- (5) The Taxpayer signed the North Carolina Corporate Franchise and Income Tax Returns for the tax years 1996 and 1997 as corporate president.
- (6) The corporation's North Carolina Corporate Franchise and Income Tax Returns for 1996 and 1997 both indicated sales tax due at both year-ends in the amount \$19,434 and \$18,914, respectively.
- (7) The sales and use tax returns were signed by Cindy Murray, as bookkeeper, for periods in 1995, 1996 and 1997. Ms. Murray is the Taxpayer's assistant at his law firm.
- (8) Beginning in January 1998, the sales tax returns were signed by C. L. Clodfelter, as bookkeeper, through the balance of the assessed periods.
- (9) The corporation ceased conducting business in January 1999.
- (10) The corporation was a small, closely held, family-owned company with no more than two shareholders at any one time. Taxpayer originally incorporated the company and remained its principal executive officer until it ceased conducting business, including the assessed periods. Since there was no senior financial corporate officer, Taxpayer as chief executive officer was legally responsible for filing tax returns and paying all company debts.
- (11) In October 1999, assessments were imposed against the Taxpayer personally pursuant to N.C.G.S. 105-253 as the responsible officer for the corporation.
- (12) Notices of Proposed Assessment were mailed to the Taxpayer on October 15, 1999.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

- (1) The liability of a responsible officer is satisfied upon the timely remittance of the tax by the corporation or the limited liability company.
- (2) If the tax remains unpaid after it is due and payable, the Secretary of Revenue may assess the tax against and collect the tax from any responsible officer in accordance with the procedures for assessing and collecting tax from a taxpayer.
- (3) As used in N.C.G.S. 105-253, the term responsible officer means the president and treasurer of a corporation.
- (4) Since the rules of evidence do not apply to an administrative tax hearing conducted under N.C.G.S. 105-241.1(c), Taxpayer's letter of July 22, 1999, is properly in the record. The letter, from the Taxpayer's attorney to the Department, seeks a compromise of the November 1995 assessment.
- (5) On the line designated "Total Amount Due State and County" on the return for each of the assessed periods, the amount of tax due was entered. This indicates that the person preparing the return had determined that there was sales tax due to the State of North Carolina.
- (6) In order for the sales tax liabilities to have been reported on both the monthly sales tax returns and the corresponding corporate franchise and income tax returns, the tax must have been collected, as that is the only way the liability could have been incurred and properly reported in the corporation's accounting records.
- (7) Taxpayer has produced no documentation suggesting that sales tax was not collected as reported on the sales tax returns and as noted on the corporate income and franchise returns.
- (8) Pursuant to N.C.G.S. 105-241.1 (a), the assessments have been properly based upon financial information prepared by and obtained from the corporation, and constitute the best information available.
- (9) N.C.G.S. 105-164.4, which levies tax on the sale of manufactured homes, imposes the tax on the retailer, not the lender or other third parties.
- (10) Failure to make reasonable and prudent inquiry into the proper procedures for remittance of sales tax or to determine if the tax were paid by another person fails the test of "reasonable care" required in N.C.G.S. 105-253.
- (11) The Taxpayer constituted a responsible officer for sales tax liability incurred by this corporation because he should have known in the exercise of reasonable care that sales tax was being collected by the corporation on retail sales of manufactured homes and not being remitted to the State.
- (12) The Taxpayer, as president of the corporation, is a responsible officer of the corporation under N.C.G.S. 105-253. The record shows that sales tax was collected by the corporation on the retail sales of manufactured homes and the Taxpayer has produced no evidence to show otherwise.

IN ADDITION

- (13) The Taxpayer is personally liable under N.C.G.S. 105-253(b)(1) for the sales taxes collected by the corporation and not remitted to the State.
- (14) The Taxpayer is personally liable for the sales taxes pursuant to N.C.G.S. 105-253(b)(2), as he did not exercise reasonable care with regard to their collection and remittance.
- (15) Notices of Assessment for the periods of November 1995, December 1995, April 1996 through March 1997, June 1997 through July 1997, September 1997 through January 1998, March through April 1998, and July through August 1998, were properly issued pursuant to N.C.G.S. 105-241.1.
- (16) The Taxpayer timely protested his Notices of Proposed Assessment dated October 15, 1999.

DECISION

The Taxpayer was the president of Dependable Housing, Inc., trading as Westwood Homes, a North Carolina corporation engaged in the business of selling manufactured housing at retail. The corporation filed sales and use tax returns for the periods in question, reporting sales tax due, but sent the returns without remittance of the tax. Although sales tax assessment notices were sent to the corporation, it did not protest any of the assessments so the Department of Revenue billed the assessments as final. The corporation ceased conducting business in January 1999. In October 1999, an assessment was made against the Taxpayer personally pursuant to N.C.G.S. 105-253 as the responsible corporate officer for the corporation. As stated in the Assistant's Secretary's final decision the Department argued that the Taxpayer, as the president of the corporation, is responsible for the sales taxes collected but not paid to the State under both subparagraphs 1 and 2 of N.C.G.S. 105-253 (b).

N.C.G.S. 105-253 reads in pertinent part that:

"(b) Each responsible officer is personally and individually liable for all of the following:

- (1) All sales and use taxes collected by a corporation or limited liability company upon its taxable transactions.
- (2) All sales and use taxes due upon taxable transactions of a corporation or limited liability company but upon which it failed to collect the tax, but only if the person knew, or in the exercise of reasonable care should have known, that tax was not being collected."

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

The Board having conducted an administrative hearing, and having considered the Petition, the brief, the arguments and the record in this matter, concludes that the findings of fact contained in the Assistant Secretary's decision were fully supported by competent evidence in the record; that the conclusions of law made by the Assistant Secretary were fully supported by the findings of fact; and the Assistant Secretary's final decision sustaining the proposed assessment of additional sales and use tax was fully supported by the conclusions of law.

WHEREFORE, THE TAX REVIEW BOARD ORDERS that the Assistant Secretary's final decision sustaining the proposed assessment of sales and use tax for the periods of November through December 1995, April 1996 through March 1997, June through July 1997, September 1997 through January 1998, March through April 1998, and July through August 1998 be and is hereby **Confirmed**.

Made and entered into the 19th day of December 2002.

TAX REVIEW BOARD

Signature _____

Richard H. Moore, Chairman
State Treasurer

Signature _____

Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessments of Unauthorized)
 Substance Tax dated March 16, 2001 by)
 The Secretary of Revenue of North Carolina)
)
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)
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 vs.)
)
Farelia Glover Fleming,)
 Taxpayer)

**ADMINISTRATIVE DECISION
NUMBER: 397**

This Matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina, in the office of the State Treasurer, on Thursday, September 5, 2002, upon Farelia Glover Fleming's (hereinafter "Taxpayer") petition for administrative review of the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings, entered on December 5, 2001, sustaining the assessment of unauthorized substance tax in the amount of \$29,000.00, plus interest as required by law.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Mr. and Mrs. Fleming appeared at the hearing. David J. Adinolfi, II, Associate Attorney General, represented the North Carolina Secretary of Revenue at the hearing.

STATEMENT OF FACTS AND CASE

Between April 19, 2000 and January 12, 2001, the Taxpayer obtained 50 hydrocodone prescriptions from numerous doctors and a registered nurse and had them filled at various pharmacies. Investigators interviewed ten of the doctors involved in this matter and stated that the Taxpayer failed to inform them that she was also being prescribed the Schedule III narcotic hydrocodone by other physicians. Based upon the investigation, 36 of the prescriptions, totaling 1,416 dosages were deemed fraudulent and therefore subject to the unauthorized substance tax. On March 16, 2001, the Department of Revenue issued an unauthorized substance tax assessment against the Taxpayer.

Taxpayer appeals from an adverse decision of the Assistant Secretary of Revenue entered on December 5, 2001 sustaining a proposed assessment of an unauthorized substance tax in the amount of \$29,000.00 together with interest as allowed by law. The Assistant Secretary, under the provisions of G.S. 105-260.1, scheduled a hearing in this matter. The Taxpayer and her husband, who is an attorney, appeared at the hearing before the Assistant Secretary. Also appearing at the hearing was Taxpayer's physician, Dr. Rudolph J. Maier.

At the hearing before the Assistant Secretary, the Taxpayer's primary argument is that she obtained the pills to combat the extreme chronic pain she suffers from due to migraines and fibromyalgia. Mr. Fleming argued that his wife is essentially unemployable due to her illness, and as no assets, and that the Department of Revenue should accept her offer in compromise. After the hearing, the Assistant Secretary issued a final decision that affirmed the assessment in the amount of \$29,000.00 and waived the \$11,600 penalty imposed against the Taxpayer.

In the Petition filed with the Board, the Taxpayer argues that the intent of the Unauthorized Substance Tax is to combat drug trafficking by levying a punitive tax burden upon drug dealers. Since she is not a drug dealer, the Taxpayer contends that the assessment should be dismissed. The Taxpayer further argues that she has a limited earning capacity due to her various health problems and has requested the Department of Revenue to accept her \$2,100 offer in compromise or cancel the assessment.

ISSUES:

1. Did the Taxpayer have actual/or constructive possession of hydrocodone without proper tax stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

IN ADDITION

FINDINGS OF FACT

After considering the petition, brief, record and considering the arguments presented by the parties, the Board makes the following finding of fact:

1. An Assessment of Unauthorized Substance Tax was made against the Taxpayer on March 16, 2001, in the sum of \$29,000.00 tax, \$11,600.00 penalty and \$1,333.62 interest, for a total proposed liability of \$41,933.62, based upon the unlawful possession of 1,416 dosages of hydrocodone for the period at issue.
2. The Taxpayer made a timely objection and application for hearing.
3. The Taxpayer suffers from medical conditions that cause her to have chronic pain.
4. The Assistant Secretary, after conducting the hearing, sustained the proposed tax assessment together with interest as allowed by law, but waived the penalty.
5. The Taxpayer filed a timely notice of intent and petition for administrative review with the Board.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

1. An assessment of tax is presumed to be correct.
2. The burden is upon the Taxpayer who objects to an assessment to overcome that presumption.
3. Pursuant to G.S. 105-113.109, a dealer who actually or constructively possesses an unauthorized substance in this State, upon which the tax has not been paid, is required to purchase and affix the appropriate stamp. Tax is due from the dealer at the time the dealer comes into possession of the unauthorized substance.
4. The Taxpayer, as a matter of law, is not a dealer as that term is defined in G.S. 105-113.109 and is therefore not liable for the proposed assessment issued against her on March 16, 2001, in the amount of \$29,000 tax, together with interest.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

The Board having conducted an administrative hearing in this matter, and having considered the petition, the brief, the record and final decision, concludes that the findings of fact contained in the Assistant Secretary's final decision are not supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were not fully supported by the findings of fact; therefore the Assistant Secretary's final decision should be reversed.

WHEREFORE, THE TAX REVIEW BOARD ORDERS that the Assistant Secretary final decision sustaining the proposed tax assessment together with interest against the Taxpayer be and is hereby **REVERSED**.

Made and entered into the 19th day of December 2002.

TAX REVIEW BOARD

Signature _____

Richard H. Moore, Chairman
State Treasurer

Signature _____

Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessments of Unauthorized)
Substance Tax dated July 24, 2001 by)
The Secretary of Revenue of North Carolina)
)
)
)
)
vs.)
)
James M. Barbee,)
Taxpayer)

**ADMINISTRATIVE DECISION
NUMBER: 398**

This Matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina, in the office of the State Treasurer, on Thursday, September 5, 2002, upon **James M. Barbee's** (hereinafter "Taxpayer") petition for administrative review of the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings entered on April 24, 2002, sustaining the assessment of unauthorized substance tax for the period of July 24, 2001.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

The Taxpayer and his attorney, George Hughes appeared at the hearing. David J. Adinolfi, II, Associate Attorney General, appeared at the hearing for the North Carolina Secretary of Revenue at the hearing.

Pursuant to G.S. 105-113.111(a) and G.S. 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer on July 24, 2001. The notice related to a proposed assessment of tax, penalty and interest in the total amount of \$38,052.00 based upon the possession of 27,180 grams of marijuana. The assessment alleged that on February 25, 2001, the Taxpayer possessed a total of 27,180 grams of marijuana. After conducting a hearing, the Assistant Secretary entered his decision sustaining the proposed assessment against the Taxpayer. Thereafter, the Taxpayer, through counsel, timely filed a notice and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

ISSUES

The issues considered by the Board upon administrative review of this matter are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of marijuana without the proper stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance tax?

EVIDENCE

The evidence submitted to the Assistant Secretary and included in the record for the Board's review is stated as follows:

1. US-1, Form BD-10, "Notice of Unauthorized Substance Tax Assessment," dated July 24, 2001.
2. US-2, Letter from the Taxpayer's attorney, dated August 17, 2001, objecting to the assessment and requesting a hearing.
3. US-3, Letter to the Taxpayer's attorney, dated August 29, 2001, advising him that his client's Administrative Tax Hearing was scheduled for November 20, 2001.
4. US-4, Forms BD-4, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Controlled Substances," naming the Taxpayer as the possessor of the controlled substance.
5. US-5, The Montgomery County Sheriff's Office incident report, including the voluntary statement of the Taxpayer.
6. US-6, Memorandum from E. Norris Tolson, Secretary of Revenue, dated May 16, 2001, delegating to Eugene J. Cella, Assistant Secretary of Administrative Hearings, the authority to hold any hearing required or allowed under Chapter 105 of the North Carolina General Statutes.

FINDINGS OF FACT

IN ADDITION

The Board, after conducting a hearing in this matter and after reviewing the petition, the final decision and the record from the proceeding before the Assistant Secretary, makes the following findings of fact:

1. The Board has jurisdiction over the parties and subject matter of this appeal.
2. The Taxpayer filed a timely notice of intent and petition for administrative review of the Assistant Secretary's final decision that was entered on April 24, 2002.
3. The record does not contain sufficient evidence to show that the Taxpayer possessed 29,221 grams of marijuana as set for in the proposed assessment of on July 24, 2001 and there is no evidence to show that the Taxpayer purchased and possessed five pounds of marijuana every two weeks during the six months prior to July 13, 2001.
4. For the period at issue, the Taxpayer possessed 1958.3 grams of marijuana.
5. The proposed assessment of unauthorized substance tax, issued on July 24, 2001, in the sum of \$102,273.50 tax, \$40,909.40 penalty and \$681.82 interest, for a total proposed liability of \$143,864.72, is not valid.
6. No tax stamps were purchased for or affixed to the 1,958.3 grams of marijuana as required by law.

CONCLUSIONS OF LAW

Based upon the foregoing findings of fact, the Board makes the following conclusions of law:

1. Even though the assessment of tax in this matter is presumed to be correct, the Taxpayer may overcome the presumption by producing any evidence showing that he did not possess 29,221 grams of marijuana at the time of his arrest. Based upon the evidence, the Taxpayer has overcome the presumption by producing evidence to show that he only possessed 1,958.3 grams of marijuana for the period at issue.
2. G.S. 105-113.106(3) defines a dealer as "a person who actually or constructively possesses more than 42.5 grams of marijuana, seven or more grams of any other controlled substance that is sold by weight, or 10 or more dosage units of any other controlled substance that is not sold by weight."
3. Pursuant to G.S. 105-113.109, a tax is imposed against a dealer who possesses an authorized substance in this State upon which the tax has not been paid, as evidence of a stamp.
4. The Taxpayer is a dealer since he possessed 1,958.3 grams of marijuana for the period at issue upon which the tax had not been paid.
5. The Taxpayer is liable for the tax, penalty and interest until fully paid for the possession of 1,958.3 grams of marijuana. and the proposed assessment against the Taxpayer should be adjusted accordingly.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

The Board having conducted a hearing in this matter and having considered the petition, the brief, the final decision and the documents of record, concludes that the Assistant Secretary did not properly determine that the Taxpayer possessed 27,180 grams of marijuana. This Board determines, based upon the record, that the Taxpayer only possessed 1,958.3 grams of an unauthorized substance for the period at issue and that the proposed assessment should be amended to reflect a tax due, plus penalty and interest based upon Taxpayer's possession of 1,958.3 grams of marijuana. Thus, the Board reduces the tax assessment levied against the Taxpayer since he did not possess 27,180 grams of marijuana for the period at issue.

WHEREFORE, THE TAX REVIEW BOARD ORDERS that proposed assessment be and is hereby reduced to reflect the appropriate tax plus penalty and interest as allowed by law based upon Taxpayer's possession of 1,958.3 grams of marijuana for the period at issue.

Made and entered into the 19th day of December 2002.

TAX REVIEW BOARD

Signature _____

Richard H. Moore, Chairman
State Treasurer

Signature _____

Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____

Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessments of Unauthorized)
Substance Tax dated May 10, 2000 by)
The Secretary of Revenue of North Carolina)

**ADMINISTRATIVE DECISION
NUMBER: 399**

vs.)

Troy Ellington Stainback,)
Taxpayer)

This Matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina, in the office of the State Treasurer, on Wednesday, June 12, 2002, upon **Troy Ellington Stainback's** (hereinafter "Taxpayer") petition for administrative review of the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings, of the North Carolina Department of Revenue entered on October 10, 2001, sustaining the assessment of unauthorized substance tax for the period of May 10, 2000.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Attorney Michael S. Petty appeared at the hearing on behalf of the Taxpayer. David J. Adinolfi, II, Assistant Attorney General appeared at the hearing on behalf of the Secretary of Revenue.

Upon calling this matter for hearing, counsel for the parties advised the Board of their settlement discussion regarding the proposed assessment. Since all parties were present, the Board proceeded with the hearing and considered the petition, the brief, the final decision, the documents of record, and the arguments presented, but delayed, at counsel's request, entry of the final decision until further notice regarding the settlement. The Board, having received no notice of a settlement in the matter, renders the following decision.

Pursuant to N.C. Gen. Stat. § 105-113.111(a) and N.C. Gen. Stat. § 105-241.1, a Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer on May 10, 2000. The notice related to a proposed assessment of tax, penalty and interest in the total amount of \$35,166.67 based upon the possession of 500 grams of cocaine. The assessment alleged that on May 4, 2000, the Taxpayer was in unauthorized possession of 500 grams of cocaine that did not have the proper tax stamps affixed thereto. The Taxpayer objected to the proposed assessment and requested a hearing before Secretary of Revenue. After conducting a hearing, the Assistant Secretary entered his decision sustaining the proposed assessment against the Taxpayer. Thereafter, the Taxpayer, through counsel, timely filed a notice and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

ISSUES

The issues considered by the Board upon administrative review of this matter are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of cocaine without the proper stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance excise tax?

EVIDENCE

The evidence submitted to the Assistant Secretary and included in the record for the Board's review is stated as follows:

1. US-1 Form BD-10, "Notice of Unauthorized Substance Tax Assessment," dated May 10, 2000.
2. US-2 Letter from the Taxpayer's attorney, dated July 20, 2000, requesting a hearing.

IN ADDITION

3. US-3 Letter to the Taxpayer's attorney, dated August 8, 2000, informing him that his client's Administrative Tax Hearing was scheduled for September 29, 2000.
4. US-4 Letter from the Taxpayer's attorney, dated September 26, 2000, requesting a continuance.
5. US-5 Form BD-4, "Report of Arrest and/or Seizure Involving Nontaxpaid (Unstamped) Controlled Substances," which names the Taxpayer as the possessor of the controlled substances.
6. US-6 Incident report by Wilson County Sheriff's Office, including suspect statements and the SBI lab report.

FINDINGS OF FACT

The Board reviewed the following findings of fact in the Assistant Secretary's decision in this matter:

1. On May 16, 2001, E. Norris Tolson, Secretary of Revenue, delegated to Eugene J. Cella, Assistant Secretary of Administrative Hearings, the authority to hold any hearing required or allowed under Chapter 105 of the North Carolina General Statutes.
2. Assessment of Unauthorized Substance Tax was made against the Taxpayer on May 10, 2000, in the sum of \$25,000.00 tax, \$10,000.00 penalty and \$166.67 interest, for a total proposed liability of \$35,166.67, based on possession of 500 grams of cocaine.
3. The Taxpayer made a timely objection and application for hearing.
4. The State Bureau of Investigation's lab report stated the evidence submitted for analysis was 517.2 grams of cocaine.
5. The Taxpayer was the individual who wanted to buy the cocaine and he enlisted the services of two others to do so. Further, the Taxpayer supplied the money, albeit counterfeit, to purchase the cocaine.
6. By enlisting the services of two others to obtain the cocaine, they both became the agents of the Taxpayer. One of those agents clearly took possession of the cocaine. He was able to walk, then run with the cocaine, before eventually throwing it under a parked bus. All of these acts are consistent with having possession and control of the substance.
7. On May 4, 2000, the Taxpayer had constructive possession of 500 grams of cocaine by virtue of his agent having actual possession of the same.
8. The cocaine used in the "reversal" drug deal has been previously taxed, but the Unauthorized Substances Tax Division's records reflect that the taxes on this 500 grams of cocaine has not previously been collected.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

1. An assessment of tax is presumed to be correct.
2. The burden is upon Taxpayer who objects to an assessment to overcome that presumption, and this burden was not met.
3. On May 4, 2000, the Taxpayer possessed 500 grams of cocaine and was therefore a dealer as that term is defined in N.C. Gen. Stat. 105-113.106.
4. The Taxpayer is liable for \$25,000.00 tax, \$10,000.00 penalty and interest until date of full payment.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by N.C. Gen. Stat. 105-241.2(b2). After the Board conducts a hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to N.C. Gen. Stat. 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the Taxpayer to rebut that presumption. Since the Taxpayer failed to provide any evidence to overcome the presumption, the Assistant Secretary properly determined that the Taxpayer possessed an unauthorized substance on May 4, 2000.

The Board having conducted a hearing in this matter and having considered the petition, the brief, the final decision and the documents of record, concludes that the Assistant Secretary properly determined that the Taxpayer possessed an unauthorized substance and was a dealer as that term is defined in N.C. Gen. Stat. 105-113.106(3) and is therefore liable for the assessment imposed against him.

WHEREFORE, THE TAX REVIEW BOARD ORDERS that the tax assessment levied against the Taxpayer be and is hereby **Confirmed**.

Made and entered into the 15th day of January 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

BEFORE THE
TAX REVIEW BOARD

COUNTY OF WAKE

IN THE MATTER OF:

The Proposed Assessments of Unauthorized)
Substance Tax dated September 29, 2000 by)
The Secretary of Revenue of North Carolina)
)
)
)
)
vs.)
)
)
Kelly Sue Locklear,)
Taxpayer)

**ADMINISTRATIVE DECISION
NUMBER: 400**

This Matter was heard before the Tax Review Board (hereinafter "Board") in the City of Raleigh, North Carolina, in the office of the State Treasurer, on Thursday, September 5, 2002, upon Kelly Sue Locklear's (hereinafter "Taxpayer") petition for administrative review of the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings, entered on September 10, 2001, sustaining the assessment of unauthorized substance tax for the period of September 29, 2000.

Chairman Richard H. Moore, State Treasurer, presided over the hearing with Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Thomas W. Pleasant, counsel for the Taxpayer appeared at the hearing. David J. Adinolfi, II, Associate Attorney General, appeared at the hearing on behalf of the North Carolina Secretary of Revenue.

A Notice of Unauthorized Substance Tax Assessment was issued to the Taxpayer, assessing \$59,927.00 tax, \$23,970.80 penalty and 399.51 interest, for a total proposed liability of \$84,297.31. The assessment alleged that on September 29, 2000, the Taxpayer was in unauthorized possession of 17,122 grams of marijuana without the proper tax stamps affixed to the substance. The Taxpayer protested the assessment and requested a hearing before the Secretary of Revenue. The Taxpayer was not present or represented at the August 24, 2001 hearing before the Assistant Secretary and no evidence was offered at the hearing on behalf of the Taxpayer. After conducting the hearing, the Assistant Secretary issued a final decision on September 10, 2001 that sustained the assessment against the Taxpayer. Taxpayer then filed a notice of intent and petition for administrative review with the Tax Review Board.

ISSUES

The issues considered by the Board upon administrative review of this matter are stated as follows:

1. Did the Taxpayer have actual and/or constructive possession of marijuana without the proper stamps affixed?
2. Is the Taxpayer subject to the assessment of unauthorized substance tax?

FINDINGS OF FACT

The Board reviewed the following findings of fact in the Assistant Secretary's final decision that was issued in this matter:

1. Assessment of Unauthorized Substance Tax was made against the Taxpayer on September 29, 2000, in the sum of \$59,927.00 tax, \$23,970.80 penalty and \$399.51 interest, for a total proposed liability of \$84,297.31, based on possession of 17,122 grams of marijuana.
2. The Taxpayer made a timely objection and application for hearing.
3. Neither the Taxpayer nor anyone representing the Taxpayer appeared at the hearing to offer arguments or evidence in support of the objections to the assessment.
4. Per the State Bureau of Investigation's lab analysis, the weight of the marijuana is 17,191.44 grams.
5. On September 29, 2000, the Taxpayer possessed 17,191.44 grams of marijuana.
6. No tax stamps were purchased for or affixed to the marijuana as required by law.

CONCLUSIONS OF LAW

The Board reviewed the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

1. An assessment of tax is presumed to be correct.
2. The burden is upon the Taxpayer who objects to an assessment to overcome that presumption.
3. The Taxpayer possessed 17,191.44 grams of marijuana on September 29, 2000, and was therefore a dealer as that term is defined in G.S. 105-113.106(3).
4. The Taxpayer is liable for \$59,927.00 tax, \$23,970.80 penalty and interest until date of full payment, based upon the 17,122 grams specified in the Notice dated September 29, 2000.

DECISION

The scope of administrative review for petitions filed with the Tax Review Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing, this statute provides in pertinent part:

(b2). "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

Pursuant to G.S. 105-241.1(a), a proposed tax assessment is presumed to be correct and the burden is on the Taxpayer to rebut that presumption. From a review of the record, the Taxpayer failed to provide any evidence to overcome the presumption. Thus, the Tax Review Board having conducted an administrative hearing in this matter and having considered the petition, the briefs, the documents of record, and the Assistant Secretary's final decision, concludes that the findings of fact made by the Assistant Secretary were supported by competent evidence in the record; that based upon the findings of fact, the Assistant Secretary's conclusions of law were fully supported by the findings of fact; therefore the decision of the Assistant Secretary should be confirmed.

WHEREFORE, THE TAX REVIEW BOARD ORDERS AND DECREES that the Assistant Secretary's final decision, entered on September 10, 2001 in this matter, be and is hereby **confirmed** in every respect.

Made and entered into the 19th day of December 2002.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessments of Additional)
Income Tax for the Taxable Year 2000 by)
The Secretary of Revenue of the State of)
North Carolina)
)
)
vs.)
)
Frank L. and Linda J. Esau,)
Taxpayers)

**ADMINISTRATIVE DECISION
NUMBER: 401**

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by **Frank L. and Linda J. Esau** (hereinafter "Taxpayers") regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (hereinafter "Assistant Secretary"), sustaining the proposed assessment of additional individual income tax liability for taxable year 2000.

Pursuant to G.S. 105-241.1, an assessment proposing additional tax, penalty and accrued interest totaling \$593.22 for taxable year 2000 was mailed to the Taxpayers on December 13, 2001. The Taxpayers protested the assessment and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision, on August 29, 2002, that sustained the proposed assessment against the Taxpayers for tax year 2000, but the tax liability was modified to allow credit for the North Carolina income tax withheld. Pursuant to G.S. 105-241.2, the Taxpayers filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayers' petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that Taxpayers' petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayers' petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 4th day of February 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessments of Additional)
Income Tax for the Taxable Year 2000 by)
The Secretary of Revenue of the State of)
North Carolina)
)
)
vs.)
)
James and Melanie Dunham,)
Taxpayers)

**ADMINISTRATIVE DECISION
NUMBER: 402**

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by **James B. and Melanie Dunham** (hereinafter "Taxpayers") regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (hereinafter "Assistant Secretary"), sustaining the proposed assessment of additional individual income tax liability for taxable year 2000.

Pursuant to G.S. 105-241.1, an assessment proposing additional tax, penalty and accrued interest totaling \$1,733.09 for taxable year 2000 was mailed to the Taxpayers on December 13, 2001. The Taxpayers protested the assessment and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision, on June 25, 2002, sustaining the proposed assessment against the Taxpayers for individual income tax liability, plus penalty and accrued interest in the total amount of \$1,769.87 for taxable year 2000. Pursuant to G.S. 105-241.2, the Taxpayers filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayers' petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that Taxpayers' petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayers' petition for review administrative be and is hereby **Dismissed**.

Made and entered into the 3rd day of February 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessments of Additional)
Income Tax for the Taxable Years 1999 and 2000 by)
The Secretary of Revenue of North Carolina)
)
)
)
vs.)
)
Jerry T. Edmundson,)
Taxpayer)

**ADMINISTRATIVE DECISION
NUMBER: 403**

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by **Jerry T. Edmundson** (hereinafter "Taxpayer") regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (hereinafter "Assistant Secretary"), sustaining the proposed assessment of additional individual income tax liability for taxable years 1999 and 2000.

Pursuant to G.S. 105-241.1, assessments proposing additional tax, penalty and accrued interest totaling \$796.00 for taxable years 1999 and 2000 were mailed to the Taxpayer on December 13, 2001. The Taxpayer protested the assessments and filed a request for hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision, on July 31, 2002, sustaining the proposed assessments, plus penalty and accrued interest against the Taxpayer for individual income tax liability in the total amount of \$1,290.55 for taxable years 1999 and 2000. Pursuant to G.S. 105-241.2, the Taxpayer filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayer's petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that Taxpayer's petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayer's petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 3rd day of February 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessments of Additional)
Income Tax for the Taxable Years 1995 and 1996 by)
The Secretary of Revenue of North Carolina)
)
)
)
)
vs.)
)
Michael W. May,)
Taxpayer)

**ADMINISTRATIVE DECISION
NUMBER: 404**

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by **Michael W. May** (hereinafter "Taxpayer") regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (hereinafter "Assistant Secretary"), sustaining the proposed assessment of additional individual income tax liability for taxable years 1995 and 1996.

Pursuant to G.S. 105-241.1, assessments proposing additional tax, penalty and accrued interest totaling \$17,522.88 for tax year 1995, and \$10,620.28, for tax year 1996 were mailed to the Taxpayer June 27, 2001. The Taxpayer protested the assessments and filed a request for hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision, on June 18, 2002, sustaining the proposed assessments against the Taxpayer for individual income tax liability in the total amount of \$18,469.09, \$10,157.52 for taxable year 1995 and \$8,311.57 for taxable year 1996. Pursuant to G.S. 105-241.2, the Taxpayer filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayer's petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that Taxpayer's petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayer's petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 3rd day of February 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Denial of Claims for Refund of Sales and)
 Use Tax for the Periods of November 1, 1993)
 through June 30, 1996 and January 1, 1997)
 through August 21, 1999 by the Secretary of)
 Revenue of the State of North Carolina)
)
 vs.)
)
Morton Buildings, Inc.)
 Taxpayer)

**ADMINISTRATIVE DECISION
NUMBER: 405**

This Matter was heard before the Regular Tax Review Board (hereinafter "Board") in the City of Raleigh, Wake County, North Carolina, on Wednesday, December 18, 2002, upon a petition filed by Morton Buildings, Inc. (hereafter "Taxpayer") for administrative review of the Final Decision of the Assistant Secretary of Revenue entered on 24 May 2002 denying refund claims of sales and use taxes for the periods of November 1, 1993 through June 30, 1996 and January 1, 1997 through August 31, 1999.

Chairman Richard H. Moore, State Treasurer presided over the hearing with ex officio member Jo Anne Sanford, Chair, Utilities Commission and duly appointed member, Noel L. Allen, Attorney at Law participating.

Attorneys Charles B. Neely, Jr., Nancy S. Rendleman and Abraham M. Stranger appeared at the hearing on behalf of the Taxpayer. George W. Boylan, Special Deputy Attorney General, appeared at the hearing on behalf of the Secretary of Revenue.

STATEMENT OF FACTS

Morton Buildings, Inc. ("Taxpayer") is an Illinois corporation having its principal place of business in Morton, Illinois. Taxpayer is engaged in the business of manufacturing and installing prefabricated timber frame metal-sheathed buildings for use by farm and industry in approximately forty (40) states. The overall style of the buildings manufactured by the Taxpayer is uniform, but the dimensions of the buildings and its components are varied and customized to suit the purchaser's needs.

The Taxpayer fabricates and erects in North Carolina prefabricated buildings pursuant to performance contracts. Taxpayer purchases the raw materials (steel and lumber) used in its business in bulk outside of North Carolina and stores the materials in its own warehouses at various locations outside of this State. At factories outside of North Carolina, the Taxpayer constructs building components from the raw materials. These building components include such items as trusses, columns, metal panels, and overhang rafters. Taxpayer ultimately incorporates the building components into the buildings that it constructs in North Carolina.

STATEMENT OF CASE

On December 13, 1996 and December 27, 1999 the Taxpayer submitted claims for refund for the amount of sales and use tax that Taxpayer remitted on the purchases of tangible personal property that was used to fabricate building components at the Taxpayer's out-of-state facilities. Thereafter, the Taxpayer brought the building components into North Carolina to perform building contracts. On January 31, 2001, the North Carolina Department of Revenue notified the Taxpayer's representative that the claims for refund were denied. On February 23, 2001, the Taxpayer's representative notified the North Carolina Department of Revenue that the Taxpayer objected to the denial of the refund claims and requested a hearing before the Secretary of Revenue. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision on May 24, 2002 denying Taxpayer's refund claims of sales and use taxes for the periods of November 1, 1993 through June 30, 1996 and January 1, 1997 through August 31, 1999. Pursuant to N.C.G.S. § 105-241.2, Taxpayer's attorney timely filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

ISSUE

The issue to be considered by the Board on review of this matter is stated as follows:

IN ADDITION

Whether the Taxpayer is liable for use tax on its purchases of tangible personal property incorporated into building components at the out-of-state locations for those buildings components that are brought into the State and used in the fulfillment of performance contracts to erect structures.

EVIDENCE

The Tax Review Board reviewed the following evidence presented by the parties at the hearing before the Assistant Secretary of Revenue:

- E-1 Memorandum dated May 16, 2001 from the Secretary of Revenue to the Assistant Secretary of Administrative Hearings.
- E-2 Taxpayer's claim for refund for the period January 1, 1993 through June 30, 1996 and statement of facts and grounds for recovery dated December 13, 1996.
- E-3 Taxpayer's claim for refund for the period January 1, 1997 through August 31, 1999 and statement of facts and grounds for recovery dated December 27, 1999.
- E-4 Letter dated December 18, 1996 from the taxpayer's representative to the Department.
- E-5 Letter dated January 14, 1997 from the Department to the taxpayer.
- E-6 Letter dated April 15, 1997 from the Department to the taxpayer's representative.
- E-7 Letter dated April 22, 1997 from the taxpayer's representative to the Department.
- E-8 Letter dated August 1, 1997 from the Department to the taxpayer's representative.
- E-9 Letter dated September 16, 1997 from the taxpayer's representative to the Department.
- E-10 Letter dated October 20, 1997 from the Department to the taxpayer's representative.
- E-11 Letter dated November 17, 1997 from the taxpayer's representative to the Department.
- E-12 Letter dated December 23, 1997 from the taxpayer's representative to the Department.
- E-13 Letter dated December 31, 1997 from the Department to the taxpayer's representative.
- E-14 Letter dated March 20, 1998 from the Department to the taxpayer's representative.
- E-15 Letter dated December 28, 1999 from the taxpayer's representative to the Department.
- E-16 Letter dated February 3, 2000 from the Department to the taxpayer's representative.
- E-17 Letter dated January 5, 2001 from the taxpayer's representative to the Department.
- E-18 Letter dated January 31, 2001 from the Department to the taxpayer's representative.
- E-19 Letter dated February 23, 2001 from the taxpayer's representative to the Department.
- E-20 Letter dated March 6, 2001 from the Department to the taxpayer's representative.
- E-21 Letter dated June 7, 2001 from the Department to the taxpayer's representative.
- E-22 Letter dated June 22, 2001 from the taxpayer's representative to the Department.
- E-23 Letter dated July 25, 2001 from the Department to the taxpayer's representative.
- E-24 Letter dated September 4, 2001 from the taxpayer's representative to the Department.
- E-25 Letter dated September 10, 2001 from the Department to the taxpayer's representative.
- E-26 Letter dated September 19, 2001 from the taxpayer's representative to the Department.
- E-27 Letter dated October 4, 2001 from the Department to the taxpayer's representative.
- E-28 Letter dated December 6, 2001 from the taxpayer's representative to the Department.
- E-29 Stipulations of Fact.
- E-30 Letter dated December 7, 2001 from the Department to the taxpayer's representative.
- E-31 Letter dated December 13, 2001 from the Department to the taxpayer's representative.
- E-32 Letter dated December 13, 2001 from the Assistant Secretary to the taxpayer's representative.
- E-33 New York Supreme Court Appellate Division, In the Matter of Morton Buildings, Inc. v Chu, dated January 8, 1987.
- E-34 Missouri Administrative Hearing Commission decision, Morton Buildings, Inc. vs. Director of Revenue, dated December 8, 1989.
- E-35 Wisconsin Circuit Court decision, Wisconsin Department of Revenue vs. Morton Buildings, Inc., dated February 10, 1992.
- E-36 Connecticut Supreme Court decision, Morton Buildings, Inc. v. Bannon, dated May 12, 1992.
- E-37 Minnesota Supreme Court decision, Morton Buildings, Inc. v. Commissioner of Revenue, dated August 7, 1992.
- E-38 Texas Court of Appeals decision, Sharp v. Morton Buildings, Inc., dated June 19, 1997.
- E-39 Massachusetts Appeals Court decision, Morton Buildings, Inc. v. Commissioner of Revenue, dated August 28, 1997.
- E-40 Vermont Supreme Court decision, Morton Buildings Inc. v. Vermont Department of Taxes, dated December 26, 1997.
- E-41 Colorado Final Determination, In Re Morton Buildings, Inc., dated January 7, 1999.
- TP-1 Brief of Petitioner Morton Buildings, Inc. dated February 6, 2002.
- TP-2 State v. Roger Blackstock, 314 NC 232, 333 S.E. 2d 245 (1985).
- TP-3 1957 Session Law.

FINDINGS OF FACTS

The Board reviewed and considered the following findings of fact entered by the Assistant Secretary in his decision regarding this matter:

1. Morton seeks a refund for sales and use tax for the periods November 1, 1993 through June 30, 1996 and January 1, 1997 through August 31, 1999 (hereinafter collectively referred to as the "Tax Periods").
2. During the Tax Periods at issue, Morton timely filed all Monthly, Quarterly, and Annual Sales and Use Tax Returns with the Department and tendered timely payments of the taxes shown thereon to be due.
3. On December 18, 1996, pursuant to N.C.G.S. § 105-266.1, Morton filed an Application for Refund of Use Tax paid with the Department of Revenue. This application was amended on September 16, 1997 and November 17, 1997. The refund sought for the period of November 1, 1993 and June 30, 1996 was \$94,280.71 plus interest as provided by law. Morton's request for refund was timely under N.C.G.S. § 105-266(c) and N.C.G.S. § 105-266.1.
4. On December 28, 1999, pursuant to N.C.G.S. § 105-266.1, Morton filed Morton filed an Application for Refund of Use Tax paid with the Department of Revenue. The refund sought for the period of January 1, 1997 and August 31, 1999 was \$171,184.40 plus interest as provided by law. Morton's request for refund was timely under N.C.G.S. § 105-266(c) and N.C.G.S. § 105-266.1.
5. On February 3, 2000, the Department of Revenue denied Morton's Claim for Refund of January 1, 1997 and August 31, 1999.
6. On January 31, 2001 the Department of Revenue denied Morton's Claim for Refund for the period of January 31, 1993 through June 30, 1996 and January 1, 1997 and August 31, 1999.
7. February 23, 2001, pursuant to N.C.G.S. § 105-266.1, Morton submitted a timely request for an administrative hearing for its refund claims.
8. The parties agree that Morton is entitled to a hearing before the Secretary or his designee for the refund claims for the Tax Period pursuant to N.C.G.S. § 105-266.1.
9. Morton's Claims for Refund are for use tax paid on the cost of raw materials purchased and used in its out-of-state factories to manufacture building components and hardware ("Building Components") that were incorporated by Morton into buildings assembled in North Carolina. Morton accrued and paid use tax on the cost of the materials used to manufacture the Building Components.
10. Pass through items ("Pass Through Items") include such items as lumber, cement, nails, staples, insulation, windows, doors and some hardware that were purchased by Morton in final form from suppliers outside of North Carolina. Morton's Claims for Refund state that all use taxes paid during the Tax Periods, less the amount of tax paid for Pass Through Items, should be refunded to Morton on the grounds that the purchases on which those taxes were paid are not subject to use tax under N.C.G.S. § 105-164.6.
11. Morton's second refund claim of \$171,184.20 was based on Morton's estimate that approximately 16.64% of the use taxes paid by Morton during the second refund claim Tax Period related to Pass Through Items. This estimated amount was deducted from the total use tax paid by Morton in calculating the refund amounts shown on the second claim for refund. No such deduction was made from the first claim for refund. More recently, Morton, having computerized its records, was able to determine a more accurate percentage for use tax paid on Pass Through Items for the State of North Carolina, such percentage being 34.3%; therefore the correct amount of the second refund claim at issue in this case is \$134,918.60. The parties agree that 34.3% is a reasonable estimate of the percentage of use taxes paid by Morton during the Tax Periods related to Pass Through Items. Therefore, the correct amount of the first refund claim is \$61,942.43, and the total amount of refund claims in this case is \$196,861.03 plus interest.
12. Taxpayers are allowed a credit against the amount of state and local use tax due in North Carolina for any state and local sales or use tax legally due and paid to another state or local taxing jurisdiction for purchases of tangible personal property stored, used or consumed in North Carolina. Morton has received all such credits to which it is entitled. Such credits are not available with respect to the taxes at issue in this case.
13. The contract between Morton and its customers provides that title does not pass until the building is completed on site by Morton and turned over to the customer. Morton bears the risk of loss for any damage to the Building Components and other materials prior to that time. A copy of the standard form of contract between Morton and its customers is attached as Exhibit A of the Stipulations of Fact (E-29).
14. For purposes of the taxes at issue in this case, Morton operates in the capacity of a construction contractor in North Carolina.
15. Morton's customers own the real estate on which the buildings are erected by Morton.
16. The erection and installation of a Morton building is a permanent improvement to real property in North Carolina for sales and use tax purposes as the contract between Morton and its customers provides for Morton to deliver, erect, and affix a completed building in finished condition to the customer's building site at a lump sum price specified in the contract.
17. The Building Components become a permanent improvement to real estate and when a completed building was transferred to the customer, sales or use tax was not due on the sales price charged by Morton for the building.
18. Morton is a corporation organized under the laws of the State of Illinois. Its principal place of business is located in Morton, Illinois. At all pertinent times Morton was qualified to do business in the state of North Carolina.
19. Morton is engaged in the production, sale, and on-site erection of prefabricated timber-frame, metal-sheathed warehouses, and other buildings for use by farm and industry in approximately 40 states.

20. Morton has no factories in North Carolina at which it manufactures Building Components but Morton does maintain sales offices in North Carolina, from which it occasionally makes retail sales of Building Components. Morton collects and remits North Carolina state and local sales tax upon such sales. Morton makes no claim for refund of these sales taxes.
21. The overall style of the buildings made by Morton is uniform, but various features such as doors, windows, and skylights may be specially ordered and the dimensions of the building itself may be varied to suit the purchaser's needs.
22. Morton purchases the raw materials ("Raw Materials") used in its business in bulk from vendors outside North Carolina and stores them in its own warehouses in various locations outside of North Carolina. The principal Raw Material include, among others, steel and lumber. The Raw Materials are not purchased by Morton for application to any particular customer order, either within or without North Carolina. Determinations of the quantities of Raw Materials to be purchased for any given period are made by Morton based on projections on a factory-by-factory basis based on the prior history of quantities used at the respective factories and considerations of the economy.
23. During the Tax Periods Morton had several factories, all of which were located outside North Carolina. Two of the factories were located in Kenton, Ohio and Gettysburg, Pennsylvania. Morton manufactured Building components for its North Carolina customers only at Morton's factories in Kenton, Ohio and Gettysburg, Pennsylvania. These two factories also made Building Components for customers in at least 16 other states. At its factories, Morton's employees manufactured from Raw Materials the Building Components used in erecting Morton's buildings.
24. When Morton receives an order, the necessary Raw Materials are withdrawn from storage and are consumed and transformed by Morton in the manufacture of finished Building Components in accordance with the customer's specifications and in the manner described in paragraphs 25 through 32 hereto. The manufacturing processes performed by Morton in each of its various out-of-state factories is uniform.
25. The Building Components that are made by Morton include trusses, lower columns, upper columns, purlins, metal panels, overhand rafters and hardware. The manufacturing processes performed by Morton with respect to each of those Building Components are briefly discussed below.
26. To manufacture the trusses, the upper chords and lower chords that will form the truss are run through a machine which cuts the chords to the proper lengths and to the proper angles at both ends of each chord. Lumber webbing, which is attached between the upper and lower chords, is also cut to the correct length and to the correct angles. The trusses (chords and webs) are then transferred to a fixture table where they are positioned "face-up" and metal gusset plates are positioned at each joint. Metal gusset plates are manufactured by Morton from rolled steel. The gusset plates are then stitched into position with a pneumatic gun nailer. The truss is then repositioned "face-down" and additional metal gusset plates are positioned onto the joints on that side of the truss. The truss is then positioned onto a conveyor and transported through a roller press machine. The roller press machine imbeds the metal gusset plates into the wooden chords and webs at the pre-selected positions. The trusses include end trusses and intermediate trusses.
27. To manufacture the lower columns, Morton utilizes preservation treated lumber. The lumber is trimmed to length as required. The lumber is then run through Morton's column machine, a computerized manufacturing process, which indexes the lumber to various prepositioned locations and clamps it from the top and side. While clamped, nails are driven into the column lumber at prescribed angles. The laminating process (indexing, clamping, and nailing) is repeated until the column is completed. The lower columns then proceed to the drilling station and holes are drilled through the bottom of the lower columns at the prescribed locations.
28. To manufacture the upper columns, Morton cuts the lumber to length and cuts the ends of lumber to the prescribed angles. The lumber is then run through Morton's column machine, which indexes the lumber to various prepositioned stops as part of the computerized manufacturing process. The same laminating process (indexing, clamping, and nailing) is used for the upper columns and the lower columns. The upper columns then are affixed with 2-inch by 2-inch blocks on the outside of the upper columns. When assembled together, the upper columns and the lower columns form the main support, sidewall, structural corner, and end columns (collectively, the columns).
29. To manufacture the purlins, Morton feeds the lumber through a machine, a computerized manufacturing process, which cuts each end of the lumber to the correct length, and squares the end of the lumber. Thereafter, metal connector plates, also manufactured by Morton, are positioned at each end of the purlin and are pressed into position. At the same time during the manufacturing process, holes are drilled into the purlins at prepositioned locations so that the purlins may be readily assembled to the truss at the job site. Morton also manufactures wind ties, utilizing the same process as that used to manufacture purlins.
30. To manufacture the metal panels, Morton purchases coils of galvanized cold-rolled steel which are shipped to an independent contractor outside North Carolina for application of coatings to the steel. The rolled steel, with applied coatings, is then delivered to Morton's factories. When a factory receives an order, it manufactures the required interior and exterior metal panels by processing the rolled steel through a machine that rolls channels into the steel to add strength. The steel is then cut to specific length according to the requirements of the particular order. With the application of different paints and produced in various sizes, the metal panels are used for a variety of purposes including, inter alia, exterior sheeting, sidewalls and roof panels.

IN ADDITION

31. To manufacture the overhang rafters, Morton utilizes a manufacturing process essentially similar to that employed in manufacturing the trusses. Anywhere between 2 and 6 pieces of lumber are cut to the proper lengths, and are cut to the proper angles at the ends of each piece of lumber. The overhang rafter is then transferred to a fixture table where it is positioned "face-up" and metal gusset plates, manufactured by Morton, are positioned at the various joints. The metal gusset plates are then stitched into positions with a pneumatic gun nailer. The overhang rafters are then repositioned "face-down" and metal gusset plates are positioned onto a conveyor and transported through a roller press machine which inbeds the metal gusset plates into the wooden members.
32. Morton also manufactures some of the hardware for the buildings at its plants in Goodfield, Illinois, using a variety of metal working machines; an example of manufactured hardware is the gusset plates that are used in the manufacture of trusses. To manufacture gusset plates, galvanized coil steel is run through die machines where the steel is cut to size, straightened and punched to create diagrams with indentations to fit with the trusses.
33. All of the transportation, loading, unloading, and erection of the buildings is performed by Morton's employees or, in certain circumstances, by subcontractors hired by Morton. The Building Components and the Pass Through Items are transported to the building site in North Carolina by Morton's employees in its trucks, typically in one load.
34. The erection-site crew typically consists of three members: a "crew foreman", a "lead man" and a "laborer", all of whom are Morton employees.
35. Generally, it takes Morton's crew less than one week to complete the erection of a building.

CONCLUSIONS OF LAW

The Board reviewed and considered the following conclusions of law made by the Assistant Secretary in his decision regarding this matter:

1. N.C.G.S. § 105-164.6(a) imposes use tax on the storage, use or consumption in this state of tangible personal property purchased inside or outside the state for storage, use or consumption in the state on the purchase price of each item or article of tangible personal property that is stored, used or consumed in the state.
2. N.C.G.S. § 105-164.6(b) provides that an excise tax is imposed on the purchase price of tangible personal property purchased inside or outside the state that becomes a part of a building or other structure in the state. (Typographical error in the Final Decision is corrected as noted in Taxpayer's Petition at page 6).
3. In N.C.G.S. § 105-164.3(49) the General Assembly has broadly defined the term "use", in pertinent part, as meaning "... the exercise of any right or power or dominion whatsoever over tangible personal property by a purchaser thereof....." (Typographical error in the Final Decision is corrected as noted in Taxpayer's Petition at page 6).
4. The purpose of North Carolina's sales and use tax scheme is two-fold. The primary purpose is to generate revenue. The second purpose is to equalize the tax burden on all state residents. In re Assessment of Additional N.C. & Orange Court Use Taxes, 312 N.C. 211, 322 S.E.2d 155 (1984).
5. The purpose of the use tax is to remove the discrimination against local merchants resulting from the imposition of a sales tax, and to equalize the burden of the tax on property sold locally and that purchased outside of the state. *Watson Indus. v. Shaw*, 235 N.C. 203, 69 S.E. 2d 505 (1952).
6. When construing a statute imposing a tax, any ambiguities are resolved in favor of the taxpayer.
7. Articles of tangible personal property that are used to fabricate building components brought into the state are used in the same manner as property not modified or incorporated into components as contemplated under N.C.G.S. § 105-164.6(a).
8. This property becomes part of a building or other structure within the state within the provisions of under N.C.G.S. § 105-164.6(b).
9. The Taxpayer's purchasers of these articles of tangible personal property are subject to the applicable state and county use tax.

DECISION

The scope of administrative review for petitions filed with the Board is governed by G.S. 105-241.2(b2). After the Board conducts a hearing, this statute provides in pertinent part: "The Board shall confirm, modify, reverse, reduce or increase the assessment or decision of the Secretary."

The issue on administrative review to the Board is whether the Taxpayer is liable for use tax on its purchases of tangible personal property incorporated into building components at the out-of-state locations for those buildings components that are brought into the State and used in the fulfillment of performance contracts to erect structures.

N.C. Gen. Stat. § 105-164.6(a), during the period at issue, provided in relevant part as follows:

An excise tax ... is imposed on the storage, use, or consumption in this State of tangible personal property purchased inside or outside the State for storage, use or consumption in this State

N.C. Gen. Stat. § 105-164.6(b) provides in relevant part:

IN ADDITION

An excise tax ... is imposed on the purchase price of tangible personal property purchased inside or outside the State that becomes a part of a building or other structure in the State.

A summary of the facts show that the Taxpayer enters into agreements to fabricate and erect prefabricated buildings at locations in North Carolina. For these transactions, the Taxpayer operates in the capacity of a contractor. Contractors are deemed to be the users or consumers of tangible personal property that is used in the performance of contracts and are liable for the applicable State and county sales or use tax on their purchases of materials so used or consumed.

The Taxpayer fabricates components at out-of-state sites and delivers the components to locations in the State for erection. In the fabrication process, the Taxpayer takes materials that it purchases, such as steel and lumber, and constructs portions of the structures. Among the components fabricated by the Taxpayer are trusses, lower columns, upper columns, purlins, metal panels, overhang rafters, and hardware. The Taxpayer also incorporates items into structures in the same condition that the articles were purchased, such as cement, insulation, windows, and doors.

Taxpayer's contends that the use taxes for which it claims a refund should be refunded on the grounds that the purchases on which those taxes were paid are not subject to use under N.C. Gen. Stat. § 105-164.6. In essence, the Taxpayer contends that it had made no taxable "purchases" because it had originally acquired raw materials, not the building components eventually imported into North Carolina, that the raw materials were "used" outside the state, and that the building components had not been purchased, but rather "manufactured."

From a review of the record, it appears that this is a case of first impression in North Carolina. The Taxpayer has raised this issue in other states and the respective parties submitted for the Assistant Secretary's review decisions from other jurisdictions where the Taxpayer had prevailed in some states and lost in others (See E-33 through E-41).

In his decision, the Assistant Secretary noted that the Minnesota Supreme Court addressed this same issue with a similarly worded statute in Morton Buildings, Inc., Respondent v. Commissioner of Revenue, Relator, 488 N.W. 2d 254 (1992). In that decision, the Court stated that Morton's manufacturing process does not transform the raw materials into something that is not used in Minnesota. Despite their alteration at the factories, the raw materials are still tangible personal property used in Minnesota as parts of Morton's prefabricated buildings. The raw materials, in tier altered form as building components, are used in Minnesota when they are erected into prefabricated buildings. Morton clearly exercises a right or power over the raw materials when it constructs the prefabricated building, and thus Morton 'uses' the materials in Minnesota. In his decision, the Assistant Secretary determined that this reasoning applies in North Carolina and that there is no requirement in the law that the raw materials be unaltered to be subject of the use tax.

The Board, having conducted an administrative hearing, and having considered the Taxpayer's petition, arguments of counsel, the record in this matter, and the Assistant Secretary's final decision determines that the Assistant Secretary properly concluded that the purchases on which taxes were paid are subject to use tax under N.C. Gen. Stat. § 105-164.6. In particular, the articles of tangible personal property that Taxpayer used to fabricate building components brought into this State are used in the same manner as property not modified or incorporated into components as contemplated under N.C.G.S. § 105-164.6(a). The record in this matter does not support the Taxpayer's contention that the raw materials were first used outside of North Carolina before incorporated into buildings within North Carolina. The record shows that the raw materials, such as lumber and steel, were assembled outside of North Carolina only for the business purpose of subsequently incorporating the materials into structures erected in North Carolina.

This Board also determines that the Assistant Secretary properly concluded that this property becomes part of a building or other structure in North Carolina within the provisions of N.C.G.S. § 105-164.6(b). Therefore, the Taxpayer's purchasers of these articles of tangible personal property are subject to the applicable state and county use tax.

WHEREFORE, the Board Orders that the Assistant Secretary of Revenue's final decision sustaining the denial of Taxpayer's claims for refund of sales and use taxes for the periods at issue be and is hereby **confirmed** in every respect.

Made and entered into the 18th day of March 2003.

TAX REVIEW BOARD

Signature _____
Richard H. Moore, Chairman
State Treasurer

Signature _____
Jo Anne Sanford, Member
Chair, Utilities Commission

Signature _____
Noel L. Allen, Appointed Member

STATE OF NORTH CAROLINA

COUNTY OF WAKE

BEFORE THE
TAX REVIEW BOARD

IN THE MATTER OF:

The Proposed Assessments of Additional)
 Income Tax for the Taxable Years 1998 and)
 1999 by the Secretary of Revenue of North)
 Carolina)
)
)
 vs.)
)
Robert E. Busche, Jr.)
 Taxpayer)

**ADMINISTRATIVE DECISION
NUMBER: 406**

THIS MATTER is before the Regular Tax Review Board (hereinafter "Regular Board") upon petition for administrative review filed by **Robert E. Busche, Jr.** (hereinafter "Taxpayer") regarding the Final Decision of Eugene J. Cella, Assistant Secretary for Administrative Hearings of the North Carolina Department of Revenue (hereinafter "Assistant Secretary"), sustaining the proposed assessments of additional individual income tax liability for taxable years 1998 and 1999.

Pursuant to G.S. 105-241.1, assessments proposing additional tax, penalty and accrued interest totaling \$4,512.29 for taxable year 1998 and \$5,300.23 for taxable year 1999 were mailed to the Taxpayer on January 16, 2002. The Taxpayer protested the assessment and filed a request for an administrative hearing. After conducting a hearing, the Assistant Secretary of Revenue entered a Final Decision, on July 2, 2002, that sustained the proposed assessments against the Taxpayer for tax years 1998 and 1999. Pursuant to G.S. 105-241.2, the Taxpayer filed a notice of intent and petition for administrative review of the Assistant Secretary's Final Decision with the Tax Review Board.

Pursuant to G.S. 105-241.2(c), the Board has examined the petition, the records and documents transmitted by the North Carolina Secretary of Revenue pertaining to this matter; and it appearing to the Board that the Taxpayer's petition should be dismissed since the grounds and arguments upon which relief is sought have been repeatedly rejected by the Courts and are deemed lacking in legal merit. Thus, the Board concludes that Taxpayer's petition for administrative review is frivolous and is filed for the purpose of delay.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Taxpayer's petition for administrative review be and is hereby **Dismissed**.

Made and entered into the 20th day of March 2003.

TAX REVIEW BOARD

Signature _____
 Richard H. Moore, Chairman
 State Treasurer

Signature _____
 Jo Anne Sanford, Member
 Chair, Utilities Commission

Signature _____
 Noel L. Allen, Appointed Member

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

CHAPTER 18 - ENVIRONMENTAL HEALTH

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 18A .1300 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 130A-235; HB-1777

Statement of the Subject Matter: Notice of Rule Making Proceedings for rules governing the sanitation of hospitals, nursing homes, rest homes, and other institutions.

Reason for Proposed Action: Environmental Health Services conducts appraisals of the rules and regulations related to the business of this office continuously. A committee has been formed to make temporary changes to the current rules.

Comment Procedures: Comments shall be directed to Jim Hayes, Branch Head, DENR/Environmental Health Services Section, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919) 715-0924, fax (919) 715-4739; email jim.hayes@ncmail.net.

CHAPTER 18 - ENVIRONMENTAL HEALTH

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

Citation to Existing Rule Affected by this Rule-making: 15A NCAC 18A .2700 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 130A-247 through 130A-250

Statement of the Subject Matter: Notice of Rule Making Proceeding for rules governing the sanitation of meat markets.

Reason for Proposed Action: Environmental Health Services conducts appraisals of the rules and regulations related to the business of this office continuously. A committee has been formed to make changes to the current rules.

Comment Procedures: Comments fom the public shall be directed to Kristi Nixon, Regional Environmental Health Specialist, Committee Chair, DENR/Environmental Health Service Section, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (252) 482-1952, fax (252) 482-1952, and email Kristi.nixon@ncmail.net.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

CHAPTER 03 - DIVISION OF MOTOR VEHICLES

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

Citation to Existing Rule Affected by this Rule-making: 19A NCAC 03 - Other rules may be proposed in the course of the rule-making process.

Authority for the Rule-making: G.S. 20-39; 20-287

Statement of the Subject Matter: Rules proposed for adoption establish a civil penalty schedule for non-licensed and licensed motor vehicle dealers.

Reason for Proposed Action: These Rules are proposed for adoption to establish guidelines for the NC Division of Motor Vehicles to implement and administer the motor vehicle dealer civil penalty schedule which is authorized by G.S. 20-287.

Comment Procedures: Comments from the public shall be directed to Emily B. Lee, NCDOT, 1501 Mail Service Center, Raleigh, NC 27699, (919) 733-2520, fax (919) 733-9150, and email elee@dot.state.nc.us.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 29 - LOCKSMITH LICENSING BOARD

Notice of Rule-making Proceedings is hereby given by the NC Locksmith Licensing Board in accordance with G.S. 150B-21.2. The agency shall subsequently publish in the Register the text of

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the rule(s) it proposes to adopt as a result of this notice of rule-making proceedings and any comments received on this notice.

Citation to Existing Rule Affected by this Rule-making: *21 NCAC 29 - Other rules may be proposed in the course of the rule-making process.*

Authority for the Rule-making: *G.S. 74F*

Statement of the Subject Matter: *Renewal requirements, continuing education*

Reason for Proposed Action: *We are a new agency and have no rules governing these requirements. The first licenses will need to be renewed beginning in the fall of 2005.*

Comment Procedures: *Comments from the public shall be directed to Jim Scarborough, PO Box 10972, Raleigh, NC 27605, phone (919) 838-8782, and email j.scarborough@mindspring.com.*

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 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Code Officials Qualification Board/NC Dept. of Insurance intends to amend the rules cited as 11 NCAC 08 .0702 and .0706. Notice of Rule-making Proceedings was published in the Register on February 17, 2003.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: July 22, 2003

Time: 1:00 p.m.

Location: 322 Chapanoke Rd., Raleigh, NC

Reason for Proposed Action: *The amendments reflect changes made in occupancy classifications in the State Building Code.*

Comment Procedures: *Comments from the public shall be submitted to Mike Page, NC Dept. of Insurance, 322 Chapanoke Rd., Raleigh, NC 27603 and phone (919) 661-5880. Comments shall be received through August 14, 2003.*

Fiscal Impact

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

CHAPTER 08 - ENGINEERING AND BUILDING CODES

SECTION .0700 - QUALIFICATION BOARD-STANDARD CERTIFICATE

11 NCAC 08 .0702 NATURE OF STANDARD CERTIFICATE

(a) The Board will issue one or more standard certificates to each code enforcement official demonstrating the qualifications set forth in 11 NCAC 08 .0706 and/or and .0707. Standard certificates are available for each of the following types of qualified code enforcement officials:

- ~~(1) code administrator;~~

Occupancy Classification	Level I	Level II	Level III
Assembly	1 story/7,500 sf	1 story/20,000 sf	Unlimited
Business	1 story/20,000 sf	1 story/60,000 sf Multi-story: 4 stories max/20,000 sf per floor	Unlimited
Education	1 story/7,500 sf	1 story/20,000 sf Multi-story: 2 stories max/20,000 sf per floor	Unlimited
Hazardous	1 story/3,000 sf	1 story/20,000 sf	Unlimited

- ~~(2)(1)~~ building inspector;
- ~~(3)(2)~~ electrical inspector;
- ~~(4)(3)~~ mechanical inspector;
- ~~(5)(4)~~ plumbing inspector; and
- ~~(6)(5)~~ fire inspector.

(b) For each type of enforcement official ~~other than code administrator~~, the Board has established three levels of qualifications. Level I for each type of official represents generally the skill level required for inspection of one-family and two-family dwellings and relatively small structures designed for other purposes. Level II for each type represents the skill level required for inspection of intermediate-sized or more complex buildings. Level III for each type represents the skill level required for inspection of buildings of any size or degree of complexity. [For details, see 11 NCAC 08 .0706(a)].

(c) The holder of a standard certificate is authorized to practice code enforcement only within the inspection area and level described upon the certificate issued by the Board. A code enforcement official may qualify and hold one or more certificates. These certificates may be for different levels in different types of positions.

(d) A code enforcement official holding a certificate indicating a specified level of proficiency in a particular type of position is authorized to hold a position calling for that type of qualification anywhere in the State of North Carolina. A standard certificate must be renewed annually in order to remain valid.

Authority G.S. 143-151.13; 143-151.16.

11 NCAC 08 .0706 REQUIRED QUALIFICATIONS: TYPES AND LEVELS

(a) Qualification Levels

- (1) With respect to all types of code enforcement officials ~~other than code administrator~~, those with Level I, Level II, and Level III certificates shall be qualified to inspect and approve only those types and sizes of buildings specified in the following tables.
- (2) Limitation on maximum number of stories and square feet (sf) of floor area of buildings for Building, Electrical, Mechanical, and Plumbing inspectors, Levels I, II and III:

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	(See Note)	Multi-story: 2 stories max/20,000 sf per floor	
<u>Factory Industrial</u>	1 story/20,000 sf	1 story/60,000 sf Multi-story: 4 stories max/20,000 sf per floor	Unlimited
Institutional	1 story/7,500 sf	1 story/10,000 sf Multi-story: 3 stories max/10,000 sf per floor	Unlimited
Mercantile	1 story/20,000 sf	1 story/60,000 sf Multi-story: 4 stories max/20,000 sf per floor	Unlimited
Residential			
Multi-unit	1 story /7,500 sf	3 stories max/no restriction on floor area	Unlimited
1 & 2 family dwellings, townhouses	Unlimited	Unlimited	Unlimited
Storage	1 story/20,000 sf	1 story/60,000 sf per floor Multi-story: 4 stories max/20,000 sf per floor	Unlimited
<u>Utility and Miscellaneous</u>	<u>Unlimited</u>	<u>Unlimited</u>	<u>Unlimited</u>

See ~~Volume I of NC State Building Code~~ the Building Code for Occupancy classifications.

Note: *Electrical Inspector, Level I shall not be authorized to inspect wiring or equipment in hazardous locations as defined by Article 500 of the National Electrical Code with the exception of service stations and service pumps.

- (3) Limitation on occupancy classifications of buildings for Fire Inspectors, Levels I, II and III:

CERTIFICATION LEVELS FOR FIRE INSPECTORS

LEVEL I: - OCCUPANCY:

- Business
- ~~Small Assembly - 1 story, 20,000 sf~~
- Mercantile
- Residential
- Storage S-2
- Factory Industrial F-2
- Utility and Miscellaneous
- Excluding Highrise *
- No Plan Review

LEVEL II: - OCCUPANCY:

- Everything in Level I
- ~~Large Assembly - unlimited~~
- Educational
- Factory Industrial F-1
- Storage S-1
- Plan Review of all Occupancies in Level II
- Excluding Highrise *

LEVEL III: - OCCUPANCY:

- Everything in Levels I and II
- Hazardous
- Institutional
- Highrise
- Plan Review of all Occupancies (Unlimited Occupancies)

* The term "excluding highrise" is listed because some of the acceptable occupancies for the levels could be located in a

~~highrise (defined in Volume I of the State Building Code)~~
building, building (defined in the Building Code).

(b) Whenever a provision of the Rules in this Section requires a supporting letter (maximum of two per level) from a supervisor, the letter(s) shall be notarized, shall state the supervisor's qualifications (i.e., what type and level of certificate or license the supervisor holds), shall state that the applicant has worked under the supervisor's direct supervision for a specified period of time, and shall recommend certification of the applicant as a specified type and level of inspector upon satisfaction of other required qualifications. The supervisor shall describe the name, floor area, and number of stories of the buildings worked on by the applicant and shall describe the work performed by the applicant.

(c) References in the Rules in this Section to professional engineer or licensed engineer means engineers licensed according to G.S. 89C. References in the Rules in this Section to registered architect means architects licensed according to G.S. 83A. References to licensed building, residential, electrical, heating, plumbing, and fire sprinkler contractors means contractors licensed according to G.S. 87. References to licensed "building" contractors do not include licensed "residential" contractors. Specialty licenses issued by these Boards are not acceptable. Applicants with licenses from other states or countries must provide a copy of heir license and documentation that the requirements of the other state are at least equivalent to the statewide licensing requirements of North Carolina licensing boards.

(d) Whenever a provision of the Rules in this Section requires the possession of a license other than those certificates that are issued by the Board, if that license is inactive, the applicant must provide documentation from the appropriate licensing board that the applicant's license is inactive.

(e) Whenever a provision of the Rules in this Section requires inspector experience on a minimum number of buildings or systems, the experience must include all the inspections typically performed by an inspector during construction of the building or system. Inspections do not have to be performed on the same building.

(f) Whenever a provision of the Rules in this Section requires a high school education or other education and experience qualifications, the Board may approve equivalent qualifications. Whenever a provision of the Rules in this Section requires the possession of a diploma or degree from an accredited college, university, or trade school, accredited shall mean accreditation from a regional accrediting association, for example, Southern Association of Colleges and Schools.

(g) Every applicant shall:

- (1) provide documentation that the applicant possesses a minimum of a high school education or a high school equivalency certificate (GED); and
- (2) provide notarized certification by a city or county manager, clerk, or director of inspection department that the applicant is the administrative head of or is performing "code enforcement", as defined in G.S. 143-151.8(a)(3), as an employee of that city or county; or provide certification by the head of the Engineering and Building Codes Division of the North Carolina Department of Insurance that the applicant is performing "code enforcement", as defined in G.S. 143-151.8(a)(3), for a state department or agency; and
- (3) make a grade of at least 70 on courses developed by the Board. Successful completion is defined as attendance of a minimum of 80 percent of the hours taught and achieving a minimum score of 70 percent on the course exam. All applicants must successfully complete a law and administration course. Applicants for certification in building, electrical, fire prevention, mechanical, or plumbing inspection at levels I, II, or III must successfully complete a course in that area and level (or a higher level). For the purpose of entry into the state examination, courses must be completed within five years of the exam in Subparagraph (g)(4) of this Rule. These courses shall be administered and taught in the N.C. Community College System or other educational agencies accredited by a regional accrediting association; for example, Southern Association of Colleges and Schools; and
- (4) achieve a passing grade of 70 percent on the written examination administered by the Board in each level of certification unless exempt by 11 NCAC 08 .0707; and
- (5) meet at least one of the education and experience requirements in Paragraphs (g) through (v) of this Rule for the area and level of certification sought.

(h) Building Inspector, Level I. A standard certificate, building inspector, Level I, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a one year diploma in building construction from an accredited college or an equivalent apprenticeship or trade school program in building construction;
- (2) a four-year degree from an accredited college or university;
- (3) at least six months of building inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified building inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (4) at least one year of building design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer, registered architect, or licensed building contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (5) a license as a building contractor;
- (6) at least two years of building construction or inspection experience while working under a licensed building contractor;
- (7) at least two years of experience with a probationary building inspection certificate inspecting building construction on a minimum of two Level I buildings;
- (8) at least two years of experience as an active principal in a home building firm and who has a license as a residential contractor and with construction experience on a minimum of two Level I buildings; or
- (9) at least two years of construction experience as a subcontractor or employee of a residential contractor in the building trades or work in building construction on a minimum of two Level I buildings and under the direct supervision of a licensed residential contractor who at that time had at least three years of experience.

(i) Building Inspector, Level II. A standard certificate, building inspector, Level II, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as a professional engineer or registered architect;
- (2) a four year degree from an accredited college or university in architecture, civil or architectural engineering, or building construction;
- (3) a four-year degree from an accredited college or university and at least two years of design,

- (4) construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified building inspector II or III, licensed engineer, registered architect, or intermediate or unlimited licensed building contractor;
 - (4) a two year degree from an accredited college or university in architecture, civil or architectural engineering, or building construction and at least two years of building design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified building inspector II or III, licensed engineer, registered architect, or intermediate or unlimited licensed building contractor;
 - (5) an intermediate or unlimited license as a building contractor with building construction experience on a minimum of two Level II buildings;
 - (6) at least three years of building inspection experience including one year of inspection experience with a probationary Level II building certificate on a minimum of two Level II buildings while working under the direct supervision of a certified building inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (7) at least three years of building design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer, registered architect, or licensed intermediate or unlimited building contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
 - (8) at least two years of experience with a probationary Level II building inspection certificate inspecting construction of a minimum of two Level II buildings.
- (j) Building Inspector, Level III. A standard certificate, building inspector, Level III, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as a professional engineer or registered architect with design, construction, or inspection experience on Level III buildings and specialization in architecture, civil or architectural engineering, or fire protection engineering;
 - (2) a four-year degree from an accredited college or university in architecture, civil or architectural engineering, or building construction and at least one year of building design, construction, or inspection experience while working under the direct supervision of a certified building inspector III, licensed engineer, registered architect, or licensed

- (3) unlimited building contractor, at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;
 - (3) a two-year degree from an accredited college or university in architecture, civil or architectural engineering or building construction and at least three years of building design, construction, or inspection experience while working under the direct supervision of a certified building inspector III, licensed engineer, registered architect, or licensed unlimited building contractor with at least one year at the level of supervisor in responsible charge of a minimum of two Level III buildings;
 - (4) an unlimited license as a building contractor with experience on a minimum of two Level III buildings;
 - (5) at least four years of inspection experience including one year of building inspection experience with a probationary Level III building certificate on a minimum of two Level III buildings while working under the direct supervision of a certified building inspector III, with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (6) at least four years of building design, construction, or inspection experience while working under the direct supervision of a licensed engineer, registered architect, or licensed unlimited building contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
 - (7) at least one year of experience with a probationary Level III building inspection certificate inspecting the construction of a minimum of two Level III buildings.
- (k) Electrical Inspector, Level I. A standard certificate, electrical inspector, Level I, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a one-year diploma in electrical construction from an accredited college or an equivalent apprenticeship or trade school program in electrical construction;
 - (2) a four-year degree from an accredited college or university;
 - (3) at least six months of electrical inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified electrical inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;

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- (4) at least one year of electrical design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer or licensed electrical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (5) a restricted (one family dwelling) license or license as an electrical contractor;
 - (6) at least two years of electrical installation or inspection experience while working under a licensed electrical contractor; or
 - (7) at least two years of experience with a probationary electrical inspection certificate inspecting electrical installations on a minimum of two Level I buildings.
- (l) Electrical Inspector, Level II. A standard certificate, electrical inspector, Level II, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as a professional engineer;
 - (2) a four-year degree from an accredited college or university in electrical engineering or electrical construction;
 - (3) a four-year degree from an accredited college or university and at least two years of electrical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified electrical inspector II or III, licensed engineer, or intermediate or unlimited licensed electrical contractor;
 - (4) a two-year degree from an accredited college or university in electrical engineering or electrical construction and at least two years of electrical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified electrical inspector II or III, licensed engineer, or intermediate or unlimited licensed electrical contractor;
 - (5) an intermediate or unlimited license as an electrical contractor with experience on a minimum of two Level II buildings;
 - (6) at least three years of electrical inspection experience including one year of inspection experience with a probationary Level II electrical inspection certificate on a minimum of two Level II buildings while working under the direct supervision of a certified electrical inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (7) at least three years of electrical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer or licensed intermediate or unlimited electrical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
 - (8) at least two years of experience with a probationary Level II electrical inspection certificate inspecting electrical installations on a minimum of two Level II buildings.
- (m) Electrical Inspector, Level III. A standard certificate, electrical inspector, Level III, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a license as a professional engineer with, design, construction, or inspection experience on Level III buildings and specialization in electrical engineering;
 - (2) a four year degree from an accredited university in electrical engineering or electrical construction and at least one year of electrical design, installation, or inspection experience while working under the direct supervision of a certified electrical inspector III, licensed engineer, or licensed unlimited electrical contractor at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;
 - (3) a two-year degree from an accredited college or university in electrical engineering or electrical construction and at least three years of electrical design, installation, or inspection experience while working under the direct supervision of a certified electrical inspector III, licensed engineer, or licensed unlimited electrical contractor with at least one year at the level of supervisor in responsible charge of a minimum of two Level III buildings;
 - (4) an unlimited license as an electrical contractor with experience on a minimum of two Level III buildings;
 - (5) at least four years of electrical inspection experience including one year of inspection experience with a probationary Level III electrical certificate on a minimum of two Level III buildings while working under the direct supervision of a certified electrical inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (6) at least four years of electrical design, construction, or inspection experience while working under the direct supervision of a licensed engineer or licensed unlimited electrical contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
 - (7) at least one year of experience with a probationary Level III electrical inspection

certificate inspecting the electrical installations of a minimum of two Level III buildings.

(n) Mechanical Inspector, Level I. A standard certificate, mechanical inspector, Level I, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a one-year diploma in mechanical construction from an accredited college or an equivalent apprenticeship or trade school program in mechanical construction;
- (2) a four-year degree from an accredited college or university;
- (3) at least six months of mechanical inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified mechanical inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (4) at least one year of mechanical design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer or licensed Class I mechanical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (5) an H-1, H-2, or H-3 Class I license as a mechanical contractor;
- (6) at least two years of mechanical installation or inspection experience while working under a Class I H-1, H-2, or H-3 licensed mechanical contractor; or
- (7) at least two years of experience with a probationary mechanical inspection certificate inspecting mechanical installations a minimum of two Level I buildings.

(o) Mechanical Inspector, Level II. A standard certificate, mechanical inspector, Level II, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as a professional engineer;
- (2) a four-year degree from an accredited college or university in mechanical engineering or mechanical construction;
- (3) a four-year degree from an accredited college or university and at least two years of mechanical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified mechanical inspector II or III, licensed engineer, or licensed Class I mechanical contractor;
- (4) a two-year degree from an accredited college or university in mechanical engineering or mechanical construction and at least two years of mechanical design, construction, or inspection experience on a minimum of two

Level II buildings while working under the direct supervision of a certified mechanical inspector II or III, licensed engineer, or licensed Class I mechanical contractor;

- (5) an H-1, H-2, or H-3 Class I license as a mechanical contractor with experience on a minimum of two Level II buildings;
- (6) at least three years of mechanical inspection experience including one year of inspection experience with a probationary Level II mechanical inspection certificate on a minimum of two Level II buildings while working under the direct supervision of a certified mechanical inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (7) at least three years of mechanical design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer or licensed Class I H-1, H-2, or H-3 mechanical contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
- (8) at least two years of experience with a probationary Level II mechanical inspection certificate inspecting mechanical installations on a minimum of two Level II buildings.

(p) Mechanical Inspector, Level III. A standard certificate, mechanical inspector, Level III shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as a professional engineer with, design, construction, or inspection experience on Level III buildings and specialization in mechanical engineering;
- (2) a four-year degree from an accredited university in mechanical engineering or mechanical construction and at least one year of mechanical design, installation, or inspection experience while working under the direct supervision of a certified mechanical inspector III, licensed engineer, or licensed Class I H-1, H-2, and H-3 mechanical contractor at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;
- (3) a two-year degree from an accredited college or university in mechanical engineering or mechanical construction and at least three years of mechanical design, installation, or inspection experience while working under the direct supervision of a certified mechanical inspector III, licensed engineer, or licensed Class I H-1, H-2, and H-3 mechanical contractor with at least one year at the level of supervisor in responsible charge of a wide

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- (4) variety of types of minimum of two Level III buildings;
 - (4) H-1, H-2, and H-3 Class I licenses as a mechanical contractor with experience on a minimum of two Level III buildings;
 - (5) at least four years of mechanical inspection experience including one year of inspection experience with a probationary Level III mechanical certificate on a minimum of two Level III buildings while working under the direct supervision of a certified mechanical inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (6) at least four years of mechanical design, construction, or inspection experience while working under the direct supervision of a licensed engineer or licensed Class I H-1, H-2, and H-3 mechanical contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
 - (7) at least on year of experience with a probationary Level III mechanical inspection certificate inspecting the mechanical installations of a minimum of two Level III buildings.
- (q) Plumbing Inspector, Level I. A standard certificate, plumbing inspector, Level I, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
- (1) a one-year diploma in plumbing construction from an accredited college or an equivalent apprenticeship or trade school program in plumbing construction;
 - (2) a four-year degree from an accredited college or university;
 - (3) at least six months of plumbing inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified plumbing inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (4) at least one year of plumbing design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer or licensed Class I plumbing contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (5) a Class I license as a plumbing contractor;
 - (6) at least two years of plumbing installation or inspection experience while working under a licensed Class I plumbing contractor; or
 - (7) at least two years of experience with a probationary plumbing inspection certificate inspecting plumbing installations a minimum of two Level I buildings.
 - (r) Plumbing Inspector, Level II. A standard certificate, plumbing inspector, Level II, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:
 - (1) a license as a professional engineer;
 - (2) a four-year degree from an accredited college or university in mechanical engineering or mechanical or plumbing construction;
 - (3) a four-year degree from an accredited college or university and at least two years of plumbing design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified plumbing inspector II or III, licensed engineer, or licensed Class I plumbing contractor;
 - (4) a two year degree from an accredited college or university in mechanical engineering or mechanical or plumbing construction and at least two years of plumbing design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified plumbing inspector II or III, licensed engineer, or licensed Class I plumbing contractor;
 - (5) a Class I license as a plumbing contractor with experience on a minimum of two Level II buildings;
 - (6) at least three years of plumbing inspection experience including one year of inspection experience with a probationary Level II plumbing inspection certificate on a minimum of two Level II buildings while working under the direct supervision of a certified plumbing inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
 - (7) at least three years of plumbing design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer or licensed Class I plumbing contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
 - (8) at least two years of experience with a probationary Level II plumbing inspection certificate inspecting plumbing installations on a minimum of two Level II buildings.
 - (s) Plumbing Inspector, Level III. A standard certificate, plumbing inspector, Level III shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

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- (1) a license as a professional engineer with design, construction, or inspection experience on Level III buildings and specialization in mechanical engineering;
- (2) a four-year degree from an accredited university in mechanical engineering or mechanical or plumbing construction and at least one year of plumbing design, installation, or inspection experience while working under the direct supervision of a certified plumbing inspector III, licensed engineer, or licensed Class I plumbing contractor at least at the level of supervisor in responsible charge of a minimum of two Level III buildings;
- (3) a two-year degree from an accredited college or university in mechanical engineering or plumbing construction and at least three years of plumbing design, installation, or inspection experience while working under the direct supervision of a certified plumbing inspector III, licensed engineer, or licensed Class I plumbing contractor with at least one year at the level of supervisor in responsible charge of a wide variety of types of minimum of two Level III buildings;
- (4) a Class I license as a plumbing contractor with experience on a minimum of two Level III buildings;
- (5) at least four years of plumbing inspection experience including one year of inspection experience with a probationary Level III plumbing certificate on a minimum of two Level III buildings while working under the direct supervision of a certified plumbing inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (6) at least four years of plumbing design, construction, or inspection experience while working under the direct supervision of a licensed engineer or licensed Class I plumbing contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
- (7) at least one year of experience with a probationary Level III plumbing inspection certificate inspecting the plumbing installations of a minimum of two Level III buildings.
- (2) a four-year degree from an accredited college or university;
- (3) at least six months of fire inspection experience with a probationary certificate on a minimum of two Level I buildings while working under the direct supervision of a standard certified fire inspector I, II, or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (4) at least one year of fire protection design, construction, or inspection experience on a minimum of two Level I buildings while working under the direct supervision of a licensed engineer, registered architect, or licensed building, electrical, or fire sprinkler contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (5) a license as a fire sprinkler contractor;
- (6) at least two years of construction or inspection experience in fire protection systems while working under a licensed building, electrical, or fire sprinkler contractor;
- (7) at least two years of experience with a probationary fire inspection certificate conducting fire inspections in a minimum of two Level I buildings;
- (8) at least four years of experience in fire suppression activities for a city, county, volunteer, or other governmental fire department; or
- (9) Firefighter Level II certification under the North Carolina State Fire and Rescue Commission with at least one year of fire inspection experience in Level I buildings.

(u) Fire Inspector, Level II. A standard certificate, fire inspector, Level II, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

(t) Fire Inspector, Level I. A standard certificate, fire inspector, Level I, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a one year diploma in fire science from an accredited college or an equivalent apprenticeship or trade school program in fire science;
- (2) a four year degree from an accredited college or university in architecture, civil or architectural engineering, building construction, or fire science;
- (3) a four-year degree from an accredited college or university and at least two years of fire protection design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a certified ~~building~~fire inspector II or III, licensed engineer, registered architect, intermediate or unlimited licensed building contractor, or licensed fire sprinkler contractor;
- (4) a two-year degree from an accredited college or university in architecture, civil or architectural engineering, building construction, or fire science and at least two

years of fire protection design, construction, or inspection experience on a minimum of two Level II building fire protection systems while working under the direct supervision of a certified fire inspector II or III, licensed engineer, registered architect, intermediate or unlimited licensed building contractor, or licensed fire sprinkler contractor;

- (5) a license as a fire sprinkler contractor with experience on a minimum of two Level II buildings;
- (6) at least three years of fire inspection experience including one year of inspection experience with a probationary Level II fire certificate on a minimum of two Level II buildings while working under the direct supervision of a certified fire inspector II or III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (7) at least three years of fire protection system design, construction, or inspection experience on a minimum of two Level II buildings while working under the direct supervision of a licensed engineer, registered architect, licensed intermediate or unlimited building contractor, or licensed fire sprinkler contractor with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (8) at least two years of experience with a probationary Level II fire inspection certificate conducting fire inspections in a minimum of two Level II buildings; or
- (9) completion of the basic, intermediate, and advanced classes of the North Carolina Fire Prevention School with at least three years of fire inspection experience in Level II buildings.

(v) Fire Inspector, Level III. A standard certificate, fire inspector, Level III, shall be issued to any applicant who complies with Paragraphs (b) through (g) of this Rule and who provides documentation that the applicant possesses one of the following education and experience qualifications:

- (1) a license as a professional engineer or registered architect with design, construction, or inspection experience on Level III buildings and specialization in architecture, civil or architectural engineering, or fire protection engineering;
- (2) a four-year degree from an accredited college or university in civil, architectural, or fire protection engineering and at least one year of fire inspection experience while working under a certified fire inspector III, licensed engineer, registered architect, or licensed fire sprinkler contractor on a minimum of two Level III buildings;
- (3) a two-year degree from an accredited college or university in civil, architectural, or fire protection engineering and at least three years

of fire protection design, installation, or inspection experience while working under the direct supervision of a certified fire inspector III, licensed engineer, registered architect, licensed unlimited building contractor, or licensed fire sprinkler contractor with at least one year in responsible charge of a minimum of two Level III buildings;

- (4) a license as a fire sprinkler contractor with experience on a minimum of two Level III buildings;
- (5) at least four years of fire inspection experience in fire protection systems including one year of inspection experience with a probationary Level III fire inspection certificate on a minimum of two Level III buildings while working under the direct supervision of a certified fire inspector III with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule;
- (6) at least four years of fire protection system design, construction, or inspection experience while working under the direct supervision of a licensed engineer, registered architect, licensed intermediate or unlimited building contractor, or licensed fire sprinkler contractor, two years of which have been performed at the level of supervisor in responsible charge of a minimum of two Level III buildings with a supporting letter from the applicant's supervisor which complies with Paragraph (b) of this Rule; or
- (7) at least one year of experience with a probationary Level III fire inspection certificate conducting fire inspections in a minimum of two Level III buildings.

Authority G.S. 143-151.12(1); 143-151.13.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 64 - BOARD OF EXAMINERS OF SPEECH AND LANGUAGE PATHOLOGISTS AND AUDIOLOGISTS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Examiners for Speech and Language Pathologists and Audiologists intends to adopt the rules cited as 21 NCAC 64 .0212-.0213. Notice of Rule-making Proceedings was published in the Register on February 17, 2003.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: June 13, 2003

Time: 9:00 a.m.

Location: Hampton Inn, 715 Sullivan Rd., Statesville, NC

Reason for Proposed Action: Numerous questions from other agencies

Comment Procedures: *Comments from the public shall be directed to John C. Randall, NC Board of Examiners for Speech and Language Pathologists and Audiologists, PO Box 16885, Greensboro, NC 27416-0885. Comments shall be received through July 14, 2003.*

Fiscal Impact

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

SECTION .0200 - INTERPRETATIVE RULES

21 NCAC 64.0212 SUPERVISION OF HEARING SCREENING

(a) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the words "audiometric screening" used in G.S. 90-294 (6) and (f) as the presentation of pure tone stimuli at fixed intensity across the speech frequency region using pass/fail criteria requiring no interpretation by the person administering the screening. Objective methods of screening auditory function based upon new technology may be used subject to the conditions specified in this Rule.

(b) Fixed-intensity, pure tone audiometric screening performed within the context of an individual speech-language evaluation or assessment is within the scope of practice of licensed speech and language pathologists, and by extension allowed for registered speech-language pathology assistants, provided that it can be demonstrated that the licensee or registered assistant has received formal instruction and practicum in audiometric screening as part of his or her training program.

(c) Licensed speech and language pathologists, registered speech-language pathology assistants, and unlicensed persons may perform screenings of hearing sensitivity and auditory function on the general public or specific populations provided that the individuals performing such screenings have been properly trained by a licensed audiologist or physician in the specific screening techniques for that screening and provided that supervision of the screening program is formally vested in a licensed audiologist or physician.

(d) Screening programs using objective or technology-based hearing screening techniques in place of traditional fixed-frequency, pure tone audiometry (for example, automated auditory brainstem response tests, otoacoustic emission screening instruments, microprocessor audiometers, etc.), even though such techniques and instruments may yield a pass-fail indication, require the oversight and supervision of a licensed audiologist or physician.

(e) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the word "supervision" in G. S. 90-294(6) and (f) to include the following elements:

- (1) Selecting the appropriate calibrated screening instrument to be used for the target population;
- (2) Providing sufficient initial and refresher training in the specific screening methods and instruments to be used to ensure that the screeners have sufficient knowledge of the screening methods, understand the limitations

of the screening program, and can demonstrate proper operation of the equipment;

(3) Assuring that records are maintained describing the training received by the screeners and the names of attendees, the nature of any evaluation and any referral made;

(4) Providing sufficient evaluation of the test site for ambient sound and to ensure that the screeners are following the screening protocol. It is not expected that the audiologist or physician needs to provide on-site supervision 100% of the time. The amount of supervision may vary significantly depending upon the nature of the screening program and the education and previous experience of the persons performing the screening; and

(5) Reviewing samples of screening records to confirm that the screening has conformed to the program standards.

(e) Licensed speech and language pathologists and registered speech-language pathology assistants may not instruct others in the techniques of hearing screening or supervise hearing screening programs. These aspects of a hearing screening program are within the scope of practice of licensed audiologists and physicians.

Authority G.S. 90-304(a)(3).

21 NCAC 64.0213 SUPERVISION OF SPEECH SCREENING

(a) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the word "testing" used in G.S. 90-293 (7) as including pathology screening, but not language screening.

(b) Licensed speech and language pathologists, registered speech-language pathology assistants, and unlicensed persons may perform speech screenings on the general public or specific populations provided that the individuals performing such screenings have been properly trained by a licensed speech and language pathologist in the specific screening techniques for that screening and provided that supervision of the screening program is formally vested in a licensed speech and language pathologist.

(c) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the word "supervision" in G. S. 90-301A to include the following elements:

- (1) Selecting the appropriate screening instrument to be used for the target population;
- (2) Providing sufficient initial and refresher training in the specific screening methods and instruments to be used to ensure that the screeners have sufficient knowledge of the screening methods, understand the limitations of the screening program, and can demonstrate proper operation of the equipment;
- (3) Assuring that records are maintained describing the training received by the screeners and the names of attendees, the nature of any evaluation and any referral made;

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- (4) Providing sufficient evaluation of the test site to ensure that the screeners are following the screening protocol. It is not expected that the speech and language pathologist needs to provide on-site supervision 100% of the time. The amount of supervision may vary significantly depending upon the nature of the screening program and the education and previous experience of the persons performing the screening; and
(5) Reviewing samples of screening records to confirm that the screening has conformed to the program standards.

None

CHAPTER 02 - COMMUNITY COLLEGES

SUBCHAPTER 02C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0100 - TRUSTEES AND COLLEGES

23 NCAC 02C .0107 ESTABLISHING SERVICE AREAS FOR COLLEGES

The State Board shall assign service areas to colleges for providing education and training services. The initial assignment of service areas to colleges shall take into account the past and present patterns of providing services, including existing agreements between colleges. The State Board may reassign a service area upon the recommendation of the System President. The recommendation shall be based upon an analysis of the service areas involved, including consultation with the presidents of the colleges and the county commissioners of the county(ies) that are affected. A college may offer education and training in an area assigned to another college only by using criteria set forth in Rule 23 NCAC 02E .0604. written agreement between the colleges. This written agreement is to be filed with the System President. A board of trustees may delegate to its president authority to enter into short-term written agreements. Agreements beyond one year in length shall be approved by the boards of trustees of the colleges involved and filed with the System President.

Authority G.S. 115D-5.

SUBCHAPTER 02D - COMMUNITY COLLEGES: FISCAL AFFAIRS

SECTION .0200 - STANDARD STUDENT FEES

23 NCAC 02D .0201 AUTHORITY TO ESTABLISH TUITION AND FEES

(a) Authority to Charge. All tuition and registration fees charged to students for applying to or attending any college of the system shall be approved by the State Board. No tuition rate or fee schedule shall be charged without resolution of the State Board specifying the purpose for which the fee is charged.

(b) Time Due and Deferred Payment. Tuition, registration fees and required academic fees are due and payable at the time of the student's registration. The college shall, with approval of the board of trustees, prescribe written procedures to permit short-term deferred payment or payment in installments; provided, however, that no student shall be permitted to graduate or to register for a new semester unless payment of such outstanding balance has been guaranteed in writing by a financially responsible person or organization. Colleges are authorized to withhold transcripts of grades pending resolution of the outstanding obligations. This statement shall not be construed to prohibit a college's local governing board from adding more stringent provisions.

(c) Establishing Additional Optional Fees:

- (1) Generic Fees. Generic fees are fees charged to a group of students, such as students in a specific program or to all students, e.g., lab

Authority G.S. 90-304(a)(3).

TITLE 23 - DEPARTMENT OF COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina State Board of Community Colleges intends to adopt the rule cited as 23 NCAC 02E .0405 and amend the rules cited as 23 NCAC 02C .0107; 02D .0201-.0202, .0323-.0324; 02E .0204, .0604. Notice of Rule-making Proceedings was published in the Register on August 15, 2002 and October 15, 2002.

Proposed Effective Date: April 1, 2004

Public Hearing:

Date: May 23, 2003

Time: 10:00 a.m.

Location: State Board Room, Caswell Building, 200 W. Jones St., Raleigh, NC

Reason for Proposed Action:

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

23 NCAC 02D .0201 - To clarify the circumstances under which the Board of Trustees of community colleges may charge fees to students attending community colleges.

23 NCAC 02D .0202 - To delete the provision concerning the student activity fee.

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

23 NCAC 02E .0405 - To clarify the conditions under which community colleges may provide training for public law enforcement agencies, public fire and rescue agencies and emergency medical services agencies.

Comment Procedures: Comments from the public shall be directed to Clay T. Hines, 200 W. Jones St., Raleigh, NC 27603, phone (919) 733-7051, fax (919) 733-0680, and hinesc@ncccs.cc.nc.us. Comments shall be received through June 2, 2003.

Fiscal Impact

- State
Local
Substantive (>=\$5,000,000)

fees, computer usage fees, publications fees, equipment use fees, etc. Activity and parking fees are discussed in Rule .0202(d) of this Section.

(A) In the event that the president and the governing board of a college determine that the college needs to charge a generic student fee other than the fees already authorized by state statute or State Board rule the president of the college shall file with the State Board through the System President, a request for authorization which shall include the following documentation:

- (i) a resolution of the local governing board requesting authorization of the fee, stating the exact rate of payment proposed; and
- (ii) a brief explanation and justification stating the purpose of the fee.

(B) A generic fee requires both local and State Board approval.

Optional fees are fees charged to curriculum and continuing education students for items not covered by tuition and registration fees. Funds derived from optional fees shall be deposited in the institutional account and shall be used to directly benefit students. The president shall report any optional fee established by the Board of Trustees to the System Office's Business and Finance Division on an annual basis. Boards of Trustees may establish on an annual basis the following optional fees:

- (1) Specific fees. Fees charged to students for items required for individual courses that are considered to be in addition to normal supplies and material the college provides for students such as tools, uniforms, insurance, and certification fees;
- (2) Student Activity fee. A fee charged to students to support student activities. The student activity fee shall not exceed the maximum established by the State Board;
- (3) Computer Use and Technology fee. A fee charged to students to support the procurement, operations and repair of computers and other instructional technology including supplies and materials that accompany use of the technology. This fee shall not exceed the maximum established by the State Board; and
- (4) Parking fee. A fee charged to a student for use of the college's parking facilities.

~~(C)(d) Any additional optional fee established by a college which is approved by the State Board is considered a separate charge to curriculum students and shall not be credited as part payment of tuition, tuition or registration fees.~~

~~(D) Receipts collected from any special student fee shall be deposited as State~~

~~Board regulation shall direct, consistent with state law.~~

~~(E)(e) Nothing in any rule shall be construed to condone or to authorize any practice of depositing receipts from any student tuition or other student fees in a special fund account at a college, except the student activity optional fee receipt receipts.~~
~~(F)(f) Optional fee Generic fees receipts shall not be used for any purpose other than that for which the fee was approved, e.g., computer equipment could not be purchased for staff members using generic optional fee receipts.~~

~~(2) Specific Fees. Specific fees are those fees charged to students for items required for specific courses which are considered to be in addition to the normal supplies and materials the college would provide. Examples of supplies and materials required which the college would not normally be expected to provide would include tools, uniforms, insurance, and certification fees.~~

~~(A) Specific fees shall be approved by the college Board of Trustees. Such fee shall reflect the actual cost of items received by the student.~~

~~(B)(g) All fees shall be deposited into a proper college account and all disbursements shall be made by the college business office.~~

~~(C) In the event that there is any question as to whether a fee is generic or specific, the guidelines for generic fees, which require both local and state board approval, are applicable.~~

~~(3)(h) Students shall be informed of all approximate fees for a course at the time they enroll. Such fees shall be kept to a minimum consistent with the State Board philosophy to keep student costs as low as possible.~~

~~(4)(i) Family Relocation Tuition. Community Colleges may charge in-state tuition to certain out-of-state students who are members of families that were transferred to this state by businesses, industries, or civilian families transferred by the military, for employment. Prior to enrollment, the student shall fulfill the following conditions:~~

- (1) Demonstrate that his or her family moved to this state within the preceding 12 months;
- (2) Present a letter to the institution from the employer on corporate letterhead stating that the employee, through whom the student claims this benefit, relocated to this state for employment with that business, industry, or military establishment;
- (3) Present proof of his or her familial relationship with the employee unless the student is the employee;
- (4) Live in the same house with the employee unless the student is the employee;
- (5) Present evidence that he or she is financially dependent on the employee through which he or she claims this benefit unless the student is the employee; and
- (6) Comply with the requirements of the Selective Service System, if applicable.

The number of students eligible for in-state tuition under this rule at a college shall not exceed one percent of the average number of out-of-state students, rounded up to the next whole number, at the college in the academic year immediately preceding enrollment. Eligible students shall be granted this benefit on a first-come, first-serve basis.

Authority G.S. 115D-5; 115D-39; 116-143.1; S.L. 1995, c. 625.

23 NCAC 02D .0202 TUITION AND FEES FOR CURRICULUM PROGRAMS

(a) Tuition:

- (1) Student Residence Classification. The classification of students for tuition purposes shall be made pursuant to G.S. 115-D-39, 116-143.1, 116.43.3, and 116-143.5.
- (2) Tuition Rates In-State:
 - (A) A general and uniform tuition rate is established by the State Board as set by the Legislature for full-time curriculum students per semester or term for North Carolina residents.
 - (B) A North Carolina resident who is a part-time student shall pay a per credit hour rate for curriculum instruction, as established by the State Board, for such tuition in any semester or term as set by the Legislature.
- (3) Learning Laboratory. No tuition fees charged.
- (4) Tuition Creditable Upon Transfer of Student. When a student has paid the required tuition at a college and is given permission to transfer to another college within the system during the academic semester for which the tuition was paid, the college from which the student transfers shall issue to him a statement certifying the amounts of tuition that have been paid, and the college to which he is transferring shall accept such certificate in lieu of requiring payment again. [Also, see 23 NCAC 2D .0323(b)(2) which provides information regarding reporting student hours in membership.]
- (5) Tuition Student Enrolled in More Than One College. Where a student desires to enroll for the same semester at two or more colleges of the system, the total amount of tuition and fees may be paid to the student's "home" college. "Home" college is defined as the college which the student initially registers for classes. The home college shall, in that case, assume responsibility for arranging with the other college or colleges for enrolling the student in appropriate classes without further charge. Such arrangement shall be made by exchange of letters between the colleges involved. Student membership hours for instruction received shall, in any event, be reported by the college in which the respective instruction occurred.

(6) Tuition Rates Out-of-State:

- (A) Any full-time curriculum student who is an out-of-state resident shall pay tuition fees as established by the State Board for each semester or term as set by the Legislature.
- (B) An out-of-state resident who is a part-time student shall pay a per credit hour rate for curriculum instruction as established by the State Board as set by the Legislature.

(7) Tuition Waivers:

- (A) Individuals taking courses in the categories set forth in G.S. 115D-5(b) shall be exempt from tuition.
- (B) College Staff Members. Full-time college staff members employed for a 9, 10, 11, or 12 month term may enroll in one curriculum or extension course per semester, as well as the summer term, in the system without payment of tuition or registration fee.
- (C) Basic Law Enforcement Training Program (BLET) for law enforcement officers. All law enforcement officers employed by a municipal, county, state, or federal law enforcement agency when taking courses in a state-mandated BLET training program, are exempt from tuition payment. Also, trainees shall be exempt from BLET class tuition if a letter of sponsorship from a state, county, or municipal law enforcement agency is on file at the college.
- (D) Individuals meeting the criteria set forth in G.S. 115B-2 shall not be charged tuition.
- (E) High school students taking courses pursuant to Paragraphs (c) (concurrent enrollment) and Paragraph (e) (cooperative high school programs) of 23 NCAC 2C .0305 of this chapter shall not be charged tuition.

(b) Pre-Enrollment Deposit. When a prospective student has made application for admission and has been accepted, the student may be required to pay an advance deposit up to a maximum of fifteen dollars (\$15.00). This advance payment is not refundable unless the class(es) fails to materialize. This advance payment shall be deposited to the State Treasurer and credited against the full tuition due from the student during the regular registration period.

(c) Late Enrollment Fee. A late enrollment fee up to five dollars (\$5.00) may be charged curriculum students registering after the specific closing date of registration, with such fees becoming state funds.

~~(d) Student Activity Fee. Colleges may establish a student activity fee which may include a parking fee or a scheduled vehicle registration fee for those students who require parking facilities. The maximum amount that may be charged for the~~

PROPOSED RULES

~~student activity fee shall not exceed thirty eight dollars (\$38.00) per student per fiscal year. Students may be assessed a parking fee, vehicle registration fee, or similar fee separate from the student activity fee; however, when such a fee is added to the student activity fee, the sum shall not exceed thirty eight dollars (\$38.00) per student per fiscal year. Funds derived from collection of a student activity fee shall be accounted for and expended under standing procedures and regulations adopted by the local board of trustees. Any expenditure from the fund must directly benefit students.~~

~~(e)(d)~~ Tuition Refunds.

- (1) A refund shall not be made except under the following circumstances:
 - (A) A 100 percent refund shall be made if the student officially withdraws prior to the first day of class(es) of the academic semester or term as noted in the college calendar. Also, a student is eligible for a 100 percent refund if the class in which the student is officially registered fails to "make" due to insufficient enrollment.
 - (B) A 75 percent refund shall be made if the student officially withdraws from the class(es) prior to or on the official 10 percent point of the semester.
 - (C) For classes beginning at times other than the first week (seven calendar days) of the semester a 100 percent refund shall be made if the student officially withdraws from the class prior to the first class meeting. A 75 percent refund shall be made if the student officially withdraws from the class prior to or on the 10 percent point of the class.
 - (D) A 100 percent refund shall be made if the student officially withdraws from a contact hour class prior to the first day of class of the academic semester or term or if the college cancels the class. A 75 percent refund shall be made if the student officially withdraws from a contact hour class on or before the tenth calendar day of the class.
- (2) To comply with applicable federal regulations regarding refunds, federal regulations supersede the state refund regulations stated in this Rule.
- (3) Where a student, having paid the required tuition for a semester or term, dies during that semester (prior to or on the last day of examinations of the college the student was attending), all tuition and fees for that semester or term may be refunded to the estate of the deceased.
- (4) For a class(es) which the college collects receipts which are not required to be deposited into the State Treasury account, the college shall adopt local refund policies.

~~(f)(e)~~ Military Tuition Refund - Upon request of the student, each college shall:

- (1) Grant a full refund of tuition and fees to military reserve and national Guard personnel called to active duty or active duty personnel who have received temporary or permanent reassignments as a result of military operations then taking place outside the state of North Carolina that make it impossible for them to complete their course requirements; and
- (2) Buy back textbooks through the colleges' bookstore operations to the extent possible. Colleges shall use distance learning technologies and other educational methodologies to help these students, under the guidance of faculty and administrative staff, complete their course requirements.

Authority G.S. 115D-5; 115D-39; 116-143.1; P.L. 93-508; S.L. 1995, c. 625.

SECTION .0300 - BUDGETING: ACCOUNTING: FISCAL MANAGEMENT

23 NCAC 02D .0323 REPORTING OF STUDENT HOURS IN MEMBERSHIP FOR CURRICULUM CLASSES

(a) Academic Semester. The academic semester for all credit courses shall be designed so that all classes may be scheduled to include the number of instructional hours shown in the college catalog and the approved curriculum program of study compliance document and reported for FTE purposes (~~see 23 NCAC 02E .0201(a) and 23 NCAC 02D .0301(a)(3) (see Paragraph (a) of 23 NCAC 2E.0201 and Subparagraph (a)(3) of Rule .0301 of this Subchapter).~~ Instructional hours include scheduled class and laboratory sessions as well as examination sessions. Length of semesters or courses may vary as long as credit hours are assigned consistent with 23 NCAC 01A.0101 and as long as membership hours are reported consistent with the other provisions of this Rule. Also, note 23 NCAC 02D .0327 which identifies the reporting periods for submission of Institution Class Reports.

(b) Regularly-Scheduled Classes.

- (1) A class is regularly scheduled if it meets all of the following criteria:
 - (A) assigned definite beginning and ending time;
 - (B) specific days the class meets is predetermined;
 - (C) specific schedule is included on the Institution Master Schedule or other official college documents; and
 - (D) class hours are assigned consistent with college catalog and curriculum standard requirements;
 - (E) identified class time and dates are the same for all students registered for the class excluding clinical or cooperative;
 - (i) Classes which have a regularly scheduled lecture

section and a non-regularly scheduled laboratory section will satisfy this criteria. The census date (10% point) must be determined from the regularly scheduled portion of the class. Verification of student participation in the laboratory section of the class must be available for review.

- (ii) A student is considered absent if that student did not attend during the specified times or days the class was scheduled to meet.
- (2) A student is considered to be in class membership when the student meets all of the following criteria:
 - (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in G.S. 115D-5(b);
 - (B) attended one or more classes prior to or on the 10 percent point in the class;
 - (C) has not withdrawn or dropped the class prior to or on the 10 percent point.
- (3) Student Membership Hour. A student membership hour is one hour of scheduled class or laboratory for which the student is enrolled. A college shall provide a minimum of 50 minutes of instruction for each scheduled class hour. A college ~~must~~ shall provide sufficient time between classes to accommodate students changing classes. A college may not report more hours per student than the number of class hours scheduled in the approved curriculum program of study compliance document.
- (4) Calculation of Student Membership Hours for Regularly Scheduled Classes. Student membership hours are obtained by multiplying the number of students in membership at the 10 percent point in the class by the total number of hours the class is scheduled to meet for the semester as stated in the college catalog and the approved curriculum program of study compliance document (see 23 NCAC 02E .0204(4)). ~~(see Subdivision (4) of 23 NCAC 2E.0204(4))~~.
- (5) Maintenance of Records of Student Membership Hours. Accurate attendance records shall be maintained for each class through the 10 percent point of the class. Colleges are encouraged to maintain attendance records for the duration of all classes. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits (see the

Public Records Retention & Disposition Schedule for Institutions in the Community College System). Student membership hours shall be summarized in the Institution's Class Report and certified by the president or designee. For classes identified as non-traditional delivery (see Subparagraph (e)(1) of this Rule), documentation of student contact prior to the 10 percent point shall be maintained in the same manner as the attendance records mentioned in this record.

- (c) Non-Regularly Scheduled Classes.
 - (1) A non-regularly scheduled class may include any or all of the following:
 - (A) a class where a definitive beginning and ending time is not determined; or
 - (B) a class offered in a learning laboratory type setting (see 23 NCAC 02D .0324(b)(6)) ~~(see Subparagraph (b)(6) of Rule .0324 of this Subchapter~~ for definition of learning laboratory); or
 - (C) a class self-paced in that the student progresses through the instructional materials at the student's own pace, and can complete the courses as soon as the student has successfully met the educational objectives. Classes offered as independent study are generally offered in this manner; or
 - (D) a class in which a student may enroll during the initial college registration period or in which the student may be permitted to enroll at any time during the semester; or
 - (E) any class not meeting all criteria for a regularly scheduled class, as shown in Subparagraph (b)(1) of this Rule, is considered to be a non-regularly scheduled class for reporting purposes. Note classes defined as non-traditional (see Paragraph (e) of this Rule) which are identified as a separate student hour reporting category and are not subject to the above provisions in Paragraph (c).
 - (2) Definition of Student Membership. A student is considered to be in class membership when the student meets the following criteria:
 - (A) enrolled as evidenced by payment of the applicable tuition and fees, or obtained a waiver as defined in Paragraph (a) of Rule .0202 of this Subchapter; and
 - (B) attended one or more classes.
 - (3) Definition of a Student Contact Hour. For non-regularly scheduled classes, student contact ~~hours~~ hour is defined as actual hours of student attendance in a class or lab. 60 minutes shall constitute an hour.

- (4) Calculation of Student Contact Hours for Non-Regularly Scheduled Classes. For these classes, actual time of class attendance for each student determined to be in membership shall be reported. Student contact hours for these classes are the sum of all the hours of actual student attendance in a class in a given semester.
- (5) Maintenance of Records of Student Contact Hours. Accurate attendance records shall be maintained for each class of the nature described in this Rule through the entire semester. Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits (see the Public Records Retention & Disposition Schedule for Institutions in the Community College System). Student contact hours shall be summarized in the Institution's Class Report and certified by the president or designee.
- (d) Skills Laboratory or Computer Tutorial Laboratory. Individualized instructional laboratories are similar to learning laboratories (see 23 NCAC 02D .0324(b)(6)) (see Subparagraph (b)(6) of Rule .0324 of this Subchapter) except the participants are curriculum students. Skills labs or computer tutorial labs are remedial or developmental in nature and intended for students who are experiencing academic difficulty in a particular curriculum course. A skills laboratory instructor shall be qualified in the single-subject area of the skills laboratory. A computer tutorial laboratory coordinator need not be qualified in any of the subject area(s) provided in a computer tutorial laboratory. Student contact hours may be reported for budget/FTE when students are required by their instructor to attend either of the laboratories for remedial or developmental work and when the skills laboratory instructors or computer tutorial coordinators are paid with curriculum instructional funds.
- (1) Documentation of instructor referral shall be maintained for auditing purposes. Maintain documentation until released by audit.
 - (2) Homework assignments shall not be reported for budget/FTE. (See 23 NCAC 02D .0325(a); Note 23 NCAC 2D .0325(a);
 - (3) Calculation of Student Contact Hours for Skills Laboratory or Computer Tutorial Laboratory. For these classes, actual time of class attendance shall be reported; 60 minutes shall constitute an hour. Student hours generated for these types of classes are the sum of all the hours of actual student attendance in a class in a given semester.
- (e) Classes Identified as Curriculum Non-Traditional Delivery.
- (1) Definition. Due to the methodology by which instruction is delivered, non-traditional delivery classes are not consistent with the definitions of regularly scheduled or non-regularly scheduled classes described in this Rule. Non-traditional delivery classes are defined as those classes which are offered through media such as internet, telecourses,

- videocassette and other electronic media excluding classes offered via North Carolina Information Highway. Radio, television and other media as well as through correspondence or newspapers. The instruction delivered is pre structured into identifiable units. Non-traditional delivery classes do not include classes identified as independent study which are not media based, or are not correspondence or newspaper based.
- (2) For those classes identified as non-traditional delivery, student attendance in class or in an orientation session, submission of a written assignment or submission of an examination, is the basis for the determination of class membership at the 10 percent point of the class. Student membership hours earned in non-traditional delivery classes shall be calculated by multiplying the number of students in membership, as defined in the prior sentence, times the number of hours assigned to the class in official college documents. For these classes, the number of hours assigned shall be consistent with the credit hours assigned according to 23 NCAC 01A .0101, as well as the appropriate curriculum standard.
 - (3) Non-traditional instruction delivered is pre-structured into identifiable units. Non-traditional delivery classes do not include classes identified as independent study which are not media based.
 - (3) Rule 23 NCAC 2E.0604 specifies that if two or more colleges jointly offer credit courses or programs, the colleges shall enter into a written collaborative agreement. Individual courses developed by a college or jointly by colleges and delivered via media are not subject to this rule (Collaborative Agreements) as long as a degree, diploma, or a certificate is not awarded. In this situation, the sending college shall have an approved curriculum standard and an approved Program of Study. The receiving college may offer the course by virtue of the sending college's approval.
 - (4) Service area agreement requirements, as set forth in Rule 23 NCAC 2C.0107, shall be adhered to when a class meets physically as a group supervised by faculty or staff outside the sending college's service area.
 - (5) Sharing FTE's for Non-traditional Courses Jointly Offered by Colleges:
- Definitions**
- (A) Sending college The college that designs, develops, and delivers the course and makes it available to students on any one or several media. Instructional cost incurred by a college for courses delivered in a non-traditional format is eligible to generate budget/FTE. Instructional cost includes salaries, fringe benefits,

supplies, materials, access fees, license fees, broadcast and other directly related production costs. Students who register through the sending college are included in the college's student hour reports which generate FTE.

(B) ~~Receiving college. The college providing physical facilities or services for students enrolled in courses originating from the sending college. The college incurs a lesser instructional cost than the sending college and is eligible to report 50 percent of the FTE generated by the students who register through the receiving college. The remaining FTE of the students registered through the receiving college may be reported by the sending college unless otherwise agreed.~~

(C) ~~In situations where there are multiple sending colleges or multiple receiving colleges or both, the FTE split noted in Subdivision (e)(5)(B) of this Rule is applied.~~

(f) Curriculum Student Work Experience and Clinical Practice. The following criteria apply to the reporting guidelines for students enrolled in curriculum work experience and clinical practice courses, exclusive of work station based in plant training as specified in 23 NCAC 02E .0402. Examples of student work experience include cooperative education, practicums, and internships. Clinical practice refers to work experience in health occupation programs.

- (1) Student membership hours for student work experience and clinical practice shall not generate budget/FTE without prior approval by the ~~System Office~~ system office of such activities through the appropriate curriculum standard.
- (2) Work Experience. Work experience for curriculum courses shall earn budget/FTE at the 100 percent rate of assigned work experience hours and shall not exceed a maximum of 320 membership hours per student per semester.
 - (A) These classes shall be coordinated by college personnel paid with college instructional funds and may be located in one or more sites.
 - (B) These classes shall be specified in the approved curriculum of the college consistent with the applicable curriculum standard (see 23 NCAC 02E .0204 (3)(a)(ii)(D) (see Paragraph (a) and Subdivision (3)(D) of 23 NCAC 2E.0204).
 - (C) The college shall maintain documentation of all student work experience hours.

(C) ~~Formal or informal apprenticeship on the job training activities of a cooperative skill training program funded under a special project allocation shall not earn budget/FTE. Classroom instruction funded with college regular budget instructional dollars for related or supplemental instruction as required by formal or informal apprenticeship programs shall earn budget/FTE.~~

- (3) Clinical Practice. Curriculum clinical practice, as defined in 23 NCAC 01A .0101, refers to clinical experience in health occupation programs which shall earn budget/FTE at the 100 percent rate for student membership hours. The applicable classes shall be consistent with the curriculum standards policy as noted in Paragraph (a) of 23 NCAC 02E .0204. The maximum membership hours in a clinical experience which may be reported per student in a given semester is 640. These classes shall be supervised by college instructors who are qualified to teach in the particular program and are paid with college instructional funds. These classes may be located in one or more sites.

Authority G.S. 115D-5; S.L. 1995, c.625.

23 NCAC 02D .0324 REPORTING OF STUDENT HOURS IN MEMBERSHIP FOR CONTINUING EDUCATION CLASSES

(a) Regularly Scheduled Classes.

- (1) Definition of Regularly Scheduled Class. A class is considered to be regularly scheduled if it meets all of the following criteria:
 - (A) Assigned definite beginning and ending time;
 - (B) Specific predetermined days and time the class meets;
 - (C) Specific schedule is included on the Institution Master Schedule or other official college documents;
 - (D) Class hours are assigned consistent with State Board approval and official college documents; and
 - (E) Identified class time and dates are the same for all students registered for the class excluding clinical or work experience:
 - (i) Classes which have a regularly scheduled lecture section and a non-regularly scheduled laboratory section will satisfy the criteria. The census date (10% point) shall be determined from the regularly scheduled portion of the class. Verification of student participation in the

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- laboratory section of the class shall be available for review; or
- (ii) A student is considered absent if that student did not attend during the specified times or days the class was scheduled to meet.
- (2) Definition of Student Membership. A student is considered to be in class membership when the student meets all of the following criteria:
 - (A) Enrolled as evidenced by payment of the applicable registration fees, or obtained a waiver as defined in Paragraph (a) of Rule .0203 of this Subchapter;
 - (B) Attended one or more classes held prior to or on the 10 percent point in the class; and
 - (C) Has not withdrawn or dropped the class prior to or on the 10 percent point of the class.
- (3) Student Membership Hour. A student membership hour is one hour of scheduled class or laboratory for which the student is enrolled. A college shall provide a minimum of 50 minutes of instruction for each scheduled class hour. A college shall not report more hours per student than the number of class hours scheduled in official college documents. Colleges shall not report more hours per ~~student student, excluding non-traditional classes,~~ than the number of hours specified in the instructor's contract.
- (4) Calculation of Student Membership Hours for Regularly Scheduled Classes. Student membership hours are obtained by multiplying the number of students in membership at the 10 percent point in the class by the total number of hours the class is scheduled to meet ~~for the semester~~ as stated in official college documents.
- (5) Maintenance of Records of Student Membership Hours. Accurate attendance records shall be maintained for each class, ~~class throughout the entire class or semester.~~ Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits as provided in the Public Records Retention & Disposition Schedule for Institutions in the Community College System. Student membership hours shall be summarized in the Institution's Class Report and certified by the president or designee. ~~For classes identified as non-traditional delivery, (see Paragraph (c) of this Rule) documentation of student contact hours prior to the 10 percent point shall be maintained in the same manner as the attendance records mentioned in this Rule.~~
- (b) Non-Regularly Scheduled Classes.
 - (1) Definition of Non-Regularly Scheduled Class. A non-regularly scheduled class may include any or all of the following:
 - (A) a class where a definitive beginning and ending time is not determined; or
 - (B) a class offered in a learning laboratory type setting (see Subparagraph (b)(6) of this Rule for definition of learning laboratory); or
 - (C) ~~A class is self-paced class in that~~ where the student progresses through the instructional materials at the student's own pace, and can complete the courses as soon as the student has successfully met the educational objectives. Classes offered as independent study are generally offered in this manner; or
 - (D) A class in which a student may enroll during the initial college registration period or in which a student may be permitted to enroll at any time during the semester; or
 - (E) Any class not meeting all criteria for a regularly scheduled class as shown in Subparagraph (a)(1) of this Rule is considered to be a non-regularly scheduled class for reporting purposes. Note classes defined as non-traditional (see Paragraph (c) of this Rule) which are identified as a separate student hour reporting category and are not subject to the provisions in Paragraph (b) of this Rule.
 - (2) Definition of Student Membership. A student is considered to be in class membership when the student meets the following criteria:
 - (A) Enrolled as evidenced by payment of the applicable registration fees, or obtained a waiver as defined in Paragraph (a) of Rule .0203 of this Subchapter; and
 - (B) Attended one or more classes.
 - (3) Definition of Student Contact Hour. A student contact hour is one hour of student attendance in a class for which the student is in membership as defined in Subparagraph (b)(2) of this Rule. Sixty minutes shall constitute an hour.
 - (4) Calculation of Student Contact Hours for Non-Regularly Scheduled Classes. For these classes, actual time of class attendance for each student determined to be in membership shall be reported. Sixty minutes shall constitute an hour. Student contact hours for these classes are the sum of all the hours of actual student attendance in a class in a given semester.

- (5) Maintenance of Records of Student Contact Hours. Accurate attendance records shall be maintained for each ~~class, class throughout the entire class or semester.~~ Attendance records shall be signed by the instructor or lead instructor, verifying their accuracy, and shall be maintained by the college until released from all audits as provided in the Public Records Retention and Disposition Schedule for Institutions in the Community College System. Student membership hours shall be summarized in the Institution's Class Report and certified by the president or designee. ~~For classes identified as non-traditional delivery, (see Paragraph (c) of this Rule), documentation of student contact hours prior to the 10 percent point shall be maintained in the same manner as the attendance records mentioned in this Rule.~~
- (6) Learning Laboratory. Learning laboratory programs consist of self-instruction using programmed text, audio-visual equipment, and other self-instructional materials. A learning laboratory coordinator has the function of bringing the instructional media and the student together on the basis of objective and subjective evaluation and of counseling, supervising, and encouraging persons working in the laboratory. Contact hours shall be calculated as noted in Subparagraph (b)(4) of this Rule.
- (c) Classes Identified as Extension Non-Traditional Delivery.
- (1) Definition. Due to the methodology by which instruction is delivered, non-traditional delivery classes are not consistent with the definitions of regularly scheduled or non-regularly scheduled classes described in this Rule. Non-traditional delivery classes are defined as those classes which are offered through media such as internet, telecourses, videocassette and other electronic media excluding classes offered via North Carolina Information Highway, radio, television and other media as well as through correspondence or newspapers. ~~The instruction delivered is pre-structured into identifiable units. Non-traditional delivery classes do not include classes identified as independent study which are not media based or are not correspondence or newspaper based.~~
- (2) For those classes identified as non-traditional delivery, student attendance in class or in an orientation session, submission of a written assignment or a submission of examination is the basis for the determination of class membership at the 10 percent point of the class. Student membership hours in such classes shall be calculated by multiplying the number of students in membership, as defined in the prior sentence, times the number of instructional hours delivered which ~~is~~ are determined as follows:
- (A) Determine the number of hours of instruction delivered via non-traditional ~~delivery,~~ delivery; and
- (B) Add the number of hours of class ~~meetings, meetings, review sessions;~~
- ~~(C) For those non-traditional continuing education classes which are approved by a local college staff review committee and the Director of Continuing Education Services for the System Office additional hours above the level noted in Parts (c)(2)(A) and (B) in this Rule may be approved commensurate with course content.~~
- ~~(3) Individual non-traditional classes which may be developed by a college or jointly by colleges and sent via media are subject to service area agreement requirements as set forth in Rule 23 NCAC 2C .0107 when the class meets physically as a group and is supervised by faculty or staff, outside the sending college's service area.~~
- ~~(4) Sharing FTE's for Non-traditional Classes Jointly Offered by Colleges~~
- Definitions**
- (A) ~~Sending college~~ The college that designs, develops, and delivers the course and makes it available to students on any one or several media. ~~Instructional cost incurred by a college for courses delivered in a non-traditional format is eligible to generate budget/FTE. Instructional cost includes salaries, fringe benefits, supplies, materials, access fees, license fees, broadcast and other directly related production costs. Students who register through the sending college shall be included in that college's student hour reports which generate FTE.~~
- (B) ~~Receiving college~~ The college offering physical facilities or services for students enrolled in courses originating from the sending college. ~~This college incurs a lesser instructional cost than the sending college and is eligible to report 50 percent of the FTE generated by the students who register through the receiving college. The remaining FTE of the students registered through the receiving college may be reported by the sending college unless otherwise agreed upon.~~
- ~~(C) In situations where there are multiple sending colleges or multiple receiving colleges or both, the FTE split noted~~

~~in Part (c)(4)(B) of this Rule is applied.~~

(d) Extension Student Work Experience and Clinical Practice. The following criteria apply to the reporting guidelines for students enrolled in extension work experience and clinical practice courses, exclusive of work station based in plant training as specified in 23 NCAC 02E .0402. To be eligible for approval, these work experience or clinical practice courses shall be required by a licensing agency or accrediting body. Examples of student work experience include cooperative education, practicums, and internships.

(1) Student membership hours for student work experience and clinical practice shall not generate budget FTE without prior approval of such activities by the ~~System Office, system office.~~ Approval of student work experience and clinical practice approved prior to November 1, 1983 by the System Office shall be resubmitted for reapproval. When the number of approved student work experience membership hours increases by more than 30 percent per course, a new request for approval shall be submitted.

(2) Work Experience. Work experience for extension courses shall earn budget/FTE at the 100 percent rate for student membership hours, as required by a licensing agency or accrediting ~~body, body,~~ and shall not exceed a ~~maximum of 320 membership hours per student per semester. A maximum of 320 hours may be reported per student per year for a given licensing or accrediting requirement.~~

(A) — These classes shall be coordinated by college personnel paid with college instructional funds and may be located in one or more sites.

(B) — ~~Formal or informal apprenticeship on the job training activities of a cooperative skill training program funded under a special project allocation shall not earn budget/FTE. Classroom instruction funded with regular budget instructional dollars for related or supplemental instruction as required by formal or informal apprenticeship programs shall earn budget/FTE.~~

(3) Clinical Practice. Clinical practice, as defined in 23 NCAC 01A .0101, refers to clinical experience in health occupation courses which shall earn budget/FTE at the 100 percent rate for student membership hours, as defined in Subparagraph (a)(3) of this Rule, and shall not exceed a licensing agency or accrediting body requirements, maximum of 320 membership hours per student per semester unless North Carolina licensure or program accreditation standards require additional hours. In such cases, ~~work activity hours shall earn budget/FTE at the 100 percent rate in accordance with licensure or program~~

~~accreditation standards up to a maximum of 640 membership hours per student per semester.~~ These classes shall be supervised by college instructors who are qualified to teach in the particular program and are paid with college instructional funds. These classes may be located in one or more sites.

(e) The Adult High School Diploma work experience shall not exceed 160 hours per student.

Authority G.S. 115D-5; S.L. 1995, c. 625.

SUBCHAPTER 02E - EDUCATIONAL PROGRAMS

SECTION .0200 - CURRICULUM PROGRAMS

23 NCAC 02E .0204 COURSES AND STANDARDS FOR CURRICULUM PROGRAMS

A common course library and curriculum standards for associate degree, diploma, and certificate programs shall be as follows:

- (1) Common Course Library.
 - (a) The Common Course Library shall contain the following elements for all curriculum program credit and developmental courses approved for the North Carolina Community College System.
 - (i) Course prefix;
 - (ii) Course number;
 - (iii) Course title;
 - (iv) Classroom hours and laboratory, clinical, and work experience contact hours, if applicable;
 - (v) Credit hours;
 - (vi) Prerequisites and corequisites, if applicable; and
 - (vii) Course description consisting of three sentences.
 - (b) A numbering system for the Common Course Library is as follows:
 - (i) The numbers 050-099 shall be assigned to developmental courses.
 - (ii) The numbers 100-109 and 200-209 shall be assigned to courses approved only at the certificate and diploma level. These courses shall not be included in associate degree programs.
 - (iii) The numbers 110-199 and 210-299 shall be used for courses approved at the associate degree level. These courses may also be included in certificate and diploma programs.

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- (c) The college shall use the course information (prefix, number, title, and classroom, laboratory, clinical, work experience, and credit hours; prerequisites and corequisites; and course description) as listed in the Common Course Library.
 - (i) The college may add a fourth sentence to the course description to clarify content or instructional methodology.
 - (ii) A college may divide courses into incremental units for greater flexibility in providing instruction to part-time students or to provide shorter units of study for abbreviated calendars. The following criteria shall apply to courses divided into incremental units:
 - (A) A curriculum program course may be divided into two or three units, which are designated with an additional suffix following the course prefix and number.
 - (B) The units shall equal the entire course of instruction, without omitting any competencies.
 - (C) The combined contact and credit hours for the units shall equal the contact and credit hours for the course.
 - (D) If the course is a prerequisite to another course, the student shall complete all component parts before enrolling in the next course.
 - (E) The components of a split curriculum program course shall not be used to supplant training for occupational extension.
- (d) The ~~Department of~~ Community College System shall revise and maintain courses in the Common Course Library.
 - (2) Development of Curriculum Standards. The standards for each curriculum program title shall be established jointly by the ~~Department of~~ Community College System Office and the institution(s) proposing to offer the curriculum program based on criteria established by the State Board of Community Colleges. Changes in curriculum standards shall be approved by the State Board of Community Colleges. Requests for changes in the standards shall be made to the State Board of Community Colleges under the following conditions:
 - (a) A request is made to the ~~Department of~~ Community College System Office to change the standards for a curriculum program title; and
 - (b) A two-thirds majority of institutions approved to offer the curriculum program title concur with the request.
 - (3) Criteria for Curriculum Standards. The standards for each curriculum program title shall be based on the following criteria established by the State Board of Community Colleges for the awarding of degrees, diplomas, and certificates.
 - (a) Associate in Applied Science Degree. The Associate in Applied Science Degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 76 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.
 - (i) The associate in applied science degree curriculum program shall include a minimum of 15 semester hours of credit from general education courses selected from the Common Course Library, including six hours in communications, three hours in humanities or fine arts, three hours in social or behavioral sciences, and three hours in natural sciences or mathematics.
 - (ii) The associate in applied science degree curriculum program shall include a minimum of 49 semester hours of credit from major

courses selected from the Common Course Library. Major courses are those which offer specific job knowledge or skills.

(A) The major hours category shall be comprised of identified core courses or subject areas or both which are required for each curriculum program. Subject areas or core courses shall be based on curriculum competencies and shall teach essential skills and knowledge necessary for employment. The number of credit hours required for the core shall not be less than 12 semester hours of credit.

(B) The major hours category may also include hours required for a concentration of study. A concentration of study is a group of courses required beyond the core for a specific related employment field. A concentration shall include a minimum of 12 semester hours, and the majority of the course credit hours shall be unique to the concentration.

(C) Other major hours shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with

the exception of prefixes listed in the core or concentration.

(D) Work experience, including cooperative education, practicums, and internships, may be included in an associate in applied science degree curriculum program up to a maximum of eight semester hours of credit. Under a curriculum standard specifically designed for select associate degree programs, work experience shall be included in a curriculum up to a maximum of 16 semester hours of credit. The select associate degree programs shall be based on a program of studies registered under the North Carolina Department of Labor Apprenticeship programs. Only eight semester hours of credit of work experience shall earn budget FTE. The Community College System Office shall implement the Pilot Work Experience Project and shall submit to the State Board of Community Colleges a report, including the number of students involved and associated costs, one year after this Rule as revised is effective.

- (iii) An associate in applied science degree curriculum program may include a maximum of seven other required hours to complete college graduation requirements. These courses shall be selected from the Common Course Library.
- (iv) Selected topics or seminar courses may be included in an associate in applied science degree program up to a maximum of three semester hours of credit. Selected topics or seminar courses shall not substitute for required general education or major core courses.
- (b) Associate in Arts and Associate in Science Degrees. The Associate in Arts and Associate in Science Degrees shall be granted for planned programs of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.
 - (i) The associate in arts and associate in science degree programs shall include a minimum of 44 semester hours of general education core courses selected from the Common Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:
 - (A) six semester hours of English composition.
 - (B) 12 semester hours of humanities or fine arts, with four courses to be selected from at least three of the following disciplines: music, art, drama, dance, foreign languages, interdisciplinary
 - (ii) The associate in arts and associate in science degree programs shall include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from courses in the Common Course Library which have been approved for transfer to the University of North Carolina constituent institutions. Courses in health, physical education, college
- (C) 12 semester hours of social or behavioral sciences, with four courses to be selected from at least three of the following disciplines: anthropology, economics, geography, history, political science, psychology, and sociology. At least one course shall be a history course.
- (D) 14 semester hours of natural sciences or mathematics; six hours shall be mathematics courses; eight hours shall be natural sciences courses, including accompanying laboratory work, selected from among the biological and physical science disciplines.

humanities, literature, philosophy, and religion. At least one course shall be a literature course. Three semester hours credit in speech or communication may be substituted for three semester hours credit in humanities or fine arts.

orientation, or study skills may be included. Selected topics or seminar courses up to a maximum of three semester hours credit may be included. Work experience, including cooperative education, practicums, and internships, may be included up to a maximum of one semester hour of credit for career exploration.

(A) The associate in arts degree curriculum program shall include a minimum of 20 semester hours of credit from general education and pre-major courses which have been approved for transfer.

(B) The associate in science degree curriculum program shall include a minimum of 14 semester hours in mathematics or science and professional courses which have been approved for transfer.

(c) Associate in Fine Arts Degree. The Associate in Fine Arts Degree shall be granted for planned programs of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.

(i) The associate in fine arts degree programs shall include a minimum of 28 semester hours of general education core courses selected from the Common Course Library and approved for transfer to the University of North Carolina constituent institutions. The

general education core shall include:

(A) six semester hours of English composition.

(B) six semester hours of humanities or fine arts, with two courses to be selected from two of the following disciplines: music, art, drama, dance, foreign languages, interdisciplinary humanities, literature, philosophy, and religion. At least one course shall be a literature course. Three semester hours credit in speech or communication may be substituted for three semester hours credit in humanities or fine arts.

(C) nine semester hours of social or behavioral sciences, with three courses to be selected from three of the following disciplines: anthropology, economics, geography, history, political science, psychology, and sociology. At least one course shall be a history course.

(D) three semester hours of introductory mathematics.

(E) four semester hours from the natural sciences, including accompanying laboratory work.

(ii) The associate in fine arts degree programs shall include a minimum of 36 and a maximum of 37 additional semester hours of credit from courses in the

Common Course Library which have been approved for transfer to the University of North Carolina constituent institutions. Courses in health, physical education, college orientation, or study skills may be included. Selected topics or seminar courses up to a maximum of three semester hours credit may be included. Work experience, including cooperative education, practicums, and internships, may be included up to a maximum of one semester hour of credit for career exploration.

a minimum of 19 and a maximum of 20 additional semester hours of credit from courses in the Common Course Library which have been approved for transfer to the University of North Carolina constituent institutions. Courses in college orientation, study skills, and work experience, may be included up to one semester hour credit, but may not transfer to the receiving institution.

(d) Associate in Engineering Degree.

The associate in engineering degree shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Diplomas and certificates are not allowed under this degree program. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.

(i) The associate in engineering degree program shall include a minimum of 45 semester hours of general education core courses selected from the Common Course Library and which have been approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:

- (A) 6 semester hours of English composition;
- (B) 6 semester hours of humanities or fine arts;
- (C) 6 semester hours of social or behavioral sciences; and
- (D) 27 semester hours of mathematics and natural sciences.

(ii) The associate in engineering degree program shall include

~~(d)~~(e)

Associate in General Education. The Associate in General Education shall be granted for a planned program of study consisting of a minimum of 64 and a maximum of 65 semester hours of credit from courses at the 110-199 and 210-299 levels. Within the degree program, the institution shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers.

(i) The associate in general education degree curriculum program shall include a minimum of 15 semester hours of credit from general education courses selected from the Common Course Library, including six hours in communications, three hours in humanities or fine arts, three hours in social or behavioral sciences, and three hours in natural sciences or mathematics.

(ii) The remaining hours in the associate in general education degree curriculum program shall consist of additional general education courses selected from the Common Course Library. A maximum of seven semester hours of credit in health, physical education, and college orientation or study skills courses may be included. Selected topics or seminar courses may be included in a program of study up to a maximum of three semester hours credit.

~~(e)~~(f)

Diploma. The Diploma shall be granted for a planned program of

study consisting of a minimum of 36 and a maximum of 48 semester hours of credit from courses at the 100-299 level.

(i) Diploma curricula shall include a minimum of six semester hours of general education courses selected from the Common Course Library. A minimum of three semester hours of credit shall be in communications, and a minimum of three semester hours of credit shall be selected from courses in humanities and fine arts, social and behavioral sciences, or natural sciences and mathematics.

(ii) Diploma curricula shall include a minimum of 30 semester hours of major courses selected from the Common Course Library.

(A) A diploma curriculum program which is a stand-alone curriculum program title shall include identified core courses or subject areas or both within the major hours category.

(B) Courses for other major hours in a stand-alone diploma curriculum program title shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration.

(C) Work experience, including cooperative education, practicums, and internships, may be included in a

diploma curriculum program up to a maximum of eight semester hours of credit.

(iii) A diploma curriculum program may include a maximum of four other required hours to complete college graduation requirements. These courses shall be selected from the Common Course Library.

(iv) An institution may award a diploma under an approved associate in applied science degree curriculum program for a series of courses taken from the approved associate degree curriculum program of study.

(A) A diploma curriculum program offered under an approved associate degree curriculum program shall meet the standard general education and major course requirements for the diploma credential.

(B) A college may substitute general education courses at the 100-109 level for the associate-degree level general education courses in a diploma curriculum program offered under an approved degree program.

(C) The diploma curriculum program offered under an approved associate degree curriculum program shall require a minimum of 12 semester hours of credit from courses extracted from the required core courses and/or subject areas of the respective associate in applied science

- degree curriculum program.
- (v) Selected topics or seminar courses may be included in a diploma program up to a maximum of three semester hours of credit. Selected topics and seminar courses shall not substitute for required general education or major core courses.
- (g) Certificate Programs. The Certificate shall be granted for a planned program of study consisting of a minimum of 12 and a maximum of 18 semester hours of credit from courses at the 100-299 level.
- (i) General education is optional in certificate curricula.
- (ii) Certificate curricula shall include a minimum of 12 semester hours of major courses selected from the Common Course Library.
- (A) A certificate curriculum program which is a stand-alone curriculum program title or which is the highest credential level awarded under an approved associate degree or diploma program shall include 12 semester hours of credit from core courses or subject areas or both within the major hours category.
- (B) Courses for other major hours in a stand-alone certificate curriculum program shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in
- the core or concentration.
- (C) Work experience, including cooperative education, practicums, and internships, may be included in a certificate program up to a maximum of two semester hours of credit.
- (iii) A certificate curriculum program may include a maximum of one other required hour of credit to complete college graduation requirements. This course shall be selected from the Common Course Library.
- (iv) An institution may award a certificate under an approved degree or diploma curriculum program for a series of courses totaling a minimum of 12 semester hours of credit and a maximum of 18 semester hours of credit taken from the approved associate degree or diploma curriculum program of study.
- (v) Selected topics or seminar courses may be included in a certificate program up to a maximum of three semester hours credit.
- (4) Curriculum Standards Compliance. Each institution shall select curriculum program courses from the Common Course Library to comply with the standards for each curriculum program title the institution is approved to offer. The selected courses shall comprise the college's program of study for that curriculum program.
- (a) Each institution shall maintain on file with the ~~Department of Community Colleges~~ System Office a copy of the official program of study approved by the institution's board of trustees.
- (b) When requesting approval to offer a curriculum program title, an institution shall submit a program of study for that curriculum program title.
- (c) A copy of each revised program of study shall be filed with and approved by the ~~Department of Community Colleges~~ Community System Office

prior to implementation at the institution.

Authority G.S. 115D-5; S.L. 1995, c. 625.

SECTION .0400 - INDUSTRIAL SERVICES

23 NCAC 02E .0405 TRAINING FOR PUBLIC SAFETY AGENCIES

(a) Training for Public Law Enforcement Agencies.

(1) When a college is an accredited and designated direct delivery agency for initial certification training for public law enforcement agencies and funds 50% or greater of the instructional cost and the school director's salary, the college shall report the hours generated from the instruction for full budget FTE when the training is delivered in accordance with all other budget FTE and program requirements.

(2) When a public law enforcement agency external to a college is the accredited and designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.

(A) A college shall provide initial certification law enforcement training for an accredited and designated direct delivery public law enforcement agency under a written agreement. The agreement shall:

(i) confirm that the public law enforcement agency does not have the funds to provide the training;

(ii) designate the source of funds for the training;

(iii) list the courses to be taught;

(iv) state the total hours of instruction to be delivered; and

(v) be signed by the president or the president's designee, and the senior official of the public law enforcement agency.

(B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.

(3) A college may deliver in-service training for designated direct delivery public law enforcement agencies beyond the initial

certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budget FTE and program requirements. A college providing in-service training for public law enforcement agencies is not subject to Subparagraphs (a)(1) or (a)(2) of this Rule.

(b) Training for Public Fire and Rescue Agencies.

(1) When a college is a designated direct delivery agency for initial certification training for public fire and rescue services agencies and funds 50% or greater of the instructional cost, the college shall report hours generated from instruction for full budget FTE when the training is offered in accordance with all other budget FTE and program requirements.

(2) When a public fire and rescue agency external to a college is the designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.

(A) A college shall provide initial fire and rescue training for a designated direct delivery public fire and rescue agency under a written agreement. The agreement shall:

(i) confirm that the public fire and rescue agency does not have the funds to provide the training;

(ii) designate the source of funds for the training;

(iii) list the courses to be taught;

(iv) state the total hours of instruction to be delivered; and

(v) be signed by the president or the president's designee, and the senior official of the public fire and rescue agency.

(B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.

(3) A college may deliver in-service training for public designated direct delivery fire and rescue agencies beyond the initial certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budgetary FTE and program requirements. A college providing in-service training for public fire and rescue

agencies is not subject to Subparagraphs (b)(1) or (b)(2) of this Rule.

Authority G.S. 115D-5.

(c) Training for Emergency Medical Services Agencies.

SECTION .0600 - CONTRACTS FOR EDUCATIONAL SERVICES

(1) When a college is a designated direct delivery agency for initial certification training for public emergency medical services training and funds 50% or greater of the instructional costs, the college shall report hours generated from instruction for full budget FTE when the training is offered in accordance with all other budget FTE and program requirements.

23 NCAC 02E .0604 INSTRUCTIONAL SERVICE AGREEMENTS

~~(a) Two or more colleges may enter into a written collaborative agreement for the purpose of offering credit courses or programs. The collaborative agreement shall:~~

(2) When a public emergency medical services agency external to a college is the designated direct delivery agency for initial certification training, the college may deliver a maximum of 25% of the total program hours and shall receive full budget FTE for the hours generated. A college shall not receive any state funds for hours generated above 25% of the total program hours.

- ~~(1) Specify the curriculum program(s) to be shared;~~
- ~~(2) Define the plan for sharing the curriculum program(s), including who shall earn the FTE and grant the award(s);~~
- ~~(3) Certify that appropriate and adequate resources are available at each participating college. Where feasible, the joint utilization of physical facilities, equipment, materials, and instructional faculty should be considered;~~
- ~~(4) Certify that the curriculum program(s) meets the standards of the appropriate accrediting agency;~~
- ~~(5) Specify under what conditions and what time frame the agreement can be terminated.~~
- ~~(6) Be signed by the president and approved by the board of trustees of each participating college; and~~
- ~~(7) Be approved by the System President.~~

(A) A college shall provide initial emergency medical services training for a direct delivery public emergency medical services agency under a written agreement. The agreement shall:

~~(b) One or more of the colleges participating in the collaborative agreement shall be approved by the State Board of Community Colleges to offer the curriculum program shared under the collaborative agreement.~~

- (i) confirm that the public emergency medical services agency does not have the funds to provide the training;
- (ii) designate the source of funds for the training;
- (iii) list the courses to be taught;
- (iv) state the total hours of instruction to be delivered; and
- (v) be signed by the president or the president's designee, and the senior official of the emergency medical services agencies.

~~(c) Notification of termination of an agreement shall be sent to the System President prior to the effective termination date.~~

(B) The college shall receive full budget FTE for hours generated when the training is delivered in accordance with this agreement and all other budget FTE and program requirements. The college shall maintain a copy of the agreement on file until released from audit.

(a) Level One Instructional Service Agreement.

(3) A college may deliver in-service training for designated direct delivery public emergency medical services agencies beyond the initial certification training and receive full budget FTE for hours generated when the training is delivered in accordance with all other budgetary FTE and program requirements. A college providing in-service training for public emergency medical services agencies is not subject to Subparagraphs (c)(1) or (c)(2) of this Rule.

- (1) A college may offer curriculum or continuing education courses in an area assigned to another college by providing a written, level-one instructional service agreement under the following conditions:
 - (A) Resources are solely provided by the college requesting permission to enter into another college's service area; and
 - (B) The requesting college does not share the FTE with the other college(s).
- (2) The level one instructional service agreement shall:
 - (A) Be approved by each local board of trustees unless the board has delegated authority to the president to enter into level-one instructional service agreements;
 - (B) Be signed by the presidents of each participating college;
 - (C) Specify the course(s) or program(s) to be delivered into the other college's service area;
 - (D) Specify the plan for delivery of the instruction;

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- (E) Specify the conditions and time frame for termination of the agreement; and
- (F) Be maintained on file at all colleges involved for audit purposes.

(b) Level Two Instructional Service Agreement.

- (1) Two or more colleges may jointly offer curriculum courses or continuing education courses by providing a written, level two instructional service agreement under the following conditions:

- (A) Resources are shared between the participating colleges;
- (B) FTE may be shared between the participating colleges;
- (C) One or more of the participating colleges is approved to offer the curriculum course(s) in an approved program of study; or offer a continuing education course approved by the State Board; and
- (D) A curriculum certificate, diploma or degree is not awarded.

- (2) The level two instructional service agreement shall:

- (A) Be approved by each local board of trustees unless the board has delegated authority to the president to enter into level-two instructional service agreements;
- (B) Be signed by the president of each participating college;
- (C) Specify the course(s) to be delivered to the other college's service area;
- (D) Specify the plan for delivery of the instruction;
- (E) Specify the proration of resources and FTE allocated for each college;
- (F) Specify the conditions and time frame for termination of the agreement;
- (G) Be filed with the System Office President prior to implementation of the course(s); and
- (H) Be maintained on file at all colleges involved for audit purposes.

(c) Level Three Instructional Service Agreement.

- (1) Two or more colleges may jointly offer a curriculum program by providing a written, level three instructional service agreement under the following conditions:

- (A) Resources are shared between the participating colleges;
- (B) FTE may be shared between the participating colleges;
- (C) One or more of the colleges participating is approved by the State Board of Community Colleges to offer the curriculum program; and
- (D) A curriculum certificate, diploma or associate degree is awarded.

- (2) The level three instructional service agreement shall:

- (A) Be approved by each participating board of trustees;
- (B) Be signed by the board of trustees chair of each participating college;
- (C) Be signed by the president of each participating college;
- (D) Specify the program to be shared;
- (E) Specify the plan for delivery of the program;
- (F) Specify the proration of resources and/or FTE allocated for each college;
- (G) Specify the conditions and time frame for termination of the agreement;
- (H) Certify that appropriate and adequate resources are available between participating colleges. Where feasible joint utilization of physical facilities, equipment, materials, and instructional faculty shall be considered;
- (I) Certify that the curriculum program meets the standards of the appropriate accrediting agency or licensing authority;
- (J) Specify which college will grant the award;
- (K) Specify that only the college providing the instruction will record the letter grade on the student transcript;
- (L) Be approved by the System Office President prior to implementation of the program; and
- (M) Be maintained on file at each participating college for audit purposes;

- (3) Notification of termination of a level three agreement shall be sent to the System Office President by the college which grants the award, prior to the effective termination date.

(d) The delivery of curriculum courses, continuing education courses or programs delivered into another college's service area via non-traditional delivery as defined in Rule 23 NCAC 02D .0323(e)(1) does not require an instructional service agreement.

(e) A college may not delegate curriculum program approval to another college. Program approval is granted by the State Board using criteria set forth in Rule 23 NCAC 02E .0201.

Authority G.S. 115D-5; S.L. 1993, 2nd Session, c. 769, p.18; S.L. 1995, c.

TITLE 25 - OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rule cited as 25 NCAC 01J .1012 and repeal the rules cited as 25 NCAC 01J .1001-.1011. Notice of Rule-making Proceedings was published in the Register on February 17, 2003.

Proposed Effective Date: August 1, 2004

Public Hearing:

Date: June 5, 2003

Time: 10:00 a.m.

Location: Administration Building, 116 West Jones St., Raleigh, NC (Large Conference Room on the third floor)

Reason for Proposed Action: This Section is proposed to be amended as a result of budgetary constraints and organizational restructuring within the Office of State Personnel.

Comment Procedures: Comments from the public shall be directed to Sharon Howard, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 733-7934, ext. 291 and fax (919) 733-0653. Comments shall be received through June 2, 2003.

Fiscal Impact

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

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01J - EMPLOYEE RELATIONS

SECTION .1000 - STATE EMPLOYEES' ASSISTANCE PROGRAM

25 NCAC 01J .1001 PURPOSE

The purpose of the Employee Assistance Program is to combine sound management principles with a humanitarian approach to assist troubled employees in handling personal problems that adversely affect job performance.

Authority G.S. 126-4(10).

25 NCAC 01J .1002 POLICY

(a) It is a policy of the State to maintain an Employee Assistance Program as a benefit to assist employees with personal problems that may adversely affect their job performance.

(b) Employees shall have the right to access this program in addressing personal problems. Employing Agencies shall ensure that employees are aware of the program and that employees shall have equal knowledge of and access to the program.

Authority G.S. 126-4(10).

25 NCAC 01J .1003 ORGANIZATION OF PROGRAM

The State EAP Office shall operate as a component of the Office of State Personnel. Agency level EAP efforts shall operate in

coordination with the State EAP Office. To increase the accessibility to the State EAP by all state employees, field offices will be provided in strategic locations throughout the state.

Authority G.S. 126-4(10).

25 NCAC 01J .1004 SERVICES OFFERED TO AGENCIES, UNIVERSITIES AND EMPLOYEES

The program has two primary functions:

- (1) Management Consultation. Provision of expert consultation to management in the identification and referral of employees who face personal problems that may adversely affect job performance.
(a) In assisting management, the Employees' Assistance Program is expected to become incorporated into existing management structure, and to guide management in developing plans for corrective action.
(b) The goal of the EAP is to impact on the return of employees to full work capacity at levels of satisfactory job performance.

- (2) Assessment and Referral. A confidential and professional evaluation of the personal problem with the employee, including an organized approach for both problem resolution and linkage with professional resources: The personal problems addressed by the EAP include, but are not limited to alcoholism, drug abuse, emotional disorders, family problems, marital discord, legal and financial difficulties. The Employees' Assistance Program will serve both employees and the immediate family in these problem areas.

Authority G.S. 126-4(10).

25 NCAC 01J .1005 ELIGIBILITY FOR SERVICES

- (a) All full time, part time permanent and temporary employees of agencies with employees who are subject to the State Personnel Act, are eligible for this service.
(b) EAP may enter into agreements with other agencies to the extent that resources are available and as provided in G.S. 126-10.

Authority G.S. 126-4(10); 126-10.

25 NCAC 01J .1006 SELF REFERRAL

- (a) A Self Referral is defined as any referral made in the absence of disciplinary action. The employee and/or family member may call the EAP office directly, or may request assistance from the supervisor or Program Administrator in scheduling an appointment.
(b) For the supervisor, this only results in the need to know of scheduled absences from work. If an appointment is scheduled during working hours, the employee must coordinate the absence with his/her supervisor:

(1) ~~If, in order to ensure complete confidentiality, the employee chooses not to notify the supervisor of the intention to use EAP, then vacation or sick leave should be used to cover the absence from work.~~

(2) ~~If the employee does notify the supervisor of an EAP appointment, the supervisor, after considering requirements for coverage of the workplace, will authorize the absence from the work station. When the supervisor is aware of appointments for EAP assessment, the use of vacation or sick leave is not required. Follow-up appointments with resources recommended by EAP do involve the use of vacation or sick leave as appropriate. The employee is responsible for coordinating absences from the workstation in advance of the absence.~~

(c) ~~When personal problems surface at the work place, but disciplinary action is not indicated, supervisors may encourage the use of EAP. This will still be regarded as a Self Referral.~~

Authority G.S. 126-4(10).

25 NCAC 01J .1007 SUPERVISORY REFERRAL

(a) ~~A Supervisory Referral shall be defined as an EAP referral that is made within the context of disciplinary action. In this case, the employee has brought a personal problem to the work place in the form of deteriorating job performance and work habits and disciplinary action is indicated.~~

(b) ~~It is essential that the EAP be notified in advance of a Supervisory Referral. In their official professional capacity, the EAP counselors will need background information about the employee and details of the job performance and work habits that are of concern. Depending on the urgency or difficulty of the situation the EAP counselor will coordinate with the supervisor any reports or ongoing communication that may be needed.~~

(c) ~~The action on the part of the employee to seek help for personal problems shall be viewed as a responsible action, and shall be supported by management.~~

(d) ~~Management has an affirmative duty to deal appropriately with employee performance or conduct deficiencies and as appropriate, to promptly utilize the disciplinary process. EAP shall not be used as a substitute for such prudent management decisions. Consideration of a referral to EAP shall be made when documentation warrants such action.~~

(e) ~~EAP and the resources of EAP shall not be viewed as a part of the disciplinary process. As such they are not to be used in a punitive manner. Rather, the EAP is to serve in addressing the personal problem(s) that may be the primary source of the performance or behavior issue. In this manner EAP is a complement to the disciplinary process.~~

(f) ~~Should there be problems concerning either the appropriateness of an EAP referral or the decisions made by management which are associated with the referral, the EAP shall review such concerns with the agency level Program Administrator. If, after this review, the referral is still determined to be inappropriate, the State EAP may discontinue its involvement in the referral.~~

(g) ~~Disciplinary action may be initiated or continued regardless of the employee's active involvement in EAP. However, supervisors are encouraged to provide for a reasonable length of time after referral to EAP before taking additional disciplinary action.~~

Authority G.S. 126-4(10).

25 NCAC 01J .1008 MANAGEMENT DIRECTED REFERRAL

(a) ~~It will be the option of each agency to determine if it will adopt an agency level policy concerning a Management Directed Referral. A Management Directed referral shall be defined as an EAP referral which is intended to address an extraordinary situation that is considered by management to be potentially volatile. An agency decision to provide for a Management Directed Referral must address the following concerns and may be needed when an employee has demonstrated:~~

- (1) ~~behavior which is determined to present a potential or present health/safety danger to self and/or others;~~
- (2) ~~that they may not be fit to carry out the required duties and responsibilities. This includes, but is not limited to use or impairment by alcohol or a controlled substance;~~
- (3) ~~a problem that, rather than interfering with the employee's performance, actually prevents the employee from performing the duties of the job in question.~~

(b) ~~The goals of a Management Directed referral are to protect the worksetting from disruption and/or to develop a plan of action to resolve the extraordinary situation. To accomplish such goals, management may either institute an Investigatory Suspension (as provided in 25 NCAC 1J .0610 of these Rules) and make a referral to the EAP, or may obtain a Medical Evaluation of the employee (as provided in 25 NCAC 1C .0207 of these Rules) and make a referral to the EAP in order to obtain the evaluation. In handling a Management Directed Referral, management is expected to approach employee in a fair and consistent manner.~~

(c) ~~In a Management Directed referral, management must present the employee with a choice between accepting EAP services prior to returning to work, or relying on the disciplinary and grievance process to resolve the matter. Management will have an obligation to explain to the employees the options that are being considered in a manner that helps the employee understand both what is expected and what action will likely occur.~~

(d) ~~Disciplinary action that will occur in each of the following events will be defined for the employee in advance of the employee's choice:~~

- (1) ~~if the employee refuses to accept EAP services and relies on the disciplinary and grievance process;~~
- (2) ~~if the employee agrees to accept EAP services and completes the process by:

 - (A) ~~keeping EAP appointments;~~
 - (B) ~~completing the recommended course of professional care;~~~~

~~(C) — demonstrating an improvement in performance and/or behavior that have been raised as concerns by management;~~

~~(3) — if the employee agrees to accept EAP services but fails to complete the process outlined in Subparagraph (d)(2) of this Rule.~~

At the onset, the employee who agrees to accept EAP services must not face disciplinary consequences that are more severe than an employee who refuses EAP services, unless additional performance or behavior concerns are documented. The disciplinary action will always be based on actions related to the job. Utilizing this approach management may temporarily defer decisions on disciplinary action, including decisions as to the appropriate type of discipline, the level of discipline or as to whether any disciplinary action will be imposed at all. This reconsideration is contingent on the employee's demonstration of action through EAP to request assistance and to follow through with that assistance.

~~(e) The employee always has the right to accept or refuse the EAP service. However, in maintaining that right, refusal by the employee to participate in the EAP shall not be grounds for disciplinary action. A decision not to participate in EAP shall be viewed as a decision to rely on the disciplinary and grievance process to resolve the situation.~~

Authority G.S. 126-4(10).

25 NCAC 01J .1009 CONFIDENTIALITY

~~(a) Personnel Records. All personnel information concerning employees shall be confidential. The EAP will comply with the law concerning such records while involved in communications regarding a referral.~~

~~(b) Personal/Clinical Records. The EAP will follow clinical guidelines with regard to the confidentiality of records. Such guidelines prohibit EAP from sharing identifying information about an employee without the prior written consent of the employee. The EAP will obtain such written consent in supervisory referrals in order to inform management that an employee is following through on recommendations. Exceptions occur as follows:~~

~~(1) — When the employee may be harmful to self or others. In these cases the protection and safety of the work place will be an overriding concern. Laws on confidentiality permit the EAP to notify the work place that the employee may present a threat, but such laws still require restraint in the information that is released. In these cases, information will be limited and will be provided only on a "need to know" basis.~~

~~(2) — Where the employee communicates threats. If, in the presence of the EAP Professional, a person communicates plans to injure another individual, the EAP has a "duty to warn" the person who is named in such threats.~~

~~(3) — Where child abuse is occurring. In such a case where the proper authorities have not already become involved, the EAP has a "duty to notify" the proper authorities in regards to the welfare of the child.~~

~~(c) Confidentiality must exist within the EAP. Managers and supervisors are to be sensitive to the issue of confidentiality as they carry out their responsibilities regarding the EAP.~~

Authority G.S. 126-4(10).

25 NCAC 01J .1010 RESPONSIBILITIES OF THE EMPLOYEE ASSISTANCE PROGRAM

~~Upon request by the agency/university, the EAP shall provide the following:~~

- ~~(1) — guidance to Management in the development of EAP Policy;~~
- ~~(2) — training of supervisors;~~
- ~~(3) — orientation of employees;~~
- ~~(4) — consultation to Supervisors/Managers;~~
- ~~(5) — assessment of Employees/Family members;~~
- ~~(6) — employee follow up;~~
- ~~(7) — assistance in developing a system for periodically reporting on the impact of the EAP effort within the organization;~~
- ~~(8) — program evaluation.~~

Authority G.S. 126-4(10).

25 NCAC 01J .1011 RESPONSIBILITIES OF AGENCIES/UNIVERSITIES

~~(a) As part of the development and support of EAP within the organization the state agencies shall:~~

- ~~(1) — Develop an agency level policy and procedures that demonstrates both compliance with State Personnel Rules and addresses any necessary modifications of the EAP approach in order to meet agency/university level needs.~~
- ~~(2) — Provide for training of supervisors about the EAP effort and their expected role.~~
- ~~(3) — Provide for orientation and ongoing awareness among employees concerning the availability of the EAP services.~~
- ~~(4) — Make recommendations and changes that are needed to provide for an effective utilization of the service.~~

~~(b) Departments and Agencies will designate a Program Administrator whose primary EAP function will be as follows:~~

- ~~(1) — Serving as the Department/Agency liaison to the EAP, meeting periodically with the EAP to discuss concerns, and plan efforts of the EAP within the organization.~~
- ~~(2) — Scheduling and coordinating supervisory training sessions, employee orientations, and where necessary follow-up training regarding the EAP.~~
- ~~(3) — Discussing the benefits of an EAP with both supervisor and employee, pointing out available options to the employee, and encouraging referrals to the EAP.~~
- ~~(4) — Developing and maintaining a positive working relationship with the EAP Office.~~
- ~~(5) — Creating and maintaining a level of awareness of the EAP among supervisors and employees. Taking steps to create and maintain the visibility of the program.~~

PROPOSED RULES

(6) ~~Collecting information about the impact of the program and, as necessary, communicating with management of the Department/Agency concerning the program.~~

Authority G.S. 126-4(10).

25 NCAC 01J .1012 PURPOSE

The State Employees' Assistance Program [EAP] is a worksite-based program that addresses productivity and fitness-for-duty

issues by supporting employees and management in identifying and resolving personal concerns that adversely affect job performance or personal conduct. All referrals to the State Employees' Assistance Program originate from management in consultation with the agency or university Human Resources Office.

Authority G.S. 126-4(10).

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, proposed temporary rules and 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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Editor's Note: *This publication will serve as Notice of Proposed Temporary Rule-making as required by G.S. 150B-21.1(a).*

Rule-making Agency: *Secretary – Department of Health and Human Services*

Rule Citation: *10A NCAC 22N .0101-.0102, .0201-.0203, .0301-.0303*

Authority for the rulemaking: *S.L. 2002-164*

Reason for Proposed Action: *Session Law 2002-164 imposes restrictions on enrollment for certain types of Medicaid providers with a history of licensure problems or problems meeting credentialing requirements of supervising Divisions in the Department of Health and Human Services. It is intended to protect children placed outside their home. These temporary rules are needed to adopt policies necessary to implement the new law. The administrative rules implement a new law that prevents providers licensed under G.S. 122C or G.S. 131D from enrolling in Medicaid when an owner has been cited with a Type A or Type B penalty or had his license revoked, suspended or downgraded. The law also directs DMA to develop the administrative rules needed to govern enrollment of Medicaid providers previously sanctioned by the Department. The rules set forth ownership disclosure requirements as a condition of Medicaid enrollment for specified providers.*

Comment Procedures: *Written comments should be submitted to Kris M. Horton, Rule-making Coordinator, 2504 Mail Service Center, Raleigh, NC 27699-2504, fax: (919) 733-6608.*

CHAPTER 22 – MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22N – PROVIDER ENROLLMENT

SECTION .0100 - GENERAL

10A NCAC 22N .0101 DEFINITIONS

For the purpose of this Subchapter, a "provider" is any individual, facility or entity that applies to furnish services to authorized Medicaid recipients and bill Medicaid directly for reimbursement. The term "provider" also includes suppliers of medical equipment and supplies.

Authority G.S. 108A-54; 143B-139.1; 150B-21.1(a10).

10A NCAC 22N .0102 SIGNED AGREEMENTS

Each provider must have a signed participation contract agreement with the Division of Medical Assistance and will not

be reimbursed for services rendered prior to the effective date of the participation contract agreement.

Authority G.S. 108A-54; 143B-139.1; 150B-21.1(a10).

SECTION .0200 - ENTITIES LICENSED UNDER G.S. 122C OR G.S. 131D

10A NCAC 22N .0201 DEFINITIONS

"Owner" means any entity or individual who is a co-owner, partner or shareholder that holds an ownership or controlling interest of five percent or more of the provider entity. As used in this Section, the term "owner" includes a "principal" or "affiliate" of the provider.

Authority G.S. 108A-54; 143B-139.1; 150B-21.1(a10).

10A NCAC 22N .0202 DISCLOSURE OF OWNERSHIP

Providers licensed under G.S. 122C or G.S. 131D must comply with disclosure conditions as itemized in this Rule. G.S. 122C and 131D are adopted by reference under G.S. 150B-21.6, including subsequent amendments and editions.

- (1) When applying to participate in the North Carolina Medicaid program, the provider shall supply the legal name and social security number of each individual who is an owner.
- (2) Notify the Division of Medical Assistance in writing of a change in the legal name of any owner. The notification must be postmarked received within 30 business days of following the change.
- (3) Notify the Division of Medical Assistance in writing if a new owner joins the provider. The notification must include the new owner's legal name and social security number. The notification must be postmarked received no later than within 30 business days of following the change.
- (4) Notify the Division of Medical Assistance in writing if an owner withdraws his ownership interest in the provider. The notification must include the name of the departing owner and be received no later than 30 business days following the change.

Authority G.S. 108A-54; 143B-139.1; 150B-21.1(a10).

10A NCAC 22N .0203 ENROLLMENT RESTRICTIONS

(a) The Department shall deny enrollment, including enrollment for new or additional services in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). These statutes are hereby adopted by reference under G.S. 150B-21.6, including subsequent amendments and editions. They may be accessed online at <http://www.ncleg.net/Statutes/Statutes.html>.

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(b) If the action is reversed on appeal, the owner may re-apply for enrollment and may be approved back to the date of the denied application if all qualifications are met.

Authority G.S. 108A-54; 143B-139.1; 150B-21.1(a10).

SECTION .0300 – ENTITIES PROVIDING SPECIFIED HABILITATIVE AND REHABILITATIVE SERVICES

10A NCAC 22N .0301 DEFINITIONS

For purposes of this Section:

- (1) Specified rehabilitative services are services as defined in 42 CFR 440.130(d), and 42 CFR 440.90; these regulations are hereby adopted by reference under G.S. 150B-21.6, including subsequent amendments and editions. A copy of these regulations may be obtained by contacting the Government Printing Office, Superintendent of Documents, Post Office Box 37194, Pittsburgh, Pennsylvania 15250-7954 or they may be accessed online at http://www.access.gpo.gov/nara/cfr.
(2) Specified habilitative services are as defined in 42 CFR 440.180; this regulation is hereby adopted by reference under G.S. 150B-21.6, including subsequent amendments and editions. A copy of this regulation may be obtained by contacting the Government Printing Office, Superintendent of Documents, Post Office Box 37194, Pittsburgh, Pennsylvania 15250-7954 or it may be accessed online at http://www.access.gpo.gov/nara/cfr.
(3) The term "Division" means a Division of the North Carolina Department of Health and Human Services.
(4) The term "owner" has the same meaning as defined in 10A NCAC 22N .0201.

Authority G.S. 108A-54; 143B-139.1; 150B-21.1(a10).

10A NCAC 22N .0302 DISCLOSURE OF OWNERSHIP Providers of Medicaid services defined in 10A NCAC 22N .0301 must comply with the following disclosure conditions:

- (1) When applying to participate in the North Carolina Medicaid program, the provider shall supply the legal name and social security number of each individual who is an owner.
(2) Notify the Division of Medical Assistance in writing of a change in the legal name of any owner. The notification must be postmarked received within 30 business days of following the change;
(3) Notify the Division of Medical Assistance in writing if a new owner joins the provider entity. The notification must include the new owner's legal name and social security number. The notification must be received no later than 30 business days following the change; and

(4) Notify the Division of Medical Assistance in writing if an owner withdraws his ownership interest. The notification must include the name of the departing owner and be received no later than 30 business days following the change.

Authority G.S. 108A-54; 143B-139.1; 150B-21.1(a10).

10A NCAC 22N .0303 ENROLLMENT RESTRICTIONS

- (a) The Department shall terminate a provider's participation in the Medicaid program for the services defined in 10A NCAC 22N .0301 when notified in writing that the credentialing Division has withdrawn its credentialing. The termination starts the date the Division of Medical Assistance is notified the credentialing is withdrawn and continues for 60 calendar months.
(b) The Department shall deny enrollment, including enrollment for new or additional services, to any entity applying to provide Medicaid habilitative or rehabilitative services when an owner of the applicant entity was the owner of another entity that had its credentialing withdrawn by the credentialing Division. The restriction starts the date the credentialing is withdrawn and continues for 60 calendar months.

Authority G.S. 108A-54; 143B-139.1; 150B-21.1(a10).

Editor's Note: This publication will serve as Notice of Proposed Temporary Rule-making as required by G.S. 150B-21.1(a).

Rule-making Agency: Secretary of Department of Health and Human Services – DMH/DD/SAS

Rule Citation: 10A NCAC 26C .0501-.0504; 27G .0506, .0601-.0606

Authority for the rulemaking: G.S. 150B-21.1

Reason for Proposed Action: Section 4.6 of Session Law 2002-164 amended G.S. 150B-21.1 by adding a new subsection (a10) to read: Notwithstanding the provisions of subsection (a) of this section, the Department of Health and Human Services may adopt temporary rules concerning the placement of individuals in facilities licensed under Article 2 of Chapter 122C of the General Statutes and the enrollment of providers of services to such individuals in the Medicaid program. The legislation further states that: When the Department adopts a temporary rule pursuant to this subsection, the Department shall submit a reference to this subsection as the Department's statement of need to the Codifier of Rules. Notwithstanding any other provision of this Chapter, the Codifier of Rules shall publish in the North Carolina Register a proposed temporary rule received from the Department in accordance with this subsection. Rule citation references reflect the upcoming reorganization of Title 10 and 15A of the North Carolina Administrative Code to Title 10A. Rules governing the subject matter contained in these proposed temporary rules are currently located in 10 NCAC 14V. The Department of Health and Human Services will hold a

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Public Hearing Wednesday, May 7, 2003 from 2:00 p.m. until 4:00 p.m. at Haywood Gym, located on the Dorothea Dix Hospital Campus in Raleigh, NC.

Comment Procedures: *Comments from the public shall be directed to Cindy Kornegay, 3018 Mail Service Center, Raleigh, NC 27699-3018, phone (919) 733-7011, fax (919) 733-9455, and email cindy.kornegay@ncmail.net. Comments shall be received through June 2, 2003.*

CHAPTER 26 – MENTAL HEALTH: GENERAL

SUBCHAPTER 26C – OTHER GENERAL RULES

SECTION .0500 – SUMMARY SUSPENSION AND REVOCATIONS

10A NCAC 26C .0501 SCOPE

This Section sets forth rules governing summary suspension and revocation of privilege to provide publicly funded mental health, developmental disabilities and substance abuse services (services).

Authority G.S. 143B-139.1; 150B-21.1.

10A NCAC 26C .0502 DEFINITIONS

As used in the rules in this Section, the following terms have the meanings specified:

- (1) "Funding authority" means the state agency responsible for administering the funding source.
- (2) "Statutes, rules or policies" means the North Carolina General Statutes, North Carolina Administrative Code or policies of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services (DMH/DD/SAS).
- (3) "Provider" means any person or entity authorized to provide publicly funded services.
- (4) "Substantial failure to comply" means:
 - (a) the provider has a criminal conviction, that could potentially impact the health, safety or welfare of individuals receiving services;
 - (b) the provider has failed to submit, revise or implement a plan of correction;
 - (c) the provider has failed to cooperate with the monitoring/auditing process or comply with investigation proceedings; or
 - (d) the provider has not addressed issues that endanger the health, safety or welfare of individuals receiving services.

Authority G.S. 143B-139.1; 150B-21.1.

10A NCAC 26C .0503 SUMMARY SUSPENSION

- (a) The DMH/DD/SAS shall issue an order of summary suspension and include the findings in its order when it finds public health, safety or welfare considerations require emergency action.
- (b) A summary suspension order shall suspend privileges to provide the services necessary to protect the public interest. An order of summary suspension shall be effective on the date

specified in the order or on the date of the first attempt to deliver notification at the last known address of the provider, whichever is later.

(c) The provider may contest the order by filing an appeal or grievance based on the appeal or grievance policy of the funding authority. The order for summary suspension shall be in full force and effect during any appeal or grievance process.

(d) The order shall specify a date by which the provider shall remove the cause for the emergency action. If the provider fails to meet that deadline, the DMH/DD/SAS shall take action to recommend revocation of privileges to provide services.

Authority G.S. 143B-139.1; 150B-21.1.

10A NCAC 26C .0504 REVOCATION

(a) The DMH/DD/SAS shall recommend the revocation of the privilege to provide publicly funded services when it finds there has been substantial failure to comply with statutes, rules or policies.

(b) Before making a recommendation for revocation, the DMH/DD/SAS shall provide written notice to the provider stating that continued failure to comply with statutes, rules or policies will result in the recommendation for revocation of the privilege to provide services.

(c) The DMH/DD/SAS shall provide written notice of intent to recommend revocation to the provider. The written notice shall include the reasons for the proposed action and the grievance or appeal process.

(d) The DMH/DD/SAS shall provide written notice of the recommendation for revocation to the funding authority or licensing agency, as applicable.

(e) If the provider files a grievance or appeal, the revocation shall not take place until the completion of the grievance or appeal process. If the provider does not file a grievance or appeal, the funding authority shall specify the effective date of the revocation.

Authority G.S. 143B-139.1; 150B-21.1.

CHAPTER 27 – MENTAL HEALTH: HOSPITALS

SUBCHAPTER 27G – RULES FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE FACILITIES AND SERVICES

SECTION .0500 - AREA PROGRAM REQUIREMENTS

10A NCAC 27G .0506 NOTIFICATION PROCEDURES FOR OUT OF HOME COMMUNITY PLACEMENT

(a) In order to make service planning decisions, when an area authority or county program has placement responsibility, the area authority or county program shall coordinate a child and family team prior to the placement of a child out of the home community. Participation shall include the parent/legal guardian and other involved agencies.

(b) The home community area authority or county program shall be responsible for notification of placement. The notification of placement shall be made via e-mail, fax or hard copy within three business days after out of home placement occurs. The following entities shall be notified:

- (1) child and family team;

- (2) host community provider; and
- (3) host community agencies (may include the court counselor, county Department of Social Services (DSS), Regional Children's Developmental Services Agency (CDSA) or the local education agency (LEA).

In case of an emergency, notification may be by telephone with written notification occurring the next working day.

Authority G.S. 122C-113; 122C-141(b); 143B-139.1; 150B-21.1.

SECTION .0600 – AREA AUTHORITY OR COUNTY PROGRAM MONITORING OF FACILITIES AND SERVICES

10A NCAC 27G .0601 SCOPE

This Section governs area authority or county program monitoring of the provision of mental health, developmental disabilities or substance abuse services (services) in the area authority or county program's catchment area. Area authority or county program monitoring shall include:

- (1) receiving and reviewing critical incident reports and identifying trends based on such reports;
- (2) receiving, mediating, investigating or referring complaints concerning the provision of services; or
- (3) monitoring of providers of services to improve the quality of care received by clients.

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G .0602 DEFINITIONS

In addition to the terms defined in GS. 122C-3 and Rules .0103 and .0104 of this Subchapter, the following terms shall apply:

- (1) "Complaint investigation" means the process of determining if an allegation made against a provider concerning the quality of services is substantiated.
- (2) "Complaint mediation" means the process of mediating and resolving a complaint concerning the quality of services.
- (3) "Critical incident" (incident) means an occurrence which has led or may result in a situation that is contrary to a client's welfare. Critical incidents include:

- (a) any accident or injury, including self-injurious behavior, which requires treatment by a physician. First aid provided by a nurse or other facility staff would not be included in this category;
- (b) any medication error, including lack of administration of a prescribed medication, which causes the client discomfort or places his or her health or safety in jeopardy;
- (c) use of any hazardous substance which requires treatment by a physician. First aid provided by a nurse or other facility staff would not be included in this category;
- (d) any client elopement (escape, run away from or abscond) lasting more than three hours;
- (e) any client death;
- (f) suspension or expulsion of a client from services;

(g) any case of abuse, neglect or exploitation against a client which is under investigation or has been substantiated by a county Department of Social Services (DSS) or the DFS Health Care Personnel Registry Section;

(h) any suicide attempt which results in injury or places the client in jeopardy;

(i) the arrest of a client for violations of state, municipal, county, or federal law; or

(j) any fire or equipment failure that places the health or safety of a client in jeopardy.

(4) "ICF/MR" means a facility certified for Medicaid as an Intermediate Care Facility for the Mentally Retarded.

(5) "Jeopardy" means a situation which has caused death, or may cause death or permanent impairment to a client.

(6) "Monitor" or "Monitoring" means the interaction between the area authority or county program and a provider of mental health, developmental disability or substance abuse services to assure the health, safety and well being of clients receiving services. Monitoring includes technical assistance.

(7) "Provider category" means the type of facility in which a client receives services or resides. The provider category determines the extent of monitoring that a provider receives and is determined as follows:

(a) Category A - facilities licensed pursuant to G.S. 122C, Article 2, except for hospitals; these include 24-hour residential facilities, day treatment and outpatient services;

(b) Category B - community based providers not requiring State licensure;

(c) Category C - hospitals, state-operated facilities, nursing homes, adult care homes, family care homes, foster care homes or child care facilities; and,

(d) Category D - individuals providing only outpatient or day services and are licensed or certified to practice in the State of North Carolina.

(8) "Quality indicators" means the set of statutes and rules that affect the quality of services provided to clients. These statutes and rules determine the scope and content of actions that may be addressed through a plan of correction. Monitoring of quality indicators shall be documented on a form provided by the Secretary. Quality indicators include the following:

(a) compliance with the quality improvement and quality assurance requirements specified in Rule .0201(a)(7) of this Subchapter;

(b) compliance with the personnel and staff competency requirements specified in Rules .0202, .0203 and .0204 of this Subchapter;

- (c) compliance with the assessment and service plan requirements specified in Rule .0205 of this Subchapter;
 - (d) compliance with the client services requirements specified in Rule .0208 of this Subchapter;
 - (e) compliance with the medication requirements specified in Rule .0209(a) and (c) of this Subchapter;
 - (f) compliance with client rights statutes specified in G.S. 122C, Article 3 and the rules promulgated under those statutes; and
 - (g) compliance with confidentiality rules specified in 10A NCAC 26B.
- (9) "Routine monitoring" means monitoring which is performed to determine compliance with quality indicators.
- (10) "Service coordination" means the process which an area authority or county program coordinates services for clients.
- (11) "Technical assistance" means the dissemination of skills, knowledge and experience to promote improvement in the quality of care received by clients. Technical assistance may include training, referrals, on-site visits, peer-to-peer interaction or the promotion of tools providers can utilize to improve the quality of services or perform self-assessment of the quality of services provided.

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G.0603 CRITICAL INCIDENT REPORTING

- (a) All Category A and Category B providers shall report to the area authority or county program responsible for the catchment area where services are being provided, a critical incident within 72 hours of the critical incident. The report shall be submitted on a form provided by the Secretary.
- (b) The critical incident report may be submitted via mail, in person, facsimile, or electronic mail. The report shall include the following information:
- (1) reporting provider: name, address, county, license number (if applicable), name and title of person preparing report, first person to learn of the incident and first staff to receive report of incident, facility telephone number, and date and time report prepared;
 - (2) client information: name, client record number, age, unit/ward (if applicable), diagnoses, whether the client has been treated by a physician for the incident and the date of the treatment;
 - (3) circumstances of incident: place where incident occurred, cause of incident (if known), and if the client was restrained or in seclusion at the time of the incident;
 - (4) investigation of incident: any investigation the provider has done to determine the cause of

- the incident and any corrective measures the provider has put in place or plans to put in place as a result of the incident; and
 - (5) other information: list of other authorities such as law enforcement, county DSS or DFS Health Care Personnel Registry Section that have been notified, have investigated or are in the process of investigating the incident or events related to the incident.
- (c) If the provider is unable to obtain any information sought, or if any such information is not yet available, the provider shall explain on the form.
- (d) The provider shall maintain documentation regarding critical incidents. The provider shall:
- (1) notify the area authority or county program whenever it has reason to believe that information provided may be erroneous, misleading, or otherwise unreliable;
 - (2) submit to the area authority or county program information required on the critical incident form that was previously unavailable; and
 - (3) provide, upon request by the area authority or county program, other information the provider may obtain regarding the critical incident, including hospital records and reports by other authorities.

(e) The area authority or county program shall review, not less than quarterly, critical incident reports to identify trends based on such reports. Trends may include the type, frequency and severity of critical incidents related to a provider. A report prepared by the area authority or county program containing the review and identification of trends shall be provided to DMH/DD/SAS not less than quarterly.

(f) If the circumstances surrounding a critical incident reveal that a disabled adult of a Category A or Category B provider may be abused, neglected or exploited and in need of protective services, the area authority or county program shall initiate the procedures outlined in G.S. 108A-6.

(g) If the circumstances surrounding a critical incident reveal that a juvenile of a Category A or Category B provider may be abused, neglected or exploited and in need of protective services, the area authority or county program shall initiate the procedures outlined in G.S. 7B-3.

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G .0604 COMPLAINTS

- (a) The area authority or county program shall respond to complaints regarding the provision of services within its catchment area. The area authority or county program shall mediate complaints involving the provision of services for any provider category.
- (b) Complaints received by an area authority or county program shall be processed as follows:
- (1) Category A or Category B providers excluding ICF/MR facilities:
 - (A) The area authority or county program shall ask the complainant to communicate the complaint to the provider to allow the provider an opportunity to resolve the complaint.

- (B) If the complainant does not wish to communicate the complaint to the provider or the complaint remains unresolved, the area authority or county program shall ask the complainant for permission to mediate the complaint.
- (C) If the complainant refuses to give permission for the area program or county authority to mediate the complaint, the area authority or county program shall initiate an investigation of the complaint without naming the complainant.
- (D) When complaint mediation has been achieved, the area authority or county program shall document any resolution.
- (E) When the area authority or county program initiates investigation of the complaint, efforts shall be made to protect the complainant's identity.
- (F) The area authority or county program shall notify DFS whenever it investigates a complaint for a Category A provider. DFS may participate with the area authority or county program during any phase of the investigation. The area authority or county program shall notify DMH/DD/SAS whenever it investigates a complaint for a Category B provider. DMH/DD/SAS may participate with the area authority or county program during any phase of the investigation.
- (G) When investigating a complaint, the area authority or county program shall make contact with the provider. The area authority or county program shall state the purpose of the contact and inform the provider that the area authority or county program is in receipt of a complaint concerning the provider.
- (H) During the course of a complaint investigation or complaint mediation, the area authority or county program may provide technical assistance to the provider in an attempt to offer solutions to address and resolve the complaint.
- (I) Upon completion of the complaint investigation, a report shall be submitted to the provider within 10 working days of the date of completion of the investigation.
- (J) If the complaint report identifies any deficiencies in the quality indicators, the provider shall submit to the area authority or county program a plan of correction for each identified deficiency. The provider shall be allowed 10 working days to submit a plan of correction from the date the provider initially received the deficiency report from the area authority or county program. The plan of correction must specify the following:
- (i) the measures that will be put in place to correct the deficiency;
 - (ii) the systems that will be put in place to prevent a re-occurrence of the deficiency;
 - (iii) the individual or individuals who will monitor the corrective action; and
 - (iv) the date the deficiency will be corrected which shall be no later than 60 days from the date the investigation was concluded.
- (K) The area authority or county program shall conduct monitoring to follow-up cited deficiencies no later than 90 days from the date the investigation was concluded. An area authority or county program may provide technical assistance to a provider with identified deficiencies. The area authority or county program shall submit reports of monitoring for Category A providers to DFS and for Category B providers to DMH/DD/SAS within 30 days completion of the monitoring.
- (L) Monitoring shall be conducted in accordance with Rule .0605 of this Subchapter.
- (M) The area authority or county program may refer the monitoring of a Category A provider to DFS, or a Category B provider to DMH/DD/SAS based on the following factors:
- (i) the provider's failure to submit a plan of correction for deficiencies within the timeframe designated in the deficiency report;
 - (ii) the provider's failure to correct deficiencies after technical assistance has been provided by the area authority or county program; or
 - (iii) the possibility that continuation of uncorrected deficiencies may be detrimental to the client or

place the client's psychological or physical health or safety in jeopardy.

- (2) Category C, Category D providers or ICF/MR facilities:
- (A) The area authority or county program may mediate complaints for Category C, or Category D providers or ICF/MR facilities.
- (B) The area authority or county program shall ask the complainant to communicate the complaint to the provider to allow the provider an opportunity to resolve the complaint.
- (C) If the complainant does not wish to communicate the complaint to the provider or the complaint remains unresolved, the area authority or county program shall ask the complainant for permission to mediate the complaint.
- (D) If the complainant refuses to give permission for the area authority or county program to mediate the complaint, the area authority or county program shall refer the complaint for investigation to the State or local government agency responsible for the regulation and oversight of the provider.
- (E) If the complaint is mediated, the area authority or county program shall document any resolution.
- (F) During the course of complaint mediation, the area authority or county program may provide technical assistance to the provider in an attempt to offer solutions to address and resolve the complaint.
- (G) If mediation is unsuccessful, the area authority or county program shall refer the complaint for investigation to the State or local government agency responsible for the regulation and oversight of the provider. The area authority or county program shall send a letter to the complainant informing them of the referral and the contact person at the agency the complaint was referred.

(c) If the circumstances identified during a complaint reveal that a disabled adult may be abused, neglected or exploited and in need of protective services, the area authority or county program shall initiate the procedures outlined in G.S. 108A-6.

(d) If the circumstances identified during a complaint reveal that a juvenile may be abused, neglected or exploited and in need of protective services, the facility shall initiate the procedures outlined in G.S. 7B-3.

Authority G.S. 122C-112.1; 143B-139.1.

10A NCAC 27G .0605 ROUTINE MONITORING

(a) The area authority or county program may conduct routine monitoring for any Category A or Category B provider based on the following factors:

- (1) number and severity of critical incident reports received from a provider;
- (2) number and severity of complaints received or investigated concerning a provider;
- (3) results of State inspections conducted by DFS or DMH/DD/SAS;
- (4) concerns about compliance with quality indicators while the area authority or county program is providing service coordination;
- (5) addition of a new service which the provider has not provided in the past; or
- (6) whether the provider is accredited by the Joint Commission on the Accreditation of Healthcare Organizations, the Council on Accreditation, the Commission on Accreditation of Rehabilitation Facilities, or the Council on Quality and Leadership, or has been reviewed by the North Carolina Council of Community Programs.

(b) The area authority or county program shall notify DFS when it conducts routine monitoring for a Category A provider. DFS may participate with the area authority or county program during any phase of the monitoring. The area authority or county program shall notify DMH/DD/SAS when it conducts routine monitoring for a Category B provider. DMH/DD/SAS may participate with the area authority or county program during any phase of the monitoring.

(c) When an area authority or county program has notified another area authority or county program pursuant to Rule .0505 of this Subchapter, the notifying area authority or county program may request that the area authority or county program conduct routine monitoring of their client's provider to assure compliance with quality indicators.

(d) When routine monitoring occurs, a monitoring report shall be submitted to the provider within 10 working days of the completion of on-site monitoring.

(e) If the routine monitoring identifies deficiencies in quality indicators, the provider shall submit to the area authority or county program a plan of correction for each identified deficiency. The provider shall be allowed 10 working days to submit a plan of correction from the date the provider initially received the deficiency report from the area authority or county program. The plan of correction shall specify the following:

- (1) the measures that will be put in place to correct the deficiency;
- (2) the systems that will be put in place to prevent a re-occurrence of the deficiency;
- (3) the individual or individuals who will monitor the corrective action; and
- (4) the date the deficiency will be corrected which shall be no later than 60 days from the date the routine monitoring was concluded.

(f) The area authority or county program shall follow-up on cited deficiencies no later than 90 days from the date the routine monitoring was concluded. An area authority or county program may provide technical assistance to a provider with identified deficiencies. The area authority or county program shall submit

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reports of routine monitoring for Category A providers to DFS and for Category B providers to DMH/DD/SAS within 30 days completion of the routine monitoring.

(g) The area authority or county program may refer the routine monitoring of a Category A provider to DFS, or a Category B provider to DMH/DD/SAS based on the following factors:

- (1) the provider's failure to submit a plan of correction for deficiencies within the timeframe designated in the deficiency report;
- (2) the provider's failure to correct deficiencies after technical assistance has been provided by the area authority or county program; or
- (3) the possibility that continuation of uncorrected deficiencies may be detrimental to the client or place the client's psychological or physical health or safety in jeopardy.

(h) If the circumstances identified during routine monitoring reveal that a disabled adult may be abused, neglected or exploited and in need of protective services, the area authority or county program shall initiate the procedures outlined in G.S. 108A-6.

(i) If the circumstances identified during routine monitoring reveal that a juvenile may be abused, neglected or exploited and in need of protective services, the area authority or county program shall initiate the procedures outlined in G.S. 7B-3.

Authority G.S. 122C-111; 143B-139.1.

10A NCAC 27G .0606 REPORTING REQUIREMENTS

The area authority or county program shall report to DMH/DD/SAS annually, beginning July 1, 2003, the following information:

- (1) the number of complaints mediated according to provider category;
- (2) the number of complaints investigated and the number of complaints substantiated for Category A and Category B providers; and
- (3) the number of on-site monitoring reviews completed for Category A and Category B providers.

Authority G.S. 122C-112.1; 143B-139.1.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Rule-making Agency: *NC Wildlife Resources Commission*

Rule Citation: *15A NCAC 10B .0203, .0209, .0302; 20C .0205, .0305, .0401-.0402, .0407; 10D .0103-.0104*

Effective Date: *June 1, 2003*

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

Authority for the rulemaking: *G.S. 113-134; 113-135; 113-272; 113-276; 113-292; 113-304; 113-305*

Reason for Proposed Action: *Notice and public hearing provided. The purpose for temporary rule is effective date. We*

need to have the fishing seasons and bag limits and the hunting seasons and bag limits established prior to August 2004.

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

CHAPTER 10 – WILDLIFE RESOURCES COMMISSION

SUBCHAPTER 10B – HUNTING AND TRAPPING

SECTION .0200 – HUNTING

15A NCAC 10B .0203 DEER (WHITE-TAILED)

(a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule shall be closed to deer hunting.

(b) Open Seasons (All Lawful Weapons)

- (1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

- (A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties, and the following parts of counties:

Cumberland: All of the county except that part east of US 401, north of NC 24, and west of I-95;

Harnett: That part west of NC 87;

Moore**: All of the county except that part north of NC 211 and west of US 1;

*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

**Refer to 15A NCAC 10D .0103(f) (54)(B) for seasons on Sandhills Game Land.

- (B) Saturday before Thanksgiving through the ~~third Saturday~~ fourth Friday after Thanksgiving Day in all Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln, Stokes, Surry, Watauga, Wilkes, and Yadkin counties.

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- (C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery, Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Swain, Transylvania, and Yancey counties.
- (D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties, and in the following parts of counties:
Cumberland: That part east of US 401, north of NC 24 and west of I-95;
Harnett: That part east of NC 87;
Moore: That part north of NC 211 and west of US 1;
- (E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge;
- ~~(F) Saturday before Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Gaston and Lincoln counties.~~
- ~~(G)~~(F) Monday of Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Cleveland and Rutherford counties.
- (2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph (Refer to 15A NCAC 10D .0103 for either sex seasons on Game Lands):
- (A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston ~~counties; and the second Saturday in November for youth either-sex deer hunting by permit only on a portion of Warrior Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission.~~
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Avery, Buncombe, Haywood, Henderson, Madison, Mitchell, Transylvania, and Yancey counties and the following parts of counties:
Robeson: That part south of NC 211 and west of I-95.
Scotland: That part south of US 74.
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Burke, Caldwell, Catawba, Gaston, Lincoln, McDowell, Polk and Watauga and the following parts of counties:
Camden: That part south of US 158.
Dare: Except the Outer Banks north of Whalebone.

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- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Carteret, Cleveland, Hoke, Richmond, Rutherford, counties and in the following parts of counties:
Columbus: That part west of US 74, SR 1005, and SR 1125.
Cumberland: That part west of I-95.
Harnett: That part west of NC 87.
Moore: All of the county except that part north of NC 211 and west of US 1.
Robeson: All of the county except that part south of NC 211 and west of I-95.
Scotland: That part north of US 74.
- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Caswell, Chatham, Chowan, Craven, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Hertford, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Rockingham, Rowan, Sampson, Stanly, Stokes, Surry, Tyrrell, Union, Vance, Wake, Warren, Washington, Wilkes, Wayne, Wilson, and Yadkin counties, and in the following parts of counties:
Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280.
Camden: That part north of US 158.
Columbus: That part east of a line formed by US 74, SR 1005, and SR 1125.
Cumberland: That part east of I-95.
Currituck: All of the county except the Outer Banks.
Dare: That part of the Outer Banks north of Whalebone.
Harnett: That part east of NC 87.
Henderson: That part east of NC 191 and north and west of NC 280.
Moore: That part north of NC 211 and west of US 1.

(c) Open Seasons (Bow and Arrow)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
- (A) Saturday on or nearest September 10 to the fourth Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on the Sandhills Game Land and the area known as the Outer Banks in Currituck County.
- (B) Saturday on or nearest September 10 to the second Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule and in Gaston and Lincoln Counties.
- (C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (b)(1) of this Rule and in Cleveland and Rutherford counties.
- (D) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.
- (2) Restrictions
- (A) Dogs may not be used for hunting deer during the bow and arrow season.
- (B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.
- (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(d) Open Seasons (Muzzle-Loading Rifles and Shotguns)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms (except that bow and arrow may be used on designated and posted game land Archery Zones) during the following seasons:

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- (A) The Saturday on or nearest October 8 to the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on Sandhills Game Land and the area known as the Outer Banks in Currituck County.
- (B) The second Saturday preceding Thanksgiving until the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule and in Gaston and Lincoln counties.
- (C) Monday on or nearest October 8 to the following Saturday in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (b)(1) of this Rule.
- (D) The third Saturday preceding Thanksgiving until the following Friday in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Sandhills Game Land.

(2) Restrictions

- (A) Deer of either sex may be taken during muzzle-loading firearms season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Wilkes, and Ashe. Deer of either sex may be taken on the last day of muzzle-loading firearms season in all other counties.
- (B) Dogs shall not be used for hunting deer during the muzzle-loading firearms seasons.
- (C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms seasons.

(e) In those counties or parts of counties listed in Part (b)(1)(A) of Subparagraph (b)(1) of this Rule and those counties or parts of counties listed in Part (b)(1)(D) of this Rule in which hunting deer with dogs is allowed, the daily bag limit shall be two and the possession limit six, two of which shall be antlerless. The season limit shall be six, two of which shall be antlerless. In all other counties or parts of counties, the daily bag limit shall be two and the possession limit six, four of which shall be antlerless. The season limit shall be six, four of which shall be antlerless. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The antlerless bag limits described above do not apply to antlerless deer harvested in areas covered

in the Deer Management Assistance Program as described in G.S. 113-291.2(e). Individual daily antlerless bag limits on these areas shall be determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that shall be in the possession of the hunter. Season antlerless bag limits shall be set by the number of tags available. All antlerless deer harvested on these areas, regardless of the date of harvest, shall be tagged with these special tags but the hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license.

(f) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2; Eff. February 1, 1976;

Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996, July 1, 1995; December 1, 1994; July 1, 1994; July 1, 1993;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2001;

Temporary Amendment Eff. July 1, 2002;

Amended Eff. August 1, 2002 (Approved by RRC on 06/21/01 and 04/18/02);

Temporary Amendment Eff. June 1, 2003.

15A NCAC 10B .0209 WILD TURKEY

(a) Open Seasons:

(1) Winter Either-Sex Wild Turkey Season: From the Monday on or nearest to January 15 through the following Saturday on bearded or beardless turkeys in Alleghany, Ashe, Caswell, Granville, Person, Rockingham, Stokes, Surry, and Watauga counties except on Game Lands.

(2) Spring Wild Turkey Season: From the Second Saturday in April through the Saturday of the fourth week thereafter on bearded turkeys only in all counties except Wilson County.

(b) Bag Limits: The daily bag limit shall be one bird and the annual bag limit shall be two birds only one of which may be taken during the Winter Either-Sex Wild Turkey Season. Possession limit is two birds.

(c) Dogs: The use of dogs for hunting wild turkeys during the Spring Wild Turkey Season shall be prohibited.

~~(a) Open Season for wild turkey shall be from the: Second Saturday in April to Saturday of the fourth week thereafter on bearded turkeys in the following counties: Alamance, Alexander, Alleghany, Anson, Ashe, Avery, Beaufort, **Bertie, **Bladen, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, **Camden, Carteret, Caswell, Catawba, **Chatham, Cherokee, Chowan, Clay, Cleveland, Craven, Currituck, Davie, Duplin, **Durham, Edgecombe, Forsyth, Franklin, Gaston, Gates, Graham, **Granville, Halifax, Harnett, Haywood, Henderson, Hertford, Hyde, Iredell, Jackson, Jones, Lee, Lenoir, Lincoln, Macon, Madison, **Martin, McDowell, Mecklenburg, Mitchell, Montgomery, Moore, Northampton, Onslow, **Orange, Pasquotank, Perquimans, Person, Pitt, Polk, **Richmond, Rockingham, Rowan, Rutherford, Sampson, **Scotland, Stanley, Stokes, Surry, Swain, Transylvania, **Tyrrell, Vance, Wake, **Washington, , Warren, Watauga, Wilkes, Yadkin, Yancey and in the following portions of counties:~~

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Columbus: All of the county except that part east of NC 701 and west of SR 1005.

Cumberland: That part west of NC 53 or I 95.

Davidson: That part south of I 85.

Guilford: That part north of I 40.

Hoke: That part south and west of NC 211 and that part known as Fort Bragg.

Johnston: That part east of I 95.

Nash: All of the county except that part east of NC 581 and south of US 64.

New Hanover: Starting at the Brunswick County line, that part north and west of a line formed by NC 133 and SR 1002.

Pamlico: That part west of NC 306.

**Pender: All of the county except that part west of I 40, north of NC 53, and east of US 421.

Randolph: That part west of US 220.

Robeson: That part east of I 95.

Union: That part south of US 74.

Wayne: That part south of US 70.

*The Sandhills Game Land in Hoke, Moore, Richmond, and Scotland, counties; the Bladen Lakes State Forest Game Lands in Bladen County; the North River Game Lands in Camden County; the Northeast Cape Fear Wetlands Game Lands in Pender County; the Jordan Game Land in Chatham, Durham, Orange, and Wake counties; the Butner Falls of the Neuse Game Land in Durham, Granville, and Wake counties; the Roanoke River Wetlands in Bertie, Halifax, and Martin counties; Chatham Game Land in Chatham and Harnett counties; Lantern Acres Game Land in Washington and Tyrrell counties; and the Shearon Harris Game Land in Chatham and Wake counties are closed to turkey hunting except by holders of special permits authorizing turkey hunting as provided in G.S. 113-264(d).

(b) Bag Limits shall be:

(1) — daily, one;

(2) — possession, two; and

(3) — season, two.

(c) Dogs Prohibited. It is unlawful to use dogs for hunting turkeys.

(d) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

History Note: Authority G.S. 113-134; 113-270.3;

113-276.1; 113-291.2; 113-291.5;

Eff. February 1, 1976;

Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1992;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2001.

Temporary Amendment Eff. July 1, 2002;

Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);

Temporary Amendment Eff. June 1, 2003.

SECTION .0300 – TRAPPING

15A NCAC 10B .0302 OPEN SEASONS

(a) General. Subject to the restrictions set out in Paragraph (b) of this Rule, the following seasons for taking furbearing animals as defined in G.S. 113-129(7a), coyotes, and groundhogs shall apply as indicated, all dates being inclusive:

- (1) November 7-February 12 in and west of Surry, Wilkes, Alexander, Catawba, Burke and Cleveland Counties.
(2) December 15-February 28 in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover Counties, except that in the marshes adjoining Currituck Sound in Currituck County the season is December 15-March 12 and nutria may not be shot at any time (day or night) during the open season for migratory waterfowl.
(3) December 1-February 20 in all other counties.
(4) November 1 - March 31 statewide for beaver only.

(b) Restrictions

- (1) It is unlawful to trap or take otter in and west of Stokes, Forsyth, Davie, Iredell, and Mecklenburg Counties and on Roanoke Island north of US 64/264 in Dare County.
(2) It is unlawful to set steel traps for muskrat or mink in and west of Surry, Wilkes, Alexander, Catawba, Burke and Cleveland Counties except in or adjacent to the waters of lakes, streams or ponds.
(3) It is unlawful to trap raccoon in Yadkin County and in and west of Surry, Wilkes, Alexander, Catawba, Lincoln and Gaston Counties.

Note: See 15A NCAC 10D .0102(f) for other trapping restrictions on game lands.

History Note: Authority G.S. 113-134; 113-291.1;

113-291.2;

Eff. February 1, 1976;

Amended Eff. July 1, 1996; July 1, 1984; July 1, 1983; August 1, 1982; August 1, 1981;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. June 1, 2003.

SUBCHAPTER 10C - INLAND FISHING REGULATIONS

SECTION .0200 – GENERAL REGULATIONS

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

(a) Designation of Public Mountain Trout Waters. The waters listed herein or in 15A NCAC 10D 0104 are designated as Public Mountain Trout Waters and further classified as Wild Trout Waters or Hatchery Supported Waters. For specific classifications, see Subparagraphs (1) through (6) of this Paragraph. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

- (1) Hatchery Supported Trout Waters. The listed waters in the counties in Subparagraphs (1)(A)-(Y) are classified as Hatchery Supported Public Mountain Trout Waters. Where specific watercourses or impoundments

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are listed, indentation indicates that the watercourse or impoundment listed is tributary to the next preceding watercourse or impoundment listed and not so indented. This classification applies to the entire watercourse or impoundment listed except as otherwise indicated in parentheses following the listing. Other clarifying information may also be included parenthetically. The tributaries of listed watercourses or impoundments are not included in the classification unless specifically set out therein. Otherwise, Wild Trout regulations apply to the tributaries.

(A) Alleghany County:

- New River (not trout water)
- Little River (Whitehead to McCann Dam)
- Crab Creek
- Brush Creek (except where posted against trespass)
- Big Pine Creek
- Laurel Branch
- Big Glade Creek
- Bledsoe Creek
- Pine Swamp Creek
- South Fork New River (not trout water)
- Prather Creek
- Cranberry Creek
- Piney Fork
- Meadow Fork
- Yadkin River (not trout water)
- Roaring River (not trout water)
- East Prong Roaring River (that portion on Stone Mountain State Park) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

(B) Ashe County:

- New River (not trout waters)
- North Fork New River (Watauga Co. line to Sharp Dam)
- Helton Creek (Virginia State line to New River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Big Horse Creek (Mud Creek at SR 1363 to Tuckerdale)
- Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)
- Big Laurel Creek

- Three Top Creek (portion not on game lands)
- Hoskins Fork (Watauga County line to North Fork New River)
- South Fork New River (not trout waters)
- Cranberry Creek (Alleghany County line to South Fork New River)
- Nathans Creek
- Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
- Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Roan Creek
- North Beaver Creek
- Pine Swamp Creek (all forks)
- Old Fields Creek
- Mill Creek (except where posted against trespass)

(C) Avery County:

- Nolichucky River (not trout waters)
- North Toe River (headwaters to Mitchell County line, except where posted against trespass)
- Squirrel Creek
- Elk River (SR 1306 crossing to Tennessee State line, including portions of tributaries on game lands)
- Catawba River (not trout water)
- Johns River (not trout water)
- Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
- Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]
- Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]

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- Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 - Boyde Coffey Lake
 - Archie Coffey Lake
- Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]
 - Milltimber Creek
- (D) Buncombe County:
 - French Broad River (not trout water)
 - Big Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)
 - Dillingham Creek (Corner Rock Creek to Big Ivy Creek)
 - Stony Creek
 - Mineral Creek (including portions of tributaries on game lands)
 - Corner Rock Creek (including tributaries, except Walker Branch)
 - Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)
 - Swannanoa River (SR 2702 bridge near Ridgecrest to ~~Sayles—Bleachery~~ Wood Avenue Bridge, intersection of NC 81W and US 74A in Asheville, except where posted against trespass)
 - Bent Creek (headwaters to N.C. Arboretum boundary line, including portions of tributaries on game lands)
 - Lake Powhatan
 - Cane Creek (headwaters to SR 3138 bridge)
- (E) Burke County:
 - Catawba River (not trout water)
 - South Fork Catawba River (not trout water)
 - Henry Fork (lower South Mountains State Park line downstream to SR 1919 at Ivy Creek)
 - Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) [Delayed Harvest
- Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Johns River (not trout water)
 - Parks Creek (portion not on game lands not trout water)
 - Carroll Creek (game lands portion above SR 1405 including tributaries)
 - Linville River (game lands portion below the Blue Ridge Parkway including portions of tributaries on game lands and from first bridge on SR 1223 below Lake James powerhouse to Muddy Creek)
- (F) Caldwell County:
 - Catawba River (not trout water)
 - Johns River (not trout water)
 - Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)
 - Estes Mill Creek (not trout water)
 - Thorps Creek (falls to NC 90 bridge)
 - Mulberry Creek (portion not on game lands not trout water)
 - Boone Fork [not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]
 - Boone Fork Pond
 - Yadkin River (not trout water)
 - Buffalo Creek (mouth of Joes Creek to McCloud Branch)
 - Joes Creek (first falls upstream of SR 1574 to confluence with Buffalo Creek)
- (G) Cherokee County:
 - Hiwassee River (not trout water)
 - Shuler Creek (headwaters to Tennessee line, except where posted against trespass including portions of tributaries on game lands)
 - North Shoal Creek (Crane Creek) (headwaters to SR 1325, including portions of tributaries on game lands)
 - Persimmon Creek

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- Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
 - Beaver Dam Creek (headwaters to SR 1326 bridge, including portions of tributaries on game lands)
 - Valley River
 - Hyatt Creek (including portions of tributaries on game lands)
 - Webb Creek (including portions of tributaries on game lands)
 - Junaluska Creek (Ashturn Creek to Valley River, including portions of tributaries on game lands)
- (H) Clay County:
 - Hiwassee River (not trout water)
 - Fires Creek (first bridge above the lower game land line on US Forest Service road 442 to SR 1300)
 - Tusquitee Creek (headwaters to lower SR 1300 bridge, including portions of Bluff Branch on game lands)
 - Tuni Creek (including portions of tributaries on game lands)
 - Chatuge Lake (not trout water)
 - Shooting Creek (SR 1349 bridge to US 64 bridge at SR 1338)
 - Hothouse Branch (including portions of tributaries on gamelands)
 - Vineyard Creek (including portions of tributaries on game lands)
- (I) Graham County:
 - Little Tennessee River (not trout water)
 - Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 - Cheoah River (not trout water)
 - Yellow Creek
 - Santeetlah Reservoir (not trout water)
 - West
 - Buffalo Creek
 - Huffman Creek (Little Buffalo Creek)
 - Santeetlah Creek (Johns Branch to
- mouth including portions of tributaries within this section located on game lands, excluding Johns Branch and Little Santeetlah Creek)
- (Big) Snowbird Creek (old railroad junction to mouth, including portions of tributaries on game lands)
- Mountain Creek (game lands boundary to SR 1138 bridge)
- Long Creek (portion not on game lands)
- Tulula Creek (headwaters to lower bridge on SR 1275)
- Franks Creek
- Cheoah Reservoir
- Fontana Reservoir (not trout water)
- Stecoah Creek
- Sawyer Creek
- Panther Creek (including portions of tributaries on game lands)
- (J) Haywood County:
 - Pigeon River (not trout water)
 - Cold Springs Creek (including portions of tributaries on game lands)
 - Jonathans Creek - lower (concrete bridge in Dellwood to Pigeon River)
 - Jonathans Creek - upper [SR 1302 bridge (west) to SR 1307 bridge]
 - Hemphill Creek
 - West Fork Pigeon River (triple arch bridge on highway NC 215 to Queens Creek, including portions of tributaries within this section located on game lands, except Middle Prong)
 - Richland Creek (Russ Avenue bridge to US 19A-23 bridge) ~~[Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]~~

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- West Fork Pigeon River
(Queen Creek to the first
game land boundary
upstream of Lake Logan)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of this
Rule.]
- (K) Henderson County:
(Rocky) Broad River (one-half
mile north of Bat Cave to
Rutherford County line)
Green River - upper (mouth of
Bobs Creek to mouth of Rock
Creek)
Green River - lower (Lake
Summit Dam to I-26 bridge)
Camp Creek (SR 1919 to
Polk County line)
(Big) Hungry River
Little Hungry River
French Broad River (not trout water)
Mills River (not trout water)
North Fork Mills River
(game lands portion below
the Hendersonville
watershed dam). [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]
- (L) Jackson County:
Tuckasegee River (confluence
with West Fork Tuckasegee
River to SR ~~1392~~ 1534 bridge at
Wilmot) [Delayed Harvest
Regulations apply to that portion
between NC 107 bridge at Love
Field and the Dillsboro dam. See
Subparagraph (a)(5) of this
Rule.]
Scott Creek (entire stream,
except where posted against
trespass)
Dark Ridge Creek (Jones
Creek to Scotts Creek)
Buff Creek (SR 1457 bridge
below Bill Johnson's place to
Scott Creek)
Savannah Creek (Headwaters to
Bradley's Packing House on NC
116)
Greens Creek (Greens Creek
Baptist Church on SR 1730 to
Savannah Creek)
Cullowhee Creek (Tilley Creek
to Tuckasegee River)
Bear Creek Lake
Wolf Creek [not Hatchery
Supported trout water, see
Subparagraph (a)(2) of this
Rule.]
- Wolf Creek Lake
Balsam Lake
Tanasee Creek [not Hatchery
Supported trout water, see
Subparagraph (a)(2) of this
Rule.]
Tanasee Creek Lake
West Fork Tuckasegee River
(Shoal Creek to existing water
level of Little Glenville Lake)
Shoal Creek (Glenville
Reservoir pipeline to mouth)
- (M) Macon County:
Little Tennessee River (not trout
water)
Nantahala River (Nantahala
Dam to Swain County line)
[Delayed Harvest
Regulations apply to the
portion from Whiteoak
Creek to the Nantahala
Power and Light
powerhouse discharge canal.
See Subparagraph (a)(5) of
this Rule.]
Queens Creek Lake
Burningtown Creek
(including portions of
tributaries on game lands)
Cullasaja River (Sequoah
Dam to US 64 bridge near
junction of SR 1672,
including portions of
tributaries on game lands,
excluding those portions of
Big Buck Creek and Turtle
Pond Creek on game lands.
[Wild Trout Regulations
apply. See Subparagraphs
(a)(2) and (a)(6) of this
Rule.]
Ellijay Creek (except
where posted against
trespass, including
portions of tributaries
on game lands)
Skitty Creek
Cliffside Lake
Cartoogechaye Creek
(US 64 bridge to Little
Tennessee River)
Tessentee Creek
(Nichols Branch to
Little Tennessee River,
except where posted
against trespassing)
Savannah River (not trout
water)
Big Creek (base of falls
to Georgia State line,
including portions of

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- tributaries within this Section located on game lands)
- (N) Madison County:
 - French Broad River (not trout water)
 - Shut-In Creek (including portions of tributaries on game lands)
 - Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary line, including portions of tributaries on game lands)
 - Meadow Fork Creek
 - Roaring Fork (including portions of tributaries on game lands)
 - Little Creek
 - Max Patch Pond
 - Mill Ridge Pond
 - Big Laurel Creek (Mars Hill Watershed boundary to Rice's Mill Dam)
 - Big Laurel Creek (NC 208 bridge to US 25-70 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Spillcorn Creek (entire stream, excluding tributaries)
 - Shelton Laurel Creek (confluence of Big Creek and Mill Creek to NC 208 bridge at Belva)
 - Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Mill Creek (upper game lands boundary to confluence with Big Creek)
 - Puncheon Fork (Hampton Creek to Big Laurel Creek)
 - Big Pine Creek (SR 1151 bridge to French Broad River)
- (O) McDowell County:
 - Catawba River (portion not on game lands, not trout water)
 - Buck Creek (portion not on game lands, not trout water)
 - Little Buck Creek (game land portion including
- portions of tributaries on game lands)
- Curtis Creek game lands portion downstream of US Forest Service boundary at Deep Branch. [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- North Fork Catawba River (headwaters to SR 1569 bridge)
- Armstrong Creek (Cato Holler line downstream to upper Greenlee line)
- Mill Creek (upper railroad bridge to U.S. 70 Bridge, except where posted against trespass)
- (P) Mitchell County:
 - Nolichucky River (not trout water)
 - Big Rock Creek (headwaters to NC 226 bridge at SR 1307 intersection)
 - Little Rock Creek (Green Creek Bridge to Big Rock Creek, except where posted against trespass)
 - Cane Creek (SR 1219 to NC 226 bridge)
 - Cane Creek (NC 226 bridge to NC 80 bridge) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Grassy Creek (East Fork Grassy Creek to mouth)
 - East Fork Grassy Creek
 - North Toe River (Avery County line to SR 1121 bridge)
- (Q) Polk County:
 - Broad River (not trout water)
 - North Pacolet River (Pacolet Falls to NC 108 bridge)
 - Fork Creek (Fork Creek Church on SR 1100 to North Pacolet River)
 - Big Fall Creek (portion above and below water supply reservoir)
 - Green River (Fishtop Falls Access Area to mouth of Brights Creek) [Delayed Harvest Regulations apply to the portion from Fishtop Falls Access Area to Cove

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- Creek. See Subparagraph (a)(5) of this Rule.]
- Little Cove Creek (including portions of tributaries on game lands)
- Cove Creek (including portions of tributaries on game lands)
- Camp Creek [Henderson County line (top of falls) to Green River]
- (R) Rutherford County:
 - (Rocky) Broad River (Henderson County line to US 64/74 bridge, except where posted against trespass)
- (S) Stokes County:
 - Dan River (Virginia State line downstream to a point 200 yards below the end of SR 1421)
- (T) Surry County:
 - Yadkin River (not trout water)
 - Ararat River (SR 1727 bridge downstream to the NC 103 bridge)
 - Stewarts Creek (not trout water)
 - Pauls Creek (Virginia State line to 0.3 mile below SR 1625 bridge - lower Caudle property line)
 - Fisher River (Cooper Creek) (Virginia State line to SR 1331 bridge)
 - Little Fisher River (Virginia State line to NC 89 bridge)
 - Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (U) Swain County:
 - Little Tennessee River (not trout water)
 - Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 - Cheoah Reservoir
 - Fontana Reservoir (not trout water)
 - Alarka Creek (game lands boundary to Fontana Reservoir)
 - Nantahala River (Macon County line to existing
- Fontana Reservoir water level)
- Tuckasegee River (not trout water)
- Deep Creek (Great Smoky Mountains National Park boundary line to Tuckasegee River)
- Connelly Creek (including portions of tributaries on game lands)
- (V) Transylvania County:
 - French Broad River (junction of west and north forks to US 276 bridge)
 - Davidson River (Avery Creek to Ecusta intake)
 - East Fork French Broad River (Glady Fork to French Broad River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 - Middle Fork French Broad River
 - West Fork French Broad River (SR 1312 and SR 1309 intersection to junction of west and north forks, including portions of tributaries within this section located on game lands)
- (W) Watauga County:
 - New River (not trout waters)
 - North Fork New River (from confluence with Maine and Mine branches to Ashe County line)
 - Maine Branch (headwaters to North Fork New River)
 - South New Fork River (not trout water)
 - Meat Camp Creek
 - Norris Fork Creek
 - Howards Creek (downstream from lower falls)
 - Middle Fork New River (Lake Chetola Dam to South Fork New River)
 - Yadkin River (not trout water)
 - Stony Fork (headwaters to Wilkes County line)
 - Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)
 - Watauga River (SR 1557 bridge to NC 105 bridge and SR

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1114 bridge to NC 194 bridge at Valle Crusis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Beech Creek
Buckeye Creek Reservoir
Coffee Lake
Beaverdam Creek (SR 1209 bridge at Bethel to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)

Laurel Creek
Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)

Dutch Creek (second bridge on SR 1134 to mouth)

(X) Wilkes County:

Yadkin River (not trout water)
Roaring River (not trout water)
East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) [Delayed Harvest Regulations apply to portion on Stone Mountain State Park. See Subparagraph (a)(5) of this Rule.]

Stone Mountain Creek [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]

Middle Prong Roaring River (headwaters to second bridge on SR 1736)

Bell Branch Pond
Boundary Line Pond

West Prong Roaring River (not trout waters)

Pike Creek
Pike Creek Pond

Reddies River (not trout water)

Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)

South Fork Reddies River (headwaters to confluence with Middle Fork Reddies River)

North Fork Reddies River (Vannoy

Creek) (headwaters to Union School bridge on SR 1559)
Darnell Ceek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)

Lewis Fork Creek (not trout water)
South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)
Fall Creek (except portions posted against trespass)

(Y) Yancey County:

Nolichucky River (not trout water)
Cane River [Bee Branch (SR 1110) to Bowlens Creek]
Bald Mountain Creek (except portions posted against trespass)

Indian Creek (not trout water)
Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)

North Toe River (not trout water)
South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)

(2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A NCAC 10D .0104, are classified as Wild Trout Waters unless specifically classified otherwise in Subparagraph (a)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.

(A) Alleghany County:

Big Sandy Creek (portion on Stone Mountain State Park)
Ramey Creek (entire stream)
Stone Mountain Creek (that portion on Stone Mountain State Park)

(B) Ashe County:

Big Horse Creek (Virginia State Line to Mud Creek at SR 1363) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]

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| | <p>Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]</p> | | <p>Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]</p> |
| (C) | <p>Avery County:
 Birchfield Creek (entire stream)
 Cow Camp Creek (entire stream)
 Cranberry Creek (entire stream)
 Elk River (portion on Lees-McRae College property, excluding the millpond) [Catch and Release/Artificial Flies Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
 Gragg Prong (entire stream)
 Horse Creek (entire stream)
 Jones Creek (entire stream)
 Kentucky Creek (entire stream)
 North Harper Creek (entire stream)
 Plumtree Creek (entire stream)
 Roaring Creek (entire stream)
 Rockhouse Creek (entire stream)
 South Harper Creek (entire stream)
 Webb Prong (entire stream)
 Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]</p> | (H) | <p>Graham County:
 South Fork Squally Creek (entire stream)
 Squally Creek (entire stream)</p> |
| | | (I) | <p>Haywood County
 Hurricane Creek (including portions of tributaries on game lands) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]</p> |
| | | (J) | <p>Henderson County:
 Green River (I-26 bridge to Henderson/Polk County line)</p> |
| | | (K) | <p>Jackson County:
 Gage Creek (entire stream)
 North Fork Scott Creek (entire stream)
 Tanasee Creek (entire stream)
 Whitewater River (downstream from Silver Run Creek to South Carolina State line)
 Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)</p> |
| (D) | <p>Buncombe County:
 Carter Creek (game land portion) [Catch and Release/Artificial Lures only Regulations apply. See Subparagraph (a)(3) of this Rule.]</p> | (L) | <p>Madison County:
 Big Creek (headwaters to the lower game land boundary, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]</p> |
| (E) | <p>Burke County:
 All waters located on South Mountain State Park, except the main stream of Jacob Fork
 Between the mouth of Shiny Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.</p> | (M) | <p>Spilleorn Creek (entire stream) [Wild Trout/Natural Bait Waters regulations apply. See Subparagraph (a)(6) of this Rule.]
 Mitchell County:
 Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)
 Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)
 Wiles Creek (game land boundary to mouth)</p> |
| (F) | <p>Nettle Branch (game land portion)
 Caldwell County:
 Buffalo Creek (Watauga County line to Long Ridge Branch)
 Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)</p> | (N) | <p>Polk County
 Green River (Henderson County line to Fishtop Falls Access Area)
 Pulliam (Fulloms) Creek and tributaries (game lands portions)</p> |
| (G) | <p>Rockhouse Creek (entire stream)
 Cherokee County:
 Bald Creek (game land portions, including tributaries) [Wild</p> | (O) | <p>Transylvania County:
 <u>All waters located on Gorges State Park</u></p> |

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- (P) Whitewater River (downstream from Silver Run Creek to South Carolina State line)
Watauga County:
Dutch Creek (headwaters to second bridge on SR 1134)
Howards Creek (headwaters to lower falls)
Watauga River (Avery County line to steel bridge at Riverside Farm Road)
- (Q) Wilkes County:
Big Sandy Creek (portion on Stone Mountain State Park)
Garden Creek (portion on Stone Mountain State Park)
Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release
Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
Widow Creek (portion on Stone Mountain State Park)
- (R) Yancey County:
Cattail Creek (Bridge at Mountain Farm Community Road (Pvt) to NC 197 bridge)
Lickskillet Creek (entire stream)
Middle Creek (game land boundary to mouth)
Rock Creek (game land boundary to mouth)
South Toe River (game land boundary downstream to Clear Creek)
- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:
(A) Ashe County:
Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)
Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
(B) Avery County:
Wilson Creek (game land portion)
(C) Buncombe County:
Carter Creek (game land portion)
(D) Burke County:
Henry Fork (portion on South Mountains State Park)
(E) Jackson County:
Flat Creek
Tuckasegee River (upstream of Clarke property)
- (F) McDowell County:
Newberry Creek (game land portion)
- (G) Wilkes County:
Harris Creek (portion on Stone Mountain State Park)
- (H) Yancey County:
Lower Creek
Upper Creek
- (4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:
(A) Avery County:
Elk River (portion on Lees-McRae College property, excluding the millpond)
Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
(B) Transylvania County:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
(C) Yancey County:
South Toe River (portion from the concrete bridge above Black Mountain Campgroup downstream to game land boundary, excluding Camp Creek and Big Lost Cove Creek)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait and only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules:
(A) Ashe County:
Trout Lake

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| <p>(B) Helton Creek (Virginia state line to New River)
Burke County:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)</p> <p>(C) Haywood County:
Richland Creek (Russ Avenue bridge to US 19A-23 bridge)
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)</p> <p>(D) Henderson County:
North Fork Mills River (game land portion below the Hendersonville watershed dam)</p> <p>(E) Jackson County:
Tuckasegee River (NC 107 bridge at Love Field Downstream to the Dillsboro dam)</p> <p>(F) Macon County:
Nantahala River (portion from Whiteoak Creek to the Nantahala Power and Light power house discharge canal)</p> <p>(G) Madison County:
Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)</p> <p>(H) McDowell County:
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)</p> <p>(I) Mitchell County:
Cane Creek (NC 226 bridge to NC 80 bridge)</p> <p>(J) Polk County:
Green River (Fishtop Falls Access Area to confluence with Cove Creek)</p> <p>(K) Surry County:
Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)</p> <p>(L) Transylvania County:
East Fork French Broad River (Glady Fork to French Broad River)</p> <p>(M) Watauga County:
Watauga River (SR 1557 bridge to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis)</p> <p>(N) Wilkes County:
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong</p> | <p>Roaring River and Bullhead Creek in Stone Mountain State Park)</p> <p>(6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].</p> <p>(A) Cherokee County:
Bald Creek (game land portions)
Dockery Creek (game land portions)
Tellico River (Fain Ford to Tennessee state line excluding tributaries)</p> <p>(B) Clay County:
Buck Creek (game land portion downstream of US 64 bridge)</p> <p>(C) Graham County:
Deep Creek
Long Creek (game land portion)</p> <p>(D) Haywood County:
Hurricane Creek (including portions of tributaries on game lands)</p> <p>(E) Jackson County:
Chattooga River (SR 1100 bridge to South Carolina state line)
(lower) Fowler Creek (game land portion)
Scotsman Creek (game land portion)</p> <p>(F) Macon County:
Chattooga River (SR 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
Kimsey Creek
Overflow Creek (game land portion)
Park Creek
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)</p> <p>(G) Madison County:
Big Creek (headwaters to the lower game land boundary, including tributaries)
Spillcorn Creek (entire stream, excluding tributaries)</p> <p>(H) Transylvania County:
North Fork French Broad River (game land portions downstream of SR 1326)
Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)</p> |
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- (b) Fishing in Trout Waters

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- (1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0104(b)(1)].
- (2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (a)(3), (a)(4), and (a)(6) of this Rule, the following rules apply to fishing in wild trout waters.
- (A) Open Season. There is a year round open season for the licensed taking of trout.
- (B) Creel Limit. The daily creel limit is four trout.
- (C) Size Limit. The minimum size limit is seven inches.
- (D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess

- natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).
- (E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; October 1, 1992;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2001
Temporary Amendment Eff. July 1, 2002;
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003.

SECTION .0300 - GAME FISH

15A NCAC 10C .0305 OPEN SEASONS: CREEL AND SIZE LIMITS

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. 2)
Hatchery Supported Trout Waters and undesignated waters	7 (exc. 2)	None (exc. 2)	All year, except March 1 to 6:00 a.m. on first Saturday in April (exc. 2)
Muskellunge and Tiger Musky	2	30 in.	ALL YEAR
Chain Pickerel (Jack)	None	None	ALL YEAR
Walleye	8 (ex. 9) (exc. 9)	None (exc. 9)	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5	14 in. (excs. 3, 8 & 10)	ALL YEAR (exc. 17)
Smallmouth and Spotted	5	12 in. (excs. 3, 8 & 10)	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	None	13 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	1	18 in. (exc. 20)	ALL YEAR
Striped Bass and their hybrids	8 aggregate (excs. 1, 5, 6, 11 & 13)	16 in. (excs. 1, 5, 6, 11 & 13)	ALL YEAR (excs. 6, 13 & 15)

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(Morone Hybrids)

Shad: (American and hickory)	10 aggregate (exc. 18)	None	ALL YEAR (excs. (exc. 18))
Kokanee Salmon	7	None	ALL YEAR
Panfishes	None	None	ALL YEAR
	(excs. 4, 12 & 16)	(exc. 12)	(exc. 4)
NONGAME FISHES	None	None	ALL YEAR
	(exc. 14) <u>(excs. 14 & 20)</u>	(exc. 20-14)	(excs. (exc. 7))

(b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam, and in John H. Kerr, Gaston, and Roanoke Rapids Reservoirs, and Lake Norman, the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches.
- (2) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, and the impounded waters of power reservoirs and municipally-owned water supply reservoirs open to the public for fishing. In Lake Lure the daily creel limit for trout is five fish and minimum size limit for trout is 15 inches.
- (3) Bass taken from Calderwood Reservoir may be retained without restriction as to size limit.
- (4) On Mattamuskeet Lake, special federal regulations apply.
- (5) In the inland fishing waters of Cape Fear, Neuse, Pee Dee, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and Lake Mattamuskeet, the daily creel limit for striped bass and their hybrids is three fish in aggregate and the minimum length limit is 18 inches. In the Tar-Pamlico River and its tributaries upstream of the Grimesland bridge and in the Neuse River and its tributaries upstream of the NC 55 bridge in Lenoir County, no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches shall be retained during the period April 1 through May 31.
- (6) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 15 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to the US 258 bridge and is March 15 through April 30 from the US 258 bridge upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18

- (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, Reedy Creek Park lakes in Mecklenburg County, Lake Rim in Cumberland County, ~~High Rock Lake downstream of I-85, Badin Lake, Falls Lake, Lake Tillery, Blewett Falls Lake, Tuckertown Lake and in the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina State line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery and Blewett Falls Lake, and the following waters and their tributaries: the New River in Onslow County, Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U.S. 258 bridge, Lake Mattamuskeet, Pungo Lake, Alligator Lake and New Lake. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan Reservoir, ~~in~~ Falls of the Neuse Reservoir, east of SR 1004, ~~and in~~ Lake Lure, ~~Lure~~, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. ~~In W. Kerr Scott Reservoir there is no minimum size limit for spotted bass. In Lake Lure the minimum size limit for smallmouth bass is 14 inches, with no exception. In Lake Phelps the minimum size for black bass is 14 inches, with no exception, and no fish between 16 and 20 inches shall be possessed. In Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed.~~~~

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- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
 - (A) Cane Creek Lake in Union County;
 - (B) Lake Thom-A-Lex in Davidson County; and
 - (C) Sutton Lake in New Hanover County.
- (11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (5), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (12) A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following waters: ~~Lake Tillery, Falls Lake, High Rock Lake, Badin Lake, Tuckertown Lake, the Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery, and Blewett Falls Lake, Lake Norman, Lake Hyco, Lake Ramseur, Cane Creek Lake, and the following waters and all their tributaries: Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U. S. 258 bridge, lake Mattamuskeet, Lake Phelps, Pungo Lake, Alligator Lake and New Lake. In and west of Madison, Buncombe and Rutherford counties, and in Lake James and in Buckhorn Reservoir in Wilson and Nash counties~~ the a daily creel limit-limit of 20 fish applies to crappie for crappie is 20 fish.
- (13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (14) The daily creel limits for channel, white, and blue catfish in designated urban lakes are stated in 15A NCAC 10C .0401(e).
- (15) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.

- (16) In the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina state line and in all public fishing waters east of I95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.
- (17) In Sutton Lake, no largemouth bass shall be retained from December 1 through March 31.
- (18) The season for taking American and hickory shad with dip nets and bow nets is March 1 through April 30.
- (19) No red drum greater than 27 inches in length may be retained.
- (20) The daily possession limit for herring (alewife and blueback in aggregate) greater than 6 inches in length is specified in 15A NCAC 10C .0401(a) and in 15A NCAC 10C .0402(c).

History Note: Authority G.S. 113-134; 113-292; 113-304; 113-305;
Eff. February 1, 1976;
Temporary Amendment Eff. May 10, 1990, for a period of 180 days to expire on November 1, 1990;
Temporary Amendment Eff. May 22, 1990, for a period of 168 days to expire on November 1, 1990;
Temporary Amendment Eff. May 1, 1991, for a period of 180 days to expire on November 1, 1991;
Amended Eff. July 1, 1994; July 1, 1993; October 1, 1992;
Temporary Amendment Eff. December 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995;
Temporary Amendment Eff. November 1, 1998;
Amended Eff. April 1, 1999;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. March 8, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002 and approved by RRC in May 2001];
Amended Eff. August 1, 2002 (approved by RRC in April 2002);
Temporary Amendment Eff. June 1, 2003.

SECTION .0400 - NONGAME FISH

15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE

(a) Except as permitted by the rules in this Section, it is unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, with the following exceptions:

- (1) Blue crabs must have a minimum carapace width of five inches (point to point);
- (2) No person shall take or possess during one day more than 25 herring (alewife and blueback in

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aggregate) that are greater than 6 inches in length from the inland fishing waters of coastal rivers and their tributaries up to the first impoundment of the main course on the river or its tributaries.

(3) Grass carp may not be possessed on Lake James and Mountain Island, Gaston and Roanoke Rapids reservoirs.

(4) No ~~no~~ trotlines or set-hooks may be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters.

(5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.

(b) The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters shall be the same as the trout fishing season.

~~(b)(c)~~ Nongame fishes, except alewife and blueback herring (greater than six inches in length) and bowfin, taken by hook and line, grabbing or by licensed special devices may be sold. Alewife and blueback herring less than 6 inches in length may be sold except in those waters specified in Paragraph (d) of Rule .0402 of this Section, where their possession is prohibited. Eels less than six inches in length may not be taken from inland waters for any purpose.

~~(d)~~ Freshwater mussels, including the Asiatic clam (*Corbicula fluminea*), may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County. It shall be unlawful to possess more than 200 freshwater mussels.

~~(d)(e)~~ It is unlawful to use boats powered by gasoline engines on impoundments located on the Barnhill Public Fishing Area.

~~(e)(f)~~ In the posted Community Fishing Program waters listed below it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate:

- Cedarrock Pond, Alamance County
- Lake Tomahawk, Buncombe County
- Frank Liske Park Pond, Cabarrus County
- Lake Rim, Cumberland County
- C.G. Hill Memorial Park Pond, Forsyth County
- Kernersville Lake, Forsyth County
- Winston Pond, Forsyth County
- Bur-Mil Park Ponds, Guilford County
- Hagan-Stone Park Ponds, Guilford County
- Oka T. Hester Pond, Guilford County
- San-Lee Park Ponds, Lee County
- Kinston Neuseway Park Pond, Lenoir County
- Freedom Park Pond, Mecklenburg County
- Hornet's Nest Pond, Mecklenburg County
- McAlpine Lake, Mecklenburg County
- Reedy Creek Park Ponds, Mecklenburg County
- Lake Luke Marion, Moore County
- Anderson Community Park, Orange County
- Lake Michael, Orange County
- River Park North Pond, Pitt County
- Hamlet City Lake, Richmond County
- Big Elkin Creek, Surry County
- Apex Community Lake, Wake County
- Bond Park Lake, Wake County

- Lake Crabtree, Wake County
- Shelley Lake, Wake County
- Simpkins Pond, Wake County
- Lake Toisnot, Wilson County
- Ellerbe Community Lake, Richmond County
- Indian Lake, Edgecombe County
- Harris Lake County Park Ponds, Wake County
- Park Road Pond, Mecklenburg County
- Etheridge Pond on the Barnhill Public Fishing Area, Edgecombe County
- Newbold Pond on the Barnhill Public Fishing Area, Edgecombe County

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 1994; July 1, 1993; May 1, 1992; Temporary Amendment Eff. December 1, 1994; Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003.

15A NCAC 10C .0402 TAKING NONGAME FISHES FOR BAIT

(a) It is unlawful to take nongame fish for bait in the inland waters of North Carolina using equipment other than:

- (1) a net of dip net design not greater than six feet across;
- (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
- (3) a cast net; or
- (4) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and which are under the immediate control and attendance of the individual operating them.

(b) It is unlawful to sell nongame fishes or aquatic animals taken under this Subchapter.

(c) Game fishes and their young taken while netting for bait shall be immediately returned unharmed to the water. No person shall take or possess more than 50 eels, or 200 eels, 200 herring (alewife and blueback in aggregate), no more than 25 of which may be greater than 6 inches in length from the inland fishing waters of coastal rivers and their tributaries up to the first impoundment of the main course on the river or its tributaries or 200 nongame fish of other species for bait pursuant to this Subchapter from inland fishing waters during one day. Any fishes taken for bait purposes are included within the daily possession limit for that species, if one is specified. It is unlawful to take nongame fish for bait or any other fish bait from designated public mountain trout waters and:

- (1) Chatham County
- Deep River
- Rocky River
- Bear Creek

- (2) Lee County
Deep River
 - (3) Moore County
Deep River
 - (4) Randolph County
Deep River below the Coleridge Dam
Fork Creek
- (d) In the waters of the Little Tennessee River, the Catawba River upstream of Lookout Shoals Dam, including all the tributaries and impoundments thereof, and on adjacent shorelines, docks, access ramps and bridge crossings, it is unlawful to transport, possess or release live alewife or live blueback herring.
- History Note: Authority G.S. 113-134; 113-135; 113-135.1; 113-272; 113-272.3; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 2000; July 1, 1998; July 1, 1993; July 1, 1992; May 1, 1992; July 1, 1989; Temporary Amendment Eff. July 1, 2001; Amended Eff. July 18, 2002; Temporary Amendment Eff. June 1, 2003.*
- 15A NCAC 10C .0407 PERMITTED SPECIAL DEVICES AND OPEN SEASONS**
- Except in designated public mountain trout waters, and in impounded waters located on the Sandhills Game Land, there is a year-round open season for the licensed taking of nongame fishes by bow and arrow. The use of special fishing devices, including crab pots in impoundments located entirely on game lands is prohibited. Seasons and waters in which the use of other special devices is authorized are indicated by counties below:
- (1) Alamance:
 - (a) July 1 to August 31 with seines in Alamance Creek below NC 49 bridge and Haw River;
 - (b) July 1 to June 30 with gigs in all public waters;
 - (2) Alexander: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lake Hickory and Lookout Shoals Reservoir;
 - (3) Alleghany: July 1 to June 30 with gigs in New River, except designated public mountain trout waters;
 - (4) Anson:
 - (a) July 1 to June 30 with traps and gigs in all public waters;
 - (b) March 1 to April 30 with dip and bow nets in Pee Dee River below Blewett Falls Dam;
 - (c) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls downstream to the Seaboard Coast Line Railroad trestle;
 - (5) Ashe: July 1 to June 30 with gigs in New River (both forks), except designated public mountain trout waters;
 - (6) Beaufort:
 - (a) July 1 to June 30 with traps in the Pungo River, and in the Tar and Pamlico Rivers above Norfolk and Southern Railroad bridge; and with gigs in all inland public waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters;
 - (7) Bertie:
 - (a) July 1 to June 30 with traps in the Broad Creek (tributary of Roanoke);
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
 - (8) Bladen: December 1 to June 5 with dip and bow nets in Black River;
 - (9) Brunswick:
 - (a) March 15 to April 15 (Thursdays, Fridays, and Saturdays only) with attended gill nets in Town Creek;
 - (b) December 1 to May 1 with dip and bow nets in Alligator Creek, Hoods Creek, Indian Creek, Orton Creek below Orton Pond, Rices Creek, Sturgeon Creek and Town Creek;
 - (10) Buncombe: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
 - (11) Burke:
 - (a) July 1 to August 31 with seines in all running public waters, except Johns River and designated public mountain trout waters;
 - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;
 - (12) Cabarrus:
 - (a) July 1 to August 31 with seines in all running public waters,
 - (b) July 1 to June 30 with traps and gigs in all public waters;
 - (13) Caldwell: July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
 - (14) Camden:
 - (a) July 1 to June 30 with traps in all inland public waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
 - (15) Carteret: December 1 to June 5 with dip and bow nets in all inland public waters except South River and the tributaries of the White Oak River;
 - (16) Caswell:
 - (a) July 1 to June 30 with gigs in all public waters;

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- (b) July 1 to August 31 with seines in all running public waters, except Moons Creek;
- (c) July 1 to June 30 with traps in Hyco Reservoir;
- (17) Catawba:
- (a) July 1 to August 31 with seines in all running public waters, except Catawba River below Lookout Dam;
- (b) July 1 to June 30 with traps, spear guns, and gigs in all public waters;
- (18) Chatham:
- (a) December 1 to April 15 with dip and gill nets in the Cape Fear River, Deep River, Haw River and Rocky River (local law);
- (b) July 1 to August 31 with seines in the Cape Fear River, and Haw River;
- (c) July 1 to June 30 with traps in Deep River; and with gigs in all public waters;
- (19) Cherokee: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (20) Chowan:
- (a) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (b) July 1 to June 30 with traps in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (21) Clay: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (22) Cleveland:
- (a) July 1 to August 31 with seines in all running public waters;
- (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;
- (23) Columbus:
- (a) December 1 to March 1 with gigs in all inland public waters, except Lake Waccamaw and its tributaries;
- (b) December 1 to June 5 with dip and bow nets in Livingston Creek;
- (24) Craven:
- (a) July 1 to June 30 with traps in the main run of the Trent and Neuse Rivers;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, except Pitch Kettle, Grindle, Slocum (downstream of the US 70 bridge), Spring and Hancock Creeks and their tributaries; and with seines in the Neuse River;
- (25) Currituck:
- (a) July 1 to June 30 with traps in Tulls Creek and Northwest River;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (26) Dare:
- (a) July 1 to June 30 with traps in Mashoes Creek, Milltail Creek, East Lake and South Lake;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (27) Davidson:
- (a) July 1 to August 31 with seines in all running public waters;
- (b) July 1 to June 30 with gigs in all public waters, and with traps in all public waters except Leonard's Creek, Abbott's Creek below Lake Thom-A-Lex dam, and the Abbott's Creek arm of High Rock Lake upstream from the NC 8 bridge;
- (28) Davie:
- (a) July 1 to June 30 with traps and gigs in all public waters;
- (b) July 1 to August 31 for taking only carp and suckers with seines in Dutchmans Creek from US 601 to Yadkin River and in Hunting Creek from SR 1338 to South Yadkin River;
- (29) Duplin: December 1 to June 5 with dip and bow nets and seines in the main run of the Northeast Cape Fear River downstream from a point one mile above Serecta Bridge;
- (30) Durham:
- (a) July 1 to August 31 with seines in Neuse River;
- (b) July 1 to June 30 with gigs in all public waters;
- (31) Edgecombe: December 1 to June 5 with dip and bow nets in all public waters;
- (32) Forsyth: July 1 to June 30 with traps and gigs in all public waters, except traps may not be used in Belews Creek Reservoir;
- (33) Franklin:
- (a) July 1 to August 31 with seines in Tar River;
- (b) July 1 to June 30 with gigs in all public waters, except Parrish, Laurel Mill, Jackson, Clifton, Moore's and Perry's Ponds, and in the Franklinton City ponds;
- (34) Gaston:
- (a) July 1 to August 31 with seines in all running public waters;
- (b) July 1 to June 30 with gigs, traps and spear guns in all public waters;
- (35) Gates: December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;

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- (36) Graham: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (37) Granville:
- (a) July 1 to June 30 with gigs in all public waters, except Kerr Reservoir;
 - (b) July 1 to August 31 with seines in the Neuse River and the Tar River below US 158 bridge;
 - (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;
 - (d) July 1 to June 30 with cast nets in all public waters;
- (38) Greene: December 1 to June 5 with dip and bow nets and reels in Contentnea Creek;
- (39) Guilford:
- (a) July 1 to August 31 with seines in Haw River, Deep River below Jamestown Dam, and Reedy Fork Creek below US 29 bridge;
 - (b) July 1 to June 30 with gigs in all public waters;
- (40) Halifax:
- (a) December 1 to June 5 with dip and bow nets in Beech Swamp, Clarks Canal, Conoconnara Swamp, Fishing Creek below the Fishing Creek Mill Dam, Kehukee Swamp, Looking Glass Gut, Quankey Creek, and White's Mill Pond Run;
 - (b) July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir;
- (41) Harnett:
- (a) January 1 to May 31 with gigs in Cape Fear River and tributaries;
 - (b) December 1 to June 5 with dip and bow nets in Cape Fear River;
- (42) Haywood: July 1 to June 30 with gigs in all public waters, except Lake Junaluska and designated public mountain trout waters;
- (43) Henderson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (44) Hertford:
- (a) July 1 to June 30 with traps in Wiccacon Creek;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (45) Hyde:
- (a) July 1 to June 30 with traps in all inland waters;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (46) Iredell: July 1 to June 30 with traps and gigs in all public waters; and with spear guns in Lookout Shoals Reservoir and Lake Norman;
- (47) Jackson: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (48) Johnston: December 1 to June 5 with dip and bow nets in Black Creek, Little River, Middle Creek, Mill Creek, Neuse River and Swift Creek;
- (49) Jones:
- (a) July 1 to June 30 with traps in the Trent River below US 17 bridge and White Oak River below US 17 bridge;
 - (b) December 1 to June 5 with dip and bow nets in all inland public waters, except the tributaries to the White Oak River;
- (50) Lee:
- (a) December 1 to April 15 with dip and gill nets (local law) in Cape Fear River and Deep River; and with gill nets in Morris Pond;
 - (b) July 1 to August 31 with seines in Cape Fear River;
 - (c) July 1 to June 30 with traps in Deep River, and with gigs in all public waters;
- (51) Lenoir:
- (a) July 1 to June 30 with traps in Neuse River below US 70 bridge at Kinston;
 - (b) December 1 to June 5 with dip and bow nets in Neuse River and Contentnea Creek upstream from NC 118 bridge at Grifton; and with seines in Neuse River;
- (52) Lincoln:
- (a) July 1 to August 31 with seines in all running public waters;
 - (b) July 1 to June 30 with traps, gigs and spear guns in all public waters;
- (53) McDowell:
- (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;
 - (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters and Lake James;
- (54) Macon: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (55) Madison: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (56) Martin: December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (57) Mecklenburg:
- (a) July 1 to August 31 with seines in all running public waters;

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- (b) July 1 to June 30 with traps, gigs and spear guns in all public waters except Freedom Park Pond and Hornet's Nest Ponds;
- (58) Montgomery:
- (a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
- (b) July 1 to June 30 with traps and gigs in all public waters;
- (59) Moore:
- (a) December 1 to April 15 with gill nets in Deep River and all tributaries;
- (b) July 1 to August 31 with seines in all running public waters except in Deep River;
- (c) July 1 to June 30 with gigs in all public waters, except lakes located on the Sandhills Game Land; and with traps in Deep River and its tributaries;
- (60) Nash:
- (a) July 1 to June 30 with gigs in all public waters, except Tar River;
- (b) December 1 to June 5 with dip and bow nets in the Tar River below Harris' Landing and Fishing Creek below the Fishing Creek Mill Dam;
- (61) New Hanover: December 1 to June 5 with dip and bow nets in all inland public waters, except Sutton (Catfish) Lake;
- (62) Northampton:
- (a) July 1 to June 30 with gigs in all public waters, except Gaston and Roanoke Rapids Reservoirs and the Roanoke River above the US 301 bridge;
- (b) December 1 to June 5 with dip and bow nets in Occoneechee Creek, Old River Landing Gut and Vaughans Creek below Watsons Mill;
- (c) July 1 to June 30 with dip and cast nets in Gaston Reservoir and Roanoke Rapids Reservoir;
- (63) Onslow:
- (a) July 1 to June 30 with traps in White Oak River below US 17 bridge;
- (b) August 1 to March 31 with eel pots in the main run of New River between US 17 bridge and the mouth of Hawkins Creek;
- (c) December 1 to June 5 with dip and bow nets in the main run of New River and in the main run of the White Oak River;
- (d) March 1 to April 30 with dip and bow nets in Grant's Creek;
- (64) Orange:
- (a) July 1 to August 31 with seines in Haw River;
- (b) July 1 to June 30 with gigs in all public waters;
- (65) Pamlico: December 1 to June 5 with dip and bow nets in all inland public waters, except Dawson Creek;
- (66) Pasquotank:
- (a) July 1 to June 30 with traps in all inland waters;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (67) Pender:
- (a) December 1 to June 5 with dip and bow nets in the Northeast Cape Fear River, Long Creek and Black River; and with seines in the main run of Northeast Cape Fear River;
- (b) December 1 to May 1 with dip and bow nets in Moore's Creek approximately one mile upstream to New Moon Fishing Camp;
- (68) Perquimans:
- (a) July 1 to June 30 with traps in all inland waters;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding public lakes, ponds, and other impounded waters;
- (69) Person:
- (a) July 1 to August 31 with seines in Hyco Creek and Mayo Creek;
- (b) July 1 to June 30 with gigs in all public waters.
- (70) Pitt:
- (a) July 1 to June 30 with traps in Neuse River and in Tar River below the mouth of Hardee Creek east of Greenville;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, except Grindle Creek, and Contentnea Creek between NC 118 bridge at Grifton and the Neuse River;
- (c) December 1 to June 5 with seines in Tar River;
- (71) Polk: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (72) Randolph:
- (a) December 1 to March 1 with gill nets in Deep River and Uwharrie River;
- (b) July 1 to August 31 with seines in Deep River above the Coleridge Dam and Uwharrie River;
- (c) July 1 to June 30 with gigs in all public waters;
- (73) Richmond:
- (a) July 1 to August 31 with seines in all running public waters, except Pee Dee River from Blewett Falls

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- downstream to the Seaboard Coast Line Railroad trestle;
- (b) July 1 to June 30 with traps and gigs in all public waters, except lakes located on the Sandhills Game Land;
- (c) March 1 to April 30 with dip and bow nets in Pee Dee River below Blewett Falls Dam;
- (74) Robeson: December 1 to March 1 with gigs in all inland public waters.
- (75) Rockingham:
- (a) July 1 to August 31 with seines in Dan River and Haw River;
- (b) July 1 to June 30 with traps in Dan River; and with gigs in all public waters;
- (76) Rowan:
- (a) July 1 to August 31 with seines in all running public waters,
- (b) July 1 to June 30 with traps and gigs in all public waters;
- (77) Rutherford:
- (a) July 1 to August 31 with seines in all running public waters, except designated public mountain trout waters;
- (b) July 1 to June 30 with traps, gigs, and spear guns in all public waters, except designated public mountain trout waters;
- (78) Sampson: December 1 to June 5 with dip and bow nets in Big Coharie Creek, Black River and Six Runs Creek;
- (79) Stanly:
- (a) July 1 to August 31 with seines in all running public waters, except that part of the Pee Dee River between the Lake Tillery dam at Hydro and the mouth of Rocky River;
- (b) July 1 to June 30 with traps and gigs in all public waters;
- (80) Stokes: July 1 to June 30 with traps and gigs in all public waters, except designated public mountain trout waters, and traps may not be used in Belews Creek Reservoir;
- (81) Surry: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters; and with traps in the main stem of Yadkin River;
- (82) Swain: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (83) Transylvania: July 1 to June 30 with gigs in all public waters, except designated public mountain trout waters;
- (84) Tyrrell:
- (a) July 1 to June 30 with traps in Scuppernong River, Alligator Creek, and the drainage canals of Lake Phelps;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impounded waters;
- (85) Union:
- (a) July 1 to August 31 with seines in all running public waters,
- (b) July 1 to June 30 with traps and gigs in all public waters;
- (86) Vance:
- (a) July 1 to August 31 with seines in the Tar River;
- (b) July 1 to June 30 with gigs in all public waters, except Rolands, Faulkners, Southerlands, and Weldon Ponds, City Lake, and Kerr Reservoir;
- (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir;
- (d) July 1 to June 30 with cast nets in all public waters;
- (87) Wake:
- (a) July 1 to June 30 with gigs in all public waters, except Sunset, Benson, Wheeler, Raleigh, and Johnson Lakes;
- (b) December 1 to June 5 with dip and bow nets in the Neuse River below Milburnie Dam, and Swift Creek below Lake Benson Dam;
- (88) Warren:
- (a) July 1 to August 31 with seines in Fishing Creek, Shocco Creek, and Walker Creek; excluding Duck and Hammes Mill Ponds;
- (b) July 1 to June 30 with gigs in all public waters, except Duck and Hammes Mill Ponds, Kerr Reservoir, and Gaston Reservoir;
- (c) July 1 to June 30 with dip and cast nets in Kerr Reservoir and Gaston Reservoir;
- (d) July 1 to June 30 with cast nets in all public waters;
- (89) Washington:
- (a) July 1 to June 30 with traps in the drainage canals of Lake Phelps;
- (b) December 1 to June 5 with dip and bow nets in all inland public waters, excluding Lake Phelps, public lakes, ponds and other impoundments;
- (90) Wayne: December 1 to June 5 with dip and bow nets in Little River, Mill Creek and Neuse River.
- (91) Wilkes: July 1 to June 30 with traps in Yadkin River below W. Kerr Scott Reservoir; and with gigs and spear guns in all public waters, except designated public mountain trout waters;
- (92) Wilson:
- (a) July 1 to June 30 with gigs in Contentnea Creek (except Buckhorn

- Reservoir), including unnamed tributaries between Flowers Mill and SR 1163 (Deans) bridge;
- (b) December 1 to June 5 with dip and bow nets in Contentnea Creek below US 301 bridge and in Toisnot Swamp downstream from the Lake Toisnot Dam;
- (93) Yadkin: July 1 to June 30 with gigs in all public waters, and with traps in the main stem of Yadkin River.

History Note: Authority G.S. 113-134; 113-276; 113-292; Eff. February 1, 1976; Temporary Amendment Eff. December 29, 1988; Temporary Amendment Eff. December 1, 1993; Amended Eff. July 1, 2000; July 1, 1998; July 1, 1996; December 1, 1995; July 1, 1995; July 1, 1994; June 1, 1994; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003.

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0100 - GAME LANDS REGULATIONS

15A NCAC 10D .0103 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made

based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.

(e) Definitions:

- (1) For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).
- (2) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced seas on.
- (3) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. These "open days" also apply to either-sex hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.
- (4) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons, except that:
 - (A) Bears shall not be taken on lands designated and posted as bear sanctuaries;
 - (B) Wild boar shall not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on male deer on bear sanctuaries;
 - (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
 - (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds shall be hunted with dogs.

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- (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.
- (iii) Additionally, raccoon and opossum may be hunted when in season on Uwharrie Game Lands.
- (D) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15;
- (f) Game Lands Seasons and Other Restrictions:
 - (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.
 - (2) Alligator River Game Land in Tyrrell County
 - (A) Six Day per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
 - (~~2~~)(3) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (~~3~~)(4) Bachelor Bay Game Land in Bertie and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (~~4~~)(5) Bertie County Game Land in Bertie County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (~~5~~)(6) Bladen Lakes State Forest Game Land in Bladen County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program.
 - (C) Handguns shall not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used or possessed.
 - (D) ~~On the Breece Tract and the Singletary Lake Tract~~ deer and bear may be taken only by still hunting.
 - (E) Wild turkey hunting on the Singletary Lake Tract is by permit only.
 - (F) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
 - (~~6~~)(7) Brunswick County Game Land in Brunswick County: Permit Only Area
 - (~~7~~)(8) Buckridge Game Land in Tyrrell County
 - (A) ~~Six~~Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season.
 - (~~8~~)(9) Bullard and Branch Hunting Preserve Game Lands in Robeson County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (~~9~~)(10) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 p.m. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.

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- (D) Horseback riding, including all equine species, is prohibited.
- (E) Target shooting is prohibited
- (F) Wild turkey hunting is by permit only.
- ~~(10)~~(11) Cape Fear Game Land in Pender County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
- ~~(11)~~(12) Caswell Game Land in Caswell County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.
- (C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.
- (D) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
- (E) The area encompassed by the following roads is closed to all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
- ~~(12)~~(13) Caswell Farm Game Land in Lenoir County-Dove-Only Area
- (A) Dove hunting is by permit only from opening day through either the first Saturday or Labor Day which ever comes last of the first segment of dove season.
- ~~(13)~~(14) Catawba Game Land in Catawba County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
- ~~(44)~~(15) Chatham Game Land in Chatham and Harnett counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (D) Horseback riding, including all equine species, is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons.
- ~~(45)~~(16) Cherokee Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(46)~~(17) Chowan Game Land in Chowan County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- ~~(47)~~(18) Chowan Swamp Game Land in Gates County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(48)~~(19) Cold Mountain Game Land in Haywood County
- (A) Six Days per Week Area
- (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- ~~(49)~~(20) Columbus County Game Land in Columbus County.
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(20)~~(21) Croatan Game Land in Carteret, Craven and Jones counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New

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- Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- ~~(21)~~(22) Currituck Banks Game Land in Currituck County
- (A) Six Days per Week Area
 - (B) Permanent waterfowl blinds in Currituck Sound adjacent to these game lands shall be hunted by permit only after November 1.
 - (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not possess or use a firearm.
 - (D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
 - (E) Dogs shall be allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
 - (F) No screws, nails, or other objects penetrating the bark will be used to attach a tree stand or blind to a tree.
- ~~(22)~~(23) Dare Game Land in Dare County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) No hunting on posted parts of bombing range.
 - (D) The use and training of dogs is prohibited from March 1 through June 30.
- ~~(23)~~(24) Dupont State Forest Game Lands in Henderson and Transylvania counties
- (A) Hunting is by Permit only.
 - (B) The training and use of dogs for hunting except during scheduled small game permit hunts for squirrel, grouse, rabbit, or quail is prohibited.
 - (C) Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- ~~(24)~~(25) Dysartsville Game Land in McDowell and Rutherford counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(25)~~(26) Elk Knob Game Land in Ashe and Watauga counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(26)~~(27) Gardner-Webb Game Land in Cleveland County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(27)~~(28) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) On posted waterfowl impoundments waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the duck hunting seasons. After November 1, on the Pamlico Point, Campbell Creek, Hunting Creek and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.
 - (D) Camping is restricted to Sep. 1-Feb 28 and April 7-May 14 in areas both designated and posted as camping areas.
- ~~(28)~~(29) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through-August 31 and all horseback riding is prohibited from September 1 through May 15. This rule includes all equine species.
- ~~(29)~~(30) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(30)~~(31) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons.

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- (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (F) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season on the Long Shoal River Tract of Gull Rock Game Land.
- ~~(31) Hickorynut Mountain Game Land in McDowell County~~
- ~~(A) Six Days per Week Area~~
- ~~(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.~~
- ~~(32) Hofmann Forest Game Land in Jones and Onslow counties~~
- ~~(A) Six Days per Week Area~~
- ~~(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.~~
- ~~(33)~~(32) Holly Shelter Game Land in Pender County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program
- (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.
- (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- ~~(34)~~(33) Hyco Game land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(35)~~(34) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- ~~(36)~~(35) Jordan Game Land in Chatham, Durham, Orange and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (D) Horseback riding, including all equine species, is prohibited except on those areas posted as American Tobacco Trail.
- (E) Target shooting is prohibited.
- (F) Wild turkey hunting is by permit only.
- ~~(37)~~(36) Lantern Acres Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- ~~(38)~~(37) Lee Game Land in Lee County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(39)~~(38) Linwood Game Land in Davidson County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- ~~(40)~~(39) Mayo Game Land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
- ~~(41)~~(40) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
- (C) Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and

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west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15.

- (42)(41) Neuse River Game Land in Craven County
(A) Six Days per Week Area
(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
(43)(42) New Lake Game Land in Hyde County
(A) Six Days per Week Area
(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
(44)(43) North River Game Land in Currituck and Camden counties
(A) Six Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season except in that part in Camden County south of US 158 where the season is the last six open days of the applicable Deer With Visible Antlers Season.
(C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
(D) Wild turkey hunting is by permit only on that portion in Camden County.
(45)(44) Northwest River Marsh Game Land in Currituck County
(A) Six Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
(46)(45) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties
(A) Six Days per Week Area
(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
(C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.
(D) On that part of Pee Dee River Game Lands between Blewett Falls Dam and the South Carolina state line, waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 PM in this area.

- (47)(46) Perkins Game Land in Davie County
(A) Three Days per Week Area
(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
(48)(47) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties
(A) Six Days per Week Area
(B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season except on that portion in Avery and Yancey counties and that portion in Haywood County encompassed by US 276 on the north, US 74 on the west, and the Blue Ridge Parkway on the south and east.
(C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.
(49)(48) Pungo River Game Land in Hyde County
(A) Six Days per Week Area
(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
(50)(49) Roanoke River Wetlands in Bertie, Halifax and Martin counties
(A) Hunting is by Permit only.
(B) Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.
(C) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
(51)(50) Roanoke Sound Marshes Game Land in Dare County-Hunting is by permit only.
(52)(51) Robeson Game Land in Robeson County
(A) Three Days per Week Area
(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
(53)(52) Sampson Game Land in Sampson County
(A) Three Days per Week Area
(B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
(54)(53) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
(A) Three Days per Week Area

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- (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting days during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on open days beginning the third Saturday before Thanksgiving through the following Wednesday, and during the Deer With Visible Antlers season.
- (C) Gun either-sex deer hunting is by permit only. For participants in the Disabled Sportsman Program, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer, opossum, rabbit, and raccoon seasons specifically indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
- (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons
- (E) Wild turkey hunting is by permit only.
- (F) Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.
- (G) Opossum, ~~rabbit~~, and raccoon hunting on the field trial grounds will be allowed on open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Thanksgiving and rabbit season on the field trial grounds will be from the Saturday preceding Thanksgiving through the Saturday following Thanksgiving.
- (H) The following areas are closed to all quail and woodcock hunting and dog training on birds: In Richmond County: that part east of US 1; In Scotland County: that part east of east of SR 1001 and west of US 15/501.
- ~~(55)~~(54) Sauratown Plantation Game Land in Stokes County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- ~~(56)~~(55) Scuppernong Game Land in Tyrrell and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(57)~~(56) Shearon Harris Game Land in Chatham and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
 - (D) The use or construction of permanent hunting blinds is prohibited.
 - (E) Wild turkey hunting is by permit only.
- ~~(58)~~(57) Shocco Creek Game Land in Franklin and Warren County counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(59)~~(58) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
 - (D) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.
- ~~(60)~~(59) Suggs Mill Pond Game Land in Bladen County;
 - (A) Hunting is by Permit only.
 - (B) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.

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- ~~(61)~~(60) Sutton Lake Game Land in New Hanover County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(62)~~(61) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- ~~(63)~~(62) Thurmond Chatham Game Land in Wilkes County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow on the Saturday prior to Northwestern bow and arrow season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species. Participants must obtain a game lands license prior to horseback riding on this area.
- ~~(64)~~(63) Toxaway Game Land in Transylvania County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- ~~(65)~~(64) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.

- ~~(66)~~(65) Vance Game Land in Vance County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- ~~(67)~~(66) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(68)~~(67) White Oak River Impoundment Game Land in Onslow County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the statewide waterfowl hunting seasons. After October 1, a special permit is required for hunting waterfowl on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.
- (g) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and shall be nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperator agent or by phone.
- (h) The following game lands and refuges shall be closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
- Bertie, Halifax and Martin counties--Roanoke River Wetlands
 - Bertie County--Roanoke River National Wildlife Refuge
 - Bladen County—Suggs Mill Pond Game Lands
 - Burke County—John's River Waterfowl Refuge
 - Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)
 - Dare County--Roanoke Sound Marshes Game Lands
 - Davie--Hunting Creek Swamp Waterfowl Refuge
 - Gaston, Lincoln and Mecklenburg counties--Cowan's Ford Waterfowl Refuge
 - Henderson and Transylvania counties--Dupont State Forest Game Lands

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305; Eff. February 1, 1976;

Temporary Amendment Eff. October 3, 1991;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996;
September 1, 1995; July 1, 1995; September 1, 1994; July 1,
1994;
Temporary Amendment Eff. October 1, 1999; July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01
and 04/18/02);
Temporary Amendment Eff. June 1, 2003.

15A NCAC 10D .0104 FISHING ON GAME LANDS

(a) Generally. Except as otherwise indicated herein, fishing on game lands which are open to fishing shall be in accordance with the statewide rules. All game lands are open to public fishing except restocked ponds when posted against fishing, Hunting Creek Swamp Waterfowl Refuge, Grogan Creek in Transylvania County, and in the case of private ponds where fishing may be prohibited by the owners thereof. No trotline or set-hook or any net, trap, gig, bow and arrow or other special fishing device of a type mentioned in 15A NCAC 10C .0404(b)(c)(d) and (f) may be used in any impounded waters located entirely on game lands. Bow and arrow may be used to take nongame fishes in impounded waters located entirely on gamelands with the exception of those waters mentioned in 15A NCAC 10C .0404(a). Blue crabs taken by hook and line (other than set-hooks) in designated waterfowl impoundments located on game lands must have a minimum carapace width of five inches (point to point) and the daily possession limit is 50 per person and 100 per vessel.

(b) Designated Public Mountain Trout Waters

- (1) Fishing Hours. It is unlawful to fish in designated public mountain trout waters on any game land and in all waters on the Dupont State Forest Game Land from one-half hour after sunset to one-half hour before sunrise, except in Hatchery Supported Trout waters as stated in 15A NCAC 10C .0305(a), Delayed Harvest waters as stated in 15A NCAC 10C .0205(a)(5), game lands sections of the Nantahala River located downstream from the Swain County line, and in the sections of Green River in Polk County located on Green River Game Lands from Cove Creek downstream to Brights Creek.
- (2) Location. All waters located on the game lands listed in this Subparagraph are designated public mountain trout waters except Cherokee Lake, Grogan Creek, and Big Laurel Creek downstream from the US 25-70 bridge to the French Broad River, Pigeon River downstream of Waterville Reservoir to

the Tennessee state line, Nolichucky River, Mill Ridge Pond Cheoah River downstream of Santeetlah Reservoir, Little River from Hooker Falls downstream to the Dupont State Forest boundary, Lake Imaging, Lake Dense, Lake Alfred, Lake Julia, Fawn ~~Lake, Lake and~~ the portion of West Fork Pigeon River below Lake ~~Logan, Logan and North Fork Catawba River~~ downstream of the mouth of Armstrong Creek.

Dupont State Forest Game Lands in Henderson and Transylvania counties
 Three Top Mountain Game Land, Ashe County
 Nantahala National Forest Game Lands in the Counties of Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania
 Pisgah National Forest Game Lands in the Counties of Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania and Yancey
 Thurmond Chatham Game Land in Wilkes County
 Toxaway Game Land in Transylvania County
 South Mountains Game Land in the counties of Cleveland and Rutherford
 Cold Mountain Game Land in Haywood County

- (3) All designated public mountain trout waters located on the game lands listed in Subparagraph (b)(2) of this Rule are wild trout waters unless classified otherwise. [See 15A NCAC 10C .0205(a)(1)].

(c) Ponds. In all game lands ponds, it is unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line and the daily creel limit for forked tail catfish is six fish in aggregate.

History Note: Authority G.S. 113-134; 113-264; 113-272; 113-292; 113-305;
Eff. February 1, 1976;
Amended Eff. July 1, 2000; July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1992;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003.

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting March 20, 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 2004 Session of the General Assembly or a later date if specified by the agency unless a bill is introduced before the 31st legislative day that specifically disapproves the rule. If a bill to disapprove a rule is not ratified, the rule will become effective either on the day the bill receives an unfavorable final action or the day the General Assembly adjourns. Statutory reference: G.S. 150B-21.3.

APPROVED RULE CITATION

REGISTER CITATION TO THE NOTICE OF TEXT

02	NCAC	09C	.0701*	not required G.S. 150B-21.5(a)(3)
10	NCAC	03D	.2508*	16:21 NCR
10	NCAC	03D	.2521-.2522*	16:21 NCR
10	NCAC	03D	.2601-.2602*	16:21 NCR
10	NCAC	03D	.2701*	16:21 NCR
10	NCAC	03D	.2901-.2902*	16:21 NCR
10	NCAC	03D	.2905*	16:21 NCR
10	NCAC	03D	.2908-.2909*	16:21 NCR
10	NCAC	03D	.3001-.3003*	16:21 NCR
10	NCAC	03D	.3101*	16:21 NCR
10	NCAC	26H	.0211*	17:03 NCR
10	NCAC	26H	.0213*	17:03 NCR
15A	NCAC	13A	.0101*	17:13 NCR
18	NCAC	01	.0101*	not required G.S. 150B-21.5(a)(4)
18	NCAC	01	.0103*	not required G.S. 150B-21.5(a)(4)
18	NCAC	02	.0102*	not required G.S. 150B-21.5(a)(4)
18	NCAC	02	.0302*	not required G.S. 150B-21.5(a)(4)
18	NCAC	03	.0101*	not required G.S. 150B-21.5(a)(4)
18	NCAC	03	.0701*	not required G.S. 150B-21.5(a)(4)
18	NCAC	04	.0101*	not required G.S. 150B-21.5(a)(4)
18	NCAC	06	.1101*	not required G.S. 150B-21.5(a)(4)
18	NCAC	06	.1210*	not required G.S. 150B-21.5(a)(4)
18	NCAC	06	.1602*	not required G.S. 150B-21.5(a)(4)
18	NCAC	06	.1604*	not required G.S. 150B-21.5(a)(4)
23	NCAC	02E	.0201	16:24 NCR
25	NCAC	01D	.1945*	17:03 NCR
25	NCAC	01E	.0805*	17:03 NCR

TITLE 2 - DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 09C .0701 SCOPE

The source approval requirements of this Section apply to bottled water sources located within the state. Bottled water from sources located outside the state must comply with the source approval requirements of Title 21, Code of Federal Regulations, Part 129, which is adopted by reference in 02 NCAC 09B .0116(p)(16).

History Note: Authority G.S. 106-139; Eff. April 1, 1992; Temporary Amendment Eff. May 13, 1996; Amended Eff. April 1, 2003; April 1, 1997.

TITLE 10 - DEPARTMENT OF HEALTH & HUMAN SERVICES

10 NCAC 03D .2508 EMS INSTRUCTOR

As used in this Subchapter, "EMS Instructor" means a person who instructs or coordinates EMS educational programs within EMS educational institutions.

History Note: Authority G.S. 143-508(b); 143-508(d)(3); 143-508(d)(4); Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 03D .2521 SPECIALTY CARE TRANSPORT

PROGRAM CONTINUING EDUCATION

COORDINATOR

As used in this Subchapter, "Specialty Care Transport Program Continuing Education Coordinator" means an EMS Instructor within a Specialty Care Transport Program who is responsible for the coordination of EMS continuing education programs for EMS personnel within the program.

*History Note: Authority G.S. 143-508(b); 143-508(d)(3);
Temporary Adoption Eff. January 1, 2002;
Eff. August 1, 2004.*

10 NCAC 03D .2522 SYSTEM CONTINUING EDUCATION COORDINATOR

As used in this Subchapter, "System Continuing Education Coordinator" means an EMS Instructor within a Model EMS System who is responsible for the coordination of EMS continuing education programs.

*History Note: Authority G.S. 143-508(b); 143-508(d)(3);
Temporary Adoption Eff. January 1, 2002;
Eff. August 1, 2004.*

10 NCAC 03D .2601 EMS SYSTEM REQUIREMENTS

(a) County government shall establish EMS Systems. Each EMS System shall have:

- (1) a defined geographical service area for the EMS System. The minimum service area for an EMS System shall be one county. There may be multiple EMS provider service areas within the service area of an EMS System. The highest level of care offered within any EMS provider service area must be available to the citizens within that service area 24 hours per day;
- (2) a scope of practice within the parameters defined by the North Carolina Medical Board pursuant to G.S. 143-514;
- (3) a written plan describing the dispatch and coordination of all responders that provide EMS care within the system;
- (4) a minimum of one licensed EMS provider. For those systems with providers operating within the EMD, EMT-D, EMT-I, or EMT-P scope of practice, there shall be a plan for medical oversight required by Section .2800 of this Subchapter;
- (5) an identified number of permitted ambulances to provide coverage to the service area 24 hours per day;
- (6) personnel credentialed to perform within the scope of practice of the system and to staff the ambulance vehicles as required by G.S. 131E-158. There shall be a written plan for the use of credentialed EMS personnel for all practice settings used within the system;
- (7) a system to collect and submit by facsimile or other electronic means to the OEMS data that uses the basic data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical

- Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. EMS Systems shall comply with this requirement by July 1, 2004;
- (8) a written infection control policy that addresses the cleansing and disinfecting of vehicles and equipment that are used to treat or transport patients;
 - (9) a written plan to provide orientation to personnel on EMS operations and related issues for hospitals routinely receiving patients from the EMS System;
 - (10) a listing of facilities that will provide online medical direction for systems with providers operating within the EMT-D, EMT-I, or EMT-P scope of practice. To provide online medical direction, the facility shall have, at a minimum:
 - (A) availability of a physician, Mobile Intensive Care Nurse, EMS-nurse practitioner, or EMS-physician assistant to provide online medical direction to EMS personnel during all hours of operation of the facility;
 - (B) a written plan to provide physician backup to the MICN, EMS-NP, or EMS-PA providing online medical direction to EMS personnel;
 - (C) a mechanism for persons providing online medical direction to provide feedback to the Quality Management Committee; and
 - (D) a plan to provide orientation and education regarding treatment protocols for those individuals providing online medical direction;
 - (11) a written plan to ensure that each facility which routinely receives patients and also offers clinical education for EMS personnel provides orientation and education to all preceptors regarding requirements of the EMS System;
 - (12) a written plan for providing emergency vehicle operation education for system personnel who operate emergency vehicles;
 - (13) an EMS communication system that provides for:
 - (A) public access using the emergency telephone number 9-1-1 within the public dial telephone network as the primary method for the public to request emergency assistance. This number shall be connected to the emergency communications center or Public Safety Answering Point (PSAP) with immediate assistance available such that no caller will be

instructed to hang up the telephone and dial another telephone number. A person calling for emergency assistance shall never be required to speak with more than two persons to request emergency medical assistance;

- (B) an emergency communications system operated by public safety telecommunicators with training in the management of calls for medical assistance available 24 hours per day;
- (C) dispatch of the most appropriate emergency medical response unit or units to any caller's request for assistance. The dispatch of all response vehicles shall be in accordance with written EMS System plan for the management and deployment of response vehicles including requests for mutual aid; and
- (D) two-way radio voice communications from within the defined service area to the emergency communications center or PSAP and to facilities where patients are routinely transported. The emergency communications system shall maintain all Federal Communications Commission (FCC) radio licenses or authorizations required;

- (14) a written plan addressing the use of Specialty Care Transport Programs within the system; and
- (15) a written continuing education plan for EMS personnel.

(b) An application to establish an EMS System shall be submitted by the county to the OEMS for review. When the system is comprised of more than one county, only one application shall be submitted. The proposal shall demonstrate that the system meets the requirements in Paragraph (a) of this Rule. System approval shall be granted for a period of six years. Systems shall apply to OEMS for reapproval.

(c) Counties shall have until July 1, 2003, to apply for initial system approval.

History Note: Authority G.S. 143-508(b); (d)(1), (5), (9); 143-509(1); 143-517; Temporary Adoption Eff. January 1, 2002; Eff. April 1, 2004.

10 NCAC 03D .2602 MODEL EMS SYSTEMS

(a) Some EMS Systems may choose to move beyond the minimum requirements in Rule .2601 and receive designation from the OEMS as a Model EMS System. To receive this designation, an EMS System shall document that, in addition to the system requirements in Rule .2601 of this Section, the following criteria have been met:

- (1) a uniform level of care throughout the system available 24 hours per day;

- (2) a plan for medical oversight that meets the requirements found in Section .2800 of this Subchapter. Specifically, Model EMS Systems shall meet the additional requirements for medical director and written treatment protocols as defined in Rules .2801(1)(b) and .2805(a)(2) of this Subchapter;
- (3) a mechanism to collect and electronically submit to the OEMS data corresponding to the advanced data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost;
- (4) a written plan to address management of the EMS System to include:
 - (A) triage of patients to appropriate facilities;
 - (B) transport of patients to facilities outside of the system;
 - (C) arrangements for transporting patients to appropriate facilities when diversion or bypass plans are activated;
 - (D) a mechanism for reporting, monitoring, and establishing standards for system response times;
 - (E) a disaster plan; and
 - (F) a mass gathering plan;
- (5) a written continuing education plan for EMS personnel, under the direction of the System Continuing Education Coordinator, developed and modified based on feedback from system data, review and evaluation of patient outcomes, and quality management reviews;
- (6) a written plan to assure participation in clinical and field internship educational components for all EMS personnel;
- (7) operational protocols for the management of equipment, supplies, and medications. These protocols shall include a methodology:
 - (A) to assure that each vehicle contains the required equipment and supplies on each response;
 - (B) for cleaning and maintaining the equipment and vehicles; and
 - (C) to assure that supplies and medications are not used beyond the expiration date and stored in a temperature controlled atmosphere according to manufacturer's specifications;
- (8) a written plan for the systematic and periodic inspection, repair, and maintenance of all vehicles used in the system;

- (9) a written plan addressing the role of the EMS system in the areas of public education, injury prevention, and community health;
- (10) documentation of affiliation with one or more trauma Regional Advisory Committees; and
- (11) a system-wide communication system that meets the requirements of Paragraph (a)(13) of Rule .2601 of this Section, and in addition:
 - (A) operates an EMD program; and
 - (B) has an operational E-911 system.

(b) EMS Systems holding current accreditation by a national accreditation agency may use this as documentation of completion of the equivalent requirements outlined above.

(c) The county shall submit an application for designation as a Model EMS System to the OEMS for review. When the system is comprised of more than one county, only one application shall be submitted. The application shall demonstrate that the system meets the standards found in Paragraph (a) of this Rule. Designation as a Model EMS System shall be awarded for a period of six years; after that time the system shall apply to OEMS for Model EMS System redesignation.

History Note: Authority G.S. 143-508(b); (d)(1), (5), (9); 143-509(1); Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 03D .2701 PROGRAM CRITERIA

(a) Programs seeking designation to provide specialty care transports shall submit an application for program approval to the OEMS at least 60 days prior to field implementation. The application shall document that the program has:

- (1) A defined service area;
- (2) A medical oversight plan meeting the requirements of Section .2800;
- (3) Service continuously available on a 24-hour-per-day basis; and
- (4) The capability to provide the following patient care skills and procedures:
 - (A) Advanced airway techniques including rapid sequence induction, cricothyrotomy, and ventilator management, including continuous monitoring of the patient's oxygenation;
 - (B) Insertion of femoral lines;
 - (C) Maintaining invasive monitoring devices to include central venous pressure lines, arterial and venous catheters, arterial lines, intra-ventricular catheters, and epidural catheters; and
 - (D) Interpreting 12-lead electrocardiograms;

(5) A written continuing education plan for EMS personnel, under the direction of the Specialty Care Transport Program Continuing Education Coordinator, developed and modified based on feedback from program data, review and evaluation of patient outcomes, and quality management reviews; and

(6) A system to collect and submit by facsimile or other electronic means to the OEMS data that uses the basic data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the Office of Emergency Medical Services, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. EMS Specialty Care Transport Programs shall comply with this requirement by July 1, 2004.

(b) Applications for Specialty Care Transport Program approval shall document that the applicant meets the requirements for the specific program type or types applied for as specified in Rules .2702, .2703, or .2704 of this Section.

(c) Specialty Care Transport Program approval shall be valid for a period to coincide with the EMS Provider License for six years. Programs shall apply to the OEMS for reapproval.

History Note: Authority G.S. 143-508(d)(1); (8); (9); Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 03D .2901 EDUCATIONAL PROGRAMS

(a) An Educational Program approved to qualify EMS personnel to perform within their scope of practice shall be offered by an EMS educational institution.

(b) Educational Programs approved to qualify EMS personnel for credentialing or renewal of credentials shall meet the requirements of the North Carolina Medical Care Commission.

History Note: Authority G.S. 143-508(d)(3), (4); 143-514; Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 03D .2902 INITIAL CREDENTIALING REQUIREMENTS FOR EMS PERSONNEL

(a) EMS personnel applicants shall meet the following criteria within one year of the completion date of the approved educational program for their level of application:

- (1) Be at least 18 years of age;
- (2) Successfully complete a scope of practice performance evaluation, approved by the OEMS, for the level of application:
 - (A) For MR and EMT credentialing, this evaluation shall be conducted under the direction of a Level II EMS Instructor; and
 - (B) For EMT-D, EMT-I, EMT-P, EMD, MICN, EMS-PA, and EMS-NP credentialing, this evaluation shall be conducted under the direction of the educational medical advisor, or a Level II EMS Instructor; and
- (3) Successfully complete a written examination administered by the OEMS, or equivalent. Applicants who fail the written EMT examination but achieve a minimum score of

70% on the medical responder subset contained within the examination may be credentialed as medical responders. If the educational program was completed over one year prior to application, applicants shall submit evidence of completion of continuing education during the past year. This continuing education shall be consistent with their level of application and approved by the OEMS.

(b) EMD applicants shall successfully complete, within one year prior to application, an AHA CPR course or equivalent, including infant, pediatric, and adult CPR, in addition to Paragraphs (a)(1), (a)(2), and (a)(3) of this Rule.

(c) MICN applicants shall currently be a registered nurse who is licensed to practice nursing in North Carolina and have two years emergency or critical care experience, or a combination of this experience in addition to Paragraphs (a)(1) and (a)(2) of this Rule.

(d) EMS-NP applicants shall currently be a registered nurse who is licensed to practice nursing in North Carolina and approved as a nurse practitioner by the North Carolina Board of Nursing and the North Carolina Medical Board and have two years emergency or critical care experience, or a combination of this experience in addition to Paragraphs (a)(1) and (a)(2) of this Rule.

(e) EMS-PA applicants shall currently be a physician assistant licensed by the North Carolina Medical Board and have two years emergency or critical care experience, or a combination of this experience in addition to Paragraphs (a)(1) and (a)(2) of this Rule.

History Note: Authority G.S. 143-508(d)(3); 131E-159(a),(b); Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 03D .2905 RENEWAL OF CREDENTIALS

Persons shall renew credentials by presenting documentation to the OEMS that they have successfully completed the requirements for their level of application as defined by the North Carolina Medical Care Commission.

History Note: Authority G.S. 131-159 (a); 143-508 (d)(3); Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 03D .2908 LEVEL I EMS INSTRUCTOR RESPONSIBILITIES

A Level I EMS Instructor may instruct or coordinate EMS educational programs for MR, EMD, EMT, and EMT-D levels within EMS educational institutions.

History Note: Authority G.S. 143-508(d)(3); Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 03D .2909 LEVEL II EMS INSTRUCTOR RESPONSIBILITIES

A Level II EMS Instructor may instruct or coordinate EMS educational programs for MR, EMD, EMT, EMT-D, EMT-I,

EMT-P, MICN, EMS-PA, and EMS-NP levels within EMS educational institutions.

History Note: Authority G.S. 143-508(d)(3); Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 03D .3001 CONTINUING EDUCATION EMS EDUCATIONAL INSTITUTION REQUIREMENTS

(a) Continuing Education EMS Educational Institutions shall be credentialed by the OEMS to provide EMS continuing education programs.

(b) Continuing Education EMS Educational Institutions shall have:

- (1) An EMS educational program coordinator responsible for ensuring that EMS continuing education programs meet the requirements defined by the North Carolina Medical Care Commission;
- (2) A continuing education program consistent with the system continuing education plan for EMS personnel:
 - (A) In an EMS System the continuing education programs for EMD, EMT-D, EMT-I, and EMT-P shall be reviewed and approved by the medical director of the EMS System;
 - (B) In a Model EMS System the continuing education program shall be reviewed and approved by the system continuing education coordinator and medical director; and
 - (C) In a Specialty Care Transport Program the continuing education program shall be reviewed and approved by Specialty Care Transport Program Continuing Education Coordinator and the medical director;
- (3) Instructional supplies and equipment, a record-keeping system detailing student attendance and performance, and facilities as defined by the North Carolina Medical Care Commission;
- (4) Educational programs offered in accordance with Rule .2901 of this Subchapter; and
- (5) An educational plan approved by the OEMS addressing program components as defined by the North Carolina Medical Care Commission.

(c) An application for credentialing as a Continuing Education EMS Educational Institution shall be submitted to the OEMS for review. The application shall demonstrate that the applicant meets the requirements in Paragraph (b) of this Rule.

(d) Continuing Education EMS Educational Institution credentials shall be valid for a period of four years.

(e) It is not necessary for Continuing Education EMS Educational Institutions to submit an application for renewal of credentials if affiliated with a Model EMS System.

History Note: Authority G.S. 143-508(d)(4); Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 03D .3002 BASIC EMS EDUCATIONAL INSTITUTION REQUIREMENTS

(a) Basic EMS Educational Institutions may offer MR, EMT, EMT-D, EMD, EMS-NP, EMS-PA, and MICN courses for which they have been credentialed by the OEMS.

(b) For initial courses, Basic EMS Educational Institutions shall have:

- (1) A Level I EMS Instructor as lead course instructor for MR, EMD, EMT, and EMT-D courses;
- (2) Instructors for EMS-NP, EMS-PA, and MICN appointed by the EMS educational program coordinator and approved by the educational medical advisor;
- (3) An EMS educational program coordinator responsible for ensuring that EMS education programs meet the requirements defined by the North Carolina Medical Care Commission;
- (4) An educational plan approved by the OEMS addressing program components as defined by the North Carolina Medical Care Commission; and
- (5) Instructional supplies and equipment, a record-keeping system detailing student attendance and performance, and facilities as defined by the North Carolina Medical Care Commission.

(c) For EMS continuing education programs, Basic EMS Educational Institutions shall meet the requirements defined in Paragraphs (a) and (b) of Rule .3001 of this Section.

(d) An application for credentialing as a Basic EMS Educational Institution shall be submitted to the OEMS for review. The proposal shall demonstrate that the applicant meets the requirements in Paragraphs (b) and (c) of this Rule.

(e) Basic EMS Educational Institution credentials shall be valid for a period of four years.

(f) It is not necessary for Basic EMS Educational Institutions to submit an application for renewal of credentials if affiliated with a Model EMS System.

History Note: Authority G.S. 143-508(d)(4); Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 03D .3003 ADVANCED EMS EDUCATIONAL INSTITUTION REQUIREMENTS

(a) Advanced EMS Educational Institutions may offer all EMS educational programs for which they have been credentialed by the OEMS.

(b) For initial courses, Advanced EMS Educational Institutions shall have:

- (1) A Level I EMS Instructor as lead course instructor for MR, EMD, EMT, and EMT-D courses;
- (2) Instructors for EMS-NP, EMS-PA, and MICN appointed by the EMS educational program coordinator and approved by the educational medical advisor;
- (3) A Level II EMS Instructor as lead instructor for EMT-I and EMT-P courses;
- (4) An EMS educational program coordinator;
- (5) An Educational Medical Advisor;

(6) An educational plan approved by OEMS addressing program components as defined by the North Carolina Medical Care Commission; and

(7) Instructional supplies and equipment, a record-keeping system detailing student attendance and performance, and facilities as defined by the North Carolina Medical Care Commission.

(c) For EMS continuing education programs, Advanced EMS Educational Institutions shall meet the requirements defined in Paragraphs (a) and (b) of Rule .3001 of this Section.

(d) An application for credentialing as an Advanced EMS Educational Institution shall be submitted to the OEMS for review. The application shall demonstrate that the applicant meets the requirements in Paragraphs (b) and (c) of this Rule. Advanced EMS Educational Institutions holding current accreditation by a national EMS educational accreditation agency may use this accreditation as documentation toward meeting the requirements of Paragraphs (b) and (c) of this Rule.

(e) Advanced Educational Institution credentials shall be valid for a period of four years.

(f) It is not necessary for Advanced EMS Educational Institutions to submit an application for renewal of credentials if affiliated with a Model EMS System.

History Note: Authority G.S. 143-508(d)(4); Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 03D .3101 DENIAL, SUSPENSION, AMENDMENT OR REVOCATION

(a) The Department may deny, suspend, or revoke the permit of an ambulance or EMS nontransporting vehicle if the EMS provider:

- (1) Fails to substantially comply with the requirements of Section .2600 of this Subchapter;
- (2) Obtains or attempts to obtain a permit through fraud or misrepresentation; or
- (3) Fails to provide emergency medical care within the defined EMS service area in a timely manner.

(b) In lieu of suspension or revocation, the Department may issue a temporary permit for an ambulance or EMS nontransporting vehicle whenever the Department finds that:

- (1) The EMS provider to which that vehicle is assigned has substantially failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article;
- (2) There is a reasonable probability that the EMS provider can remedy the permit deficiencies within a length of time determined by the Department; and
- (3) There is a reasonable probability that the EMS provider will be willing and able to remain in compliance with the rules regarding vehicle permits for the foreseeable future.

(c) The Department shall give the EMS provider written notice of the temporary permit. This notice shall be given personally or by certified mail and shall set forth:

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- (1) The duration of the temporary permit not to exceed 60 days;
 - (2) A copy of the vehicle inspection form;
 - (3) The statutes or rules alleged to be violated; and
 - (4) Notice to the EMS provider's right to a contested case hearing on the temporary permit.
- (d) The temporary permit shall be effective immediately upon its receipt by the EMS provider and shall remain in effect until the earlier of the expiration date of the permit or until the Department:
- (1) Restores the vehicle to full permitted status; or
 - (2) Suspends or revokes the vehicle permit.
- (e) The Department may deny, suspend, or revoke the credentials of EMS personnel for any of the following reasons:
- (1) Failure to comply with the applicable performance and credentialing requirements as found in this Subchapter;
 - (2) Making false statements or representations to the OEMS or willfully concealing information in connection with an application for credentials;
 - (3) Being unable to perform as EMS personnel with reasonable skill and safety to patients and the public by reason of illness, use of alcohol, drugs, chemicals, or any other type of material or by reason of any physical or mental abnormality;
 - (4) Unprofessional conduct, including but not limited to a failure to comply with the rules relating to the proper function of credentialed EMS personnel contained in this Subchapter or the performance of or attempt to perform a procedure that is detrimental to the health and safety of any person or that is beyond the scope of practice of credentialed EMS personnel;
 - (5) Conviction in any court of a crime involving moral turpitude, a conviction of a felony, or conviction of a crime involving the scope of practice of credentialed EMS personnel or EMS instructors;
 - (6) By false representations obtaining or attempting to obtain money or anything of value from a patient;
 - (7) Adjudication of mental incompetence;
 - (8) Lack of competence to practice with a reasonable degree of skill and safety for patients including but not limited to a failure to perform a prescribed procedure, failure to perform a prescribed procedure competently, or performance of a procedure that is not within the scope of practice of credentialed EMS personnel;
 - (9) Making false statements or representations, willfully concealing information, or failing to respond within a reasonable period of time and in a reasonable manner to inquiries from the OEMS;
 - (10) Testing positive for any substance, legal or illegal, that is likely to impair the physical or psychological ability of the credentialed EMS personnel to perform all required or expected functions while on duty;
- (11) Representing or allowing others to represent that the credentialed EMS personnel has a credential that the credentialed EMS personnel does not in fact have; or
 - (12) Failure to comply with G.S. 143-518 regarding the use or disclosure of records or data associated with EMS Systems, Specialty Care Transport Programs, or patients.
- (f) The Department may amend any EMS provider license by reducing it from a full license to a provisional license whenever the Department finds that:
- (1) The licensee has substantially failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article;
 - (2) There is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
 - (3) There is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.
- (g) The Department shall give the licensee written notice of the amendment to the EMS Provider License. This notice shall be given personally or by certified mail and shall set forth:
- (1) The length of the provisional EMS provider license;
 - (2) The factual allegations;
 - (3) The statutes or rules alleged to be violated; and
 - (4) Notice to the EMS provider's right to a contested case hearing on the amendment of the EMS provider license.
- (h) The provisional EMS provider license shall be effective immediately upon its receipt by the licensee and shall be posted in a prominent location at the primary business location of the EMS provider, accessible to public view, in lieu of the full license. The provisional license shall remain in effect until the Department:
- (1) Restores the licensee to full licensure status; or
 - (2) Revokes the licensee's license.
- (i) The Department may revoke or suspend an EMS Provider License whenever the Department finds that the licensee:
- (1) Has substantially failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article, and it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time;
 - (2) Has substantially failed to comply with the provisions of G.S. 131E, Article 7, and the rules adopted under that article, and although the licensee may be able to remedy the deficiencies within a reasonable period of time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future;
 - (3) Has failed to comply with the provision of G.S. 131E, Article 7, and the rules adopted under that article that endanger the health,

- safety, or welfare of the patients cared for or transported by the licensee; or
- (4) Obtained or attempted to obtain an ambulance permit, EMS nontransporting vehicle permit, or EMS Provider License through fraud or misrepresentation.
- (j) The issuance of a provisional EMS Provider License is not a procedural prerequisite to the revocation or suspension of a license pursuant to Paragraph (i) of this Rule.
- (k) The Department may amend, deny, suspend, or revoke the credential of an EMS educational institution for any of the following reasons:
- (1) Failure to substantially comply with the requirements of Section .3000 of this Subchapter; or
 - (2) Obtaining or attempting to obtain a credential through fraud or misrepresentation.
- (l) The Department may amend, deny, suspend, or revoke the approval of an EMS System or designation of a Model EMS System for any of the following reasons:
- (1) Failure to substantially comply with the requirements of Section .2600 of this Subchapter; or
 - (2) Obtaining or attempting to obtain designation through fraud or misrepresentation.
- (m) The Department may amend, deny, suspend, or revoke the designation of a Specialty Care Transport Program for any of the following reasons:
- (1) Failure to substantially comply with the requirements of Section .2700 of this Subchapter; or
 - (2) Obtaining or attempting to obtain designation through fraud or misrepresentation.

History Note: Authority G.S. 131E-155.1(d); 131E-157(c); 131E-159(a); 143-508(d)(10); Temporary Adoption Eff. January 1, 2002; Eff. August 1, 2004.

10 NCAC 26H .0211 DRG RATE SETTING METHODOLOGY

- (a) Diagnosis Related Groups is a system of classification for hospital inpatient services. For each hospital admission, a single DRG category shall be assigned based on the patient's diagnoses, age, procedures performed, length of stay, and discharge status. For claims with dates of services prior to January 1, 1995 payments shall be based on the reimbursement per diem in effect prior to January 1, 1995. However, for claims related to services where the admission was prior to January 1, 1995 and the discharge was after December 31, 1994, then the greater of the total per diem for services rendered prior to January 1, 1995, or the appropriate DRG payment shall be made.
- (b) The Division of Medical Assistance (Division) shall use the DRG assignment logic of the Medicare Grouper to assign individual claims to a DRG category. Medicare revises the Grouper each year in October. The Division shall install the most recent version of the Medicare Grouper implemented by Medicare. The initial DRG in Version 12 of the Medicare Grouper, related to the care of premature neonates and other newborns numbered

385 through 391, shall be replaced with the following classifications:

- | | |
|-----|--|
| 385 | Neonate, died or transferred, length of stay less than 3 days |
| 801 | Birthweight less than 1,000 grams |
| 802 | Birthweight 1,000 - 1,499 grams |
| 803 | Birthweight 1,500 - 1,999 grams |
| 804 | Birthweight >=2,000 grams, with Respiratory Distress Syndrome |
| 805 | Birthweight >= 2,000 grams, premature complications |
| 810 | Neonate with low birthweight diagnosis, age greater than 28 days at admission |
| 389 | Birthweight >= 2,000 grams, full term complications |
| 390 | Birthweight >= 2,000 grams, full term with other problems or premature without complications |
| 391 | Birthweight >= 2,000 grams, full term without complicating diagnoses |

(c) DRG relative weights are a measure of the relative resources required in the treatment of the average case falling within a particular DRG category. The average DRG weight for a group of services, such as all discharges from a particular hospital or all North Carolina Medicaid discharges, is known as the Case Mix Index (CMI) for that group.

- (1) The Division shall establish relative weights for each utilized DRG based on the most recent data set of historical claims submitted for Medicaid recipients. Charges on each historical claim shall be converted to estimated costs by applying the cost conversion factors from each hospital's submitted Medicare cost report to each billed line item. Cost estimates shall be standardized by removing direct and indirect medical education costs at the appropriate rates for each hospital.
- (2) Relative weights shall be calculated as the ratio of the average cost in each DRG to the overall average cost for all DRGs combined. Excluded from this calculation shall be all claims with costs below a fixed threshold of three hundred fifty dollars (\$350.00) and a variable threshold of 10% of the raw average cost of the claims set. Claims with costs exceeding the raw average cost plus two standard deviations (the high outlier threshold) of the claims shall have their cost replaced with the high outlier threshold for this calculation.
- (3) The Division of Medical Assistance shall determine whether there are a sufficient number of claims to establish a stable weight for each DRG weight based upon the following criteria:
 - (A) The claims used must exceed the number of claims required that the cost of a new claim will be within 15% of the mean cost per claim; and
 - (B) For a stable weight to be determined, the minimum number of claims

meeting criteria in Part (A) of this Subparagraph must be five claims.

For DRGs lacking sufficient volume, the Division shall set relative weights using DRG weights generated from the North Carolina Medical Data Base Commission's discharge abstract file covering all inpatient services delivered in North Carolina hospitals. For DRGs in which there are an insufficient number of discharges in the Medical Data Base Commission data set, the Division sets relative weights based upon the published DRG weights for the Medicare program.

- (4) Relative weights shall be recalculated whenever a new version of the DRG Grouper is installed by the Division of Medical Assistance. When relative weights are recalculated, the overall average CMI shall be kept constant.

(d) The Division of Medical Assistance shall establish a unit value for each hospital which represents the DRG payment rate for a DRG with a relative weight of one. This rate is established as follows:

- (1) Using the methodology described in Paragraph (c) of this Rule, the Division shall estimate the cost less direct and indirect medical education expense on claims for discharges occurring during calendar year 1993, using cost reports for hospital fiscal years ending during that period or the most recent cost report available. All cost estimates are adjusted to a common 1994 fiscal year and inflated to the 1995 rate year. The average cost per discharge for each provider is calculated.
- (2) Using the DRG weights effective on January 1, 1995, a CMI is calculated for each hospital for the same population of claims used to develop the cost per discharge amount in Subparagraph (d)(1) of this Rule. Each hospital's average cost per discharge is divided by its CMI to get the cost per discharge for a service with a DRG weight of one.
- (3) The amount calculated in Subparagraph (d)(2) of this Rule is reduced by 7.2% to account for outlier payments.
- (4) Hospitals are ranked in order of increasing CMI adjusted cost per discharge. The DRG Unit Value for hospitals at or below the 45th percentile in this ranking is set using 75% of the hospital's own adjusted cost per discharge and 25% of the cost per discharge of the hospital at the 45th percentile. The DRG Unit Value for hospitals ranked above the 45th percentile is set at the cost per discharge of the 45th percentile hospital. The DRG unit value for new hospitals and hospitals that did not have a Medicaid discharge in the base year is set at the cost per discharge of the 45th percentile hospital.
- (5) The hospital unit values calculated in Subparagraph (d)(4) of this Rule shall be

updated annually by the National Hospital Market Basket Index as published by Medicare and applied to the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management. This annual update shall not exceed the update amount approved by the North Carolina General Assembly.

- (6) Allowable and reasonable costs shall be reimbursed in accordance with the provisions of the Medicare Provider Reimbursement Manual referred to as HCFA Publication 15-1.

(e) Reimbursement for capital expense is included in the DRG hospital rate described in Paragraph (d) of this Rule.

(f) Hospitals operating Medicare approved graduate medical education programs shall receive a DRG payment rate adjustment which reflects the reasonable direct and indirect costs of operating those programs.

- (1) The Division defines reasonable direct medical education costs consistent with the base year cost per resident methodology described in 42 CFR 413.86. The ratio of the aggregate approved amount for graduate medical education costs at 42 CFR 413.86 (d) (1) to total reimbursable costs (per Medicare principles) is the North Carolina Medicaid direct medical education factor. The direct medical education factor is based on information supplied in the 1993 cost reports and the factor shall be updated annually as soon as practicable after July 1 based on the latest cost reports filed prior to July 1.

- (2) Effective October 1, 2001, and for each subsequent year, the North Carolina Medicaid indirect medical education factor is equal to the Medicare indirect medical education factor in effect on October 1 each year.

- (3) Hospitals operating an approved graduate medical education program shall have their DRG unit values increased by the sum of the direct and indirect medical education factors.

(g) Cost outlier payments are an additional payment made at the time a claim is processed for exceptionally costly services. These payments shall be subject to retrospective review by the Division of Medical Assistance, on a case-by-case basis. Cost Outlier payments may be reduced if and to the extent that the preponderance of evidence on review supports a determination that the associated cost either exceeded the costs which must be incurred by efficiently and economically operated hospitals or was for services that were not medically necessary or for services not covered by the North Carolina Medical Assistance program.

- (1) A cost outlier threshold shall be established for each DRG at the time DRG relative weights are calculated, using the same information used to establish those relative weights. The cost threshold is the greater of twenty-five thousand dollars (\$25,000) or mean cost for the DRG plus 1.96 standard deviations.
- (2) Charges for non-covered services and services not reimbursed under the inpatient DRG

methodology (such as professional fees) shall be deducted from total billed charges. The remaining billed charges are converted to cost using a hospital specific cost to charge ratio. The cost to charge ratio excludes medical education costs.

- (3) If the net cost for the claim exceeds the cost outlier threshold, a cost outlier payment is made at 75% of the costs above the threshold.

(h) Day outlier payments are an additional payment made for exceptionally long lengths of stay on services provided to children under six at disproportionate share hospitals and children under age one at non-disproportionate share hospitals. These payments shall be subject to retrospective review by the Division of Medical Assistance, on a case-by-case basis. Day outlier payments may be reduced if and to the extent that the preponderance of evidence on review supports a determination that the associated cost either exceeded the costs which must be incurred by efficiently and economically operated hospitals or was for services that were not medically necessary or for services not covered by the North Carolina Medical Assistance program.

- (1) A day outlier threshold shall be established for each DRG at the time DRG relative weights are calculated, using the same information used to establish the relative weights. The day outlier threshold is the greater of 30 days or the arithmetical average length of stay for the DRG plus 1.50 standard deviations.
- (2) A day outlier per diem payment may be made for covered days in excess of the day outlier threshold at 75% of the hospital's payment rate for the DRG rate divided by the DRG average length stay.

(i) Services which qualify for both cost outlier and day outlier payments under this rule shall receive the greater of the cost outlier or day outlier payment.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C; Eff. March 1, 1995; Temporary Amendment Eff. January 22, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. November 9, 2001; Temporary Amendment Expired August 30, 2002; Amended Eff. August 1, 2003.

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

(a) Hospitals that serve a disproportionate share of low-income patients and have Medicaid inpatient utilization rate of not less than one percent are eligible to receive rate adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to the Division of Medical Assistance (Division) on or before April 1, 1991. The cost report data and financial information to qualify as a disproportionate share hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In

subsequent years, qualifications effective any particular year are based on most recent available information. The patient days, costs, revenues, or charges related to nursing facility services, swing-bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if it meets the criteria of Subparagraph (a) (1) and one of the criteria included in Subparagraphs (a)(2) through (a)(6) of this Rule.

- (1) The hospital has at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, as defined in Title XVIII, Section 1886(d)(2)(D) the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric services as of December 21, 1987 or at a hospital that predominantly serves individuals under 18 years of age.
 - (2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state.
 - (3) The hospital's low income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:
 - (A) The ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and
 - (B) The ratio of the hospital's gross inpatient charges for charity care less the cash subsidies for inpatient care received from the State and local governments divided by the hospital's total inpatient charges.
 - (4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues.
 - (5) The hospital, in ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50 percent of the total Medicaid patient days provided by all hospitals in the State.
 - (6) It is a Psychiatric hospital operated by the North Carolina Department of Health and Human Services, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) or UNC Hospitals operated by the University of North Carolina.
- (b) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient

utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments.

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

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

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

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

- (1) For purposes of this paragraph eligible hospitals are hospitals that for the fiscal year for which payments are being made and for the most recent fiscal year that data is available:
 - (A) Qualify as disproportionate share hospitals under Subparagraphs (a)(1) through (a)(5) of this Rule;
 - (B) Operate Medicare approved graduate medical education programs and reported on cost reports filed with the Division of Medical Assistance Medicaid costs attributable to such programs;
 - (C) Incur unreimbursed costs (calculated without regard to payments under

either this Paragraph or Paragraph (f) of this Rule) for providing inpatient and outpatient services to uninsured patients in an amount in excess of two million five hundred thousand dollars (\$2,500,000.00); and

- (D) Meet the definition of qualified public hospitals set forth in Subparagraph (6) of this Paragraph;
- (2) Qualification for 12-month periods ending September 30th of each year shall be based on the most recent cost report data and uninsured patient data filed with and certified to the Division at least 60 days prior to the date of any payment under this Paragraph.
- (3) Based on availability of funds, payments authorized by this Paragraph shall be made no more frequently than quarterly or less frequently than annually, based on available information. If quarterly payments are made, the fourth quarter payment shall take into consideration available information for the full year.
- (4) In 12-month periods ending September 30th of each year, the percentage payment shall be ascertained and established by the Division by ascertaining funds available for payments pursuant to this Paragraph divided by the total unreimbursed costs of all hospitals that qualify for payments under this Paragraph for providing inpatient and outpatient services to uninsured patients.
- (5) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when this payment is added to other disproportionate share hospital payments, the total disproportionate share payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients. The total of all disproportionate share hospital payments shall not exceed the limits on disproportionate share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f).
- (6) For purposes of this Paragraph, a qualified public hospital is a hospital that:
 - (A) Qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (5) of this Rule;
 - (B) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;

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- (C) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained;
 - (D) Verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Subparagraph that is still valid as of the date of any such payments;
 - (E) Files with the Division at least 60 days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or during the most recent fiscal year that data is available; and
 - (F) Submits to the Division on or before 10 working days prior to the date any such payments under this Paragraph by use of a form prescribed by the Division a certification of expenditures eligible for FFP as described in 42 C.F.R. 433.51(b).
- (e) To ensure that the estimated payments pursuant to Subparagraph (d) do not exceed the upper limits to such payments established by applicable federal law and regulation described in Subparagraph (d)(5) of this Rule, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. If any hospital received payments pursuant to Subparagraph (d) in excess of the percentage established by the Director under Subparagraph (d)(3) or (d)(4), ascertained without regard to other disproportionate share hospital payments that may have been received for services during the 12-month period ending September 30th for which such payments were made, such excess payments shall be refunded to the Division. No additional payment shall be made to qualified hospitals in connection with the cost settlement. The payments authorized by Subparagraph (d) shall be effective in accordance with G.S. 108A-55(c).
- (f) Additional disproportionate share hospital payments for the 12-month periods ending September 30th of each year (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to qualified public hospitals licensed by the State of North Carolina. For purposes of this Paragraph, a qualified public hospital is a hospital that:
- (1) Qualifies for disproportionate share hospital status under Subparagraphs (a)(1) through (5) of this Rule;
 - (2) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;
 - (3) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained;
 - (4) Verified its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Subparagraph that is still valid as of the date of any such payment;
 - (5) Files with the Division at least 60 days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a certification of its unreimbursed charges for inpatient and outpatient services provided to uninsured patients either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or during the most recent fiscal year that data is available.
 - (6) Submits to the Division on or before 10 working days prior to the date of any such payment under this Paragraph by use of a form prescribed by the Division a certification of expenditures eligible for FFP as described in 42 C.F.R. 433.51(b).
 - (7) The payments to qualified public hospitals pursuant to this Paragraph for any given period shall be based on and shall not exceed the unreimbursed charges certified to the Division by each such hospital by use of a form prescribed by the Division for inpatient and outpatient services provided to uninsured patients either for the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or during the most recent fiscal year that data is available, to be converted by the Division to unreimbursed cost by multiplying unreimbursed charges times the cost-to-charge ratio established by the Division for each hospital for the fiscal year during which such charges were incurred. Based on availability of funds, payments authorized by this paragraph shall be made no more frequently than quarterly or less frequently than annually, based on available information. If quarterly payments are made, the fourth quarter payment shall take into consideration available information for the full year.
 - (8) Any payments pursuant to this Paragraph shall be ascertained, paid and cost settled after any

- (9) other disproportionate share hospital payments that may have been or may be paid by the Division for the same fiscal year.
- (9) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on Disproportionate Share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year in which such payments are made.
- (10) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Subparagraph (f)(6) of this Rule and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. The federal portion of any payments in excess of either of the upper limits described in Subparagraph (f)(6) of this Rule shall be promptly repaid. Subject to the availability of funds, and to the upper limits described in Subparagraph (d)(5) of this Rule, additional payments shall be made as part of the cost settlement process to hospitals qualified for payment under this Paragraph in an amount not to exceed the hospital-specific upper limit for each such hospital.
- (11) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55 (c).
- (g) Effective with dates of payment beginning October 31, 1996, hospitals that provide services to clients of state agencies are considered to be a disproportionate share hospital (DSH) when the following conditions are met:
- (1) The hospital has a Medicaid inpatient utilization rate not less than one percent and has met the requirements of Subparagraph (a)(1) of this Rule; and
 - (2) The state agency has entered into a Memorandum of Understanding (MOU) with the Division of Medical Assistance (Division); and
- (3) The inpatient and outpatient services are authorized by the state agency for which the uninsured client meets the program requirements.
- (A) For purposes of this Paragraph, uninsured patients are those clients of the state agency that have no third parties responsible for any hospital services authorized by the state agency.
 - (B) DSH payments are paid for services to qualified uninsured clients on the following basis:
 - (i) For inpatient services the amount of the DSH payment is determined by the state agency in accordance with the applicable Medicaid inpatient payment methodology as stated in Rule .0211 of this Section.
 - (ii) For outpatient services the amount of the DSH payment is determined by the state agency in accordance with the applicable Medicaid outpatient payment methodology as stated in Session Law 2002-126, Part X, Subpart 2. Division of Medical Assistance.
 - (iii) No federal funds are utilized as the non-federal share of authorized payments unless the federal funding is specifically authorized by the federal funding agency as eligible for use as the non-federal share of payments.
 - (C) Based upon this Subparagraph, DSH payments as submitted by the state agency shall be paid monthly in an amount to be reviewed and approved by the Division of Medical Assistance. The total of all payments shall not exceed the limits on disproportionate share hospital funding as set forth for the state by HCFA.
- (h) Additional disproportionate share hospital payments for the 12-month periods ending September 30th of each year (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to hospitals licensed by the State of North Carolina that qualify for disproportionate share hospital status under Subparagraph (a) (1) through (5) of this Rule and provide inpatient or outpatient hospital services to Medicaid Health Maintenance Organization (HMO) enrollees during the period for which payments under this Paragraph are being ascertained.

- (1) For purposes of this Paragraph, a Medicaid HMO enrollee is a Medicaid beneficiary who receives Medicaid services through a Medicaid HMO. A Medicaid HMO is a Medicaid managed care organization, as defined in the Social Security Act, Title XIX, Section 1903(m)(1)(A), that is licensed as an HMO and provides or arranges for services for enrollees under a contract pursuant to the Social Security Act, Title XIX, Section 1903(m)(2)(A)(i) through (xi).
- (2) To qualify for a DSH payment under this Paragraph, a hospital shall also file with the Division at least 10 working days prior to the date of any payment under this Paragraph by use of a form prescribed by the Division a certification of its charges for inpatient and outpatient services provided to Medicaid HMO enrollees either during the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or during the most recent fiscal year that data is available.
- (3) The payments to qualified hospitals pursuant to this Paragraph for any given period shall be based on charges certified to the Division by each hospital by use of a form prescribed by the Division for inpatient and outpatient Medicaid HMO services either for the fiscal year immediately preceding the period for which payments under this Paragraph are being ascertained or during the most recent fiscal year that data is available to be converted by the Division to cost by multiplying charges times the cost-to-charge ratio established by the Division for each hospital for the fiscal year during which such charges were incurred. The payment shall then be determined by multiplying the cost times a percentage determined annually by the Division. The payment percentage established by the Division shall be calculated to ensure that the Medicaid HMO DSH payment authorized by this Paragraph is equivalent as a percentage of reasonable cost to the Medicaid Supplemental payment (calculated without regard to the certified public expenditures portion of such payment) authorized by Paragraph (e) of Rule .0212 of this Section. Based on availability of funds, payments authorized by this paragraph shall be made no more frequently than quarterly or less frequently than annually, based on available information. If quarterly payments are made, the fourth quarter payment shall take into consideration available information for the full year.
- (4) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on disproportionate share hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX, Section 1923(f) for the fiscal year in which such payments are made.
- (5) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Subparagraph (h) (4) of this Rule and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with the cost settlement.
- (6) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).
 - (i) Additional disproportionate share hospital payments for the 12-month periods ending September 30th of each year (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to large free-standing inpatient rehabilitation hospitals that are qualified public hospitals licensed by the State of North Carolina.
 - (1) For purposes of this Paragraph a large free-standing inpatient rehabilitation hospital is a hospital licensed for more than 100 rehabilitation beds.
 - (2) For purposes of this Paragraph a qualified public hospital is a hospital that:
 - (A) Qualifies for disproportionate share hospital status under Subparagraph (a)(1) through (5) of this Rule;
 - (B) Does not qualify for disproportionate share hospital status under Subparagraph (a)(6) of this Rule;
 - (C) Was owned or operated by a State (or by an instrumentality or a unit of government within a State) during the period for which payments under this Paragraph are being ascertained; and
 - (D) Verifies its status as a public hospital by certifying state, local, hospital district or authority government control on the most recent version of Form HCFA-1514 filed with the Health Care Financing

Administration, U.S. Department of Health and Human Services at least 30 days prior to the date of any payment under this Paragraph that is still valid as of the date of any such payment.

- (3) Based on availability of funds, payments authorized by this Paragraph shall be made no more frequently than quarterly or less frequently than annually, based on available information. If quarterly payments are made, the fourth quarter payment shall take into consideration available information for the full year.
- (4) Payments authorized by this Paragraph for any given period shall be based on and shall not exceed for the 12-month period ending September 30th of the year for which payments are made the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to be received for these services. For purposes of this Subparagraph:
 - (A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of Rule .0212 of this Section; and
 - (B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.
- (5) The disproportionate share hospital payments to qualified public hospitals shall be made on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which payments are made. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by an analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.
- (6) The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share hospital payments shall

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

- (7) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Subparagraph (4) of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with the cost settlement.
- (8) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A-55(c).
- (j) Additional disproportionate share hospital payments for the 12-month periods ending September 30th (subject to the availability of funds and to the payment limits specified in this Paragraph) shall be paid to hospitals licensed by the State of North Carolina that relates, are designated as critical access hospitals under 42 U.S.C. 1395i-4 for the period to which such payment relates; incurred for the 12-month period ending September 30th of the fiscal year to which such payments relate unreimbursed costs for providing inpatient and outpatient services to Medicaid patients, and qualify as a disproportionate share hospital under the minimum requirements specified by 42 U.S.C. 1396r-4(d).
 - (1) Qualification for 12-month periods ending September 30th shall be based on the most recent cost report data filed with and certified to the Division at least 60 days prior to the date of any payment under this Paragraph.
 - (2) Based on availability of funds, payments authorized by this Paragraph shall be made no more frequently than quarterly or less frequently than annually, based on available information. If quarterly payments are made, the fourth quarter payment shall take into consideration available information for the full year.
 - (3) Payments to qualified hospitals under this Paragraph for any period shall be based on and shall not exceed the "Medicaid Deficit" for each hospital. The Medicaid Deficit shall be calculated by ascertaining the reasonable costs of inpatient and outpatient hospital Medicaid services less Medicaid payments received or to

be received for these services. For purposes of this Subparagraph:

- (A) Reasonable costs shall be ascertained in accordance with the provisions of the Medicare Provider Reimbursement Manual as defined in Paragraph (b) of Rule .0212 of this Section.
- (B) The phrase "Medicaid payments received or to be received for these services" shall exclude all Medicaid disproportionate share hospital payments received or to be received.
- (C) The disproportionate share hospital payments to qualified hospitals pursuant to this Paragraph shall be made on the basis of an estimate of costs incurred and payments received for inpatient and outpatient Medicaid services for the period for which the payment relates. The Director of the Division of Medical Assistance shall determine the amount of the estimated payments to be made by analysis of costs incurred and payments received for Medicaid services as reported on the most recent cost reports filed before the Director's determination is made, and supplemented by additional financial information available to the Director when the estimated payments are calculated if and to the extent that the Director concludes that the additional financial information is reliable and relevant.
- (D) The payment limits of the Social Security Act, Title XIX, Section 1923(g) (1) applied to the payments authorized by this Paragraph require on a hospital-specific basis that when such payments are added to other disproportionate share hospital payments, the total disproportionate share payments shall not exceed the percentage specified by the Social Security Act, Title XIX, Section 1923(g) of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients for the fiscal year in which such payments are made, less all payments received for services to Medicaid and uninsured patients for that year. The total of all DSH payments by the Division shall not exceed the limits on DSH hospital funding as established for this State by HCFA in accordance with the provisions of the Social Security Act, Title XIX,

Section 1923 (f) for the fiscal year in which such payments are made.

- (E) To ensure that estimated payments pursuant to this Paragraph do not exceed the upper limits to such payments described in Part D of this Paragraph and established by applicable federal law and regulation, such payments shall be cost settled within 12-months of receipt of the completed and audited Medicare/Medicaid cost report for the fiscal year for which such payments are made. No additional payments shall be made in connection with such cost settlement.
- (F) The payments authorized by this Paragraph shall be effective in accordance with G.S. 108A -55(c).

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C; Eff. February 1, 1995; Amended Eff. July 1, 1995; Temporary Amendment Eff. September 15, 1995, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Temporary Amendment Eff. September 29, 1995, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 1, 1996; Temporary Amendment Eff. September 25, 1996; Temporary Amendment Eff. April 15, 1997; Temporary Amendment Eff. September 30, 1997; Temporary Amendment Eff. September 16, 1998; Temporary Amendment Expired on June 13, 1999; Temporary Amendment Eff. September 22, 1999; Temporary Amendment Expired on July 11, 2000; Temporary Amendment Eff. May 15, 2002; June 2, 2001; September 21, 2000; Amended Eff. August 1, 2003.

**TITLE 15A - DEPARTMENT OF ENVIRONMENT
& NATURAL RESOURCES**

15A NCAC 13A .0101 GENERAL

- (a) The Hazardous Waste Section of the Division of Waste Management shall administer the hazardous waste management program for the State of North Carolina.
- (b) In applying the federal requirements incorporated by reference throughout this Subchapter, the following substitutions or exceptions shall apply:
 - (1) "Department of Environment and Natural Resources" shall be substituted for "Environmental Protection Agency" except in 40 CFR 262.51 through 262.54, 262.56, 262.57, and Part 124 where references to the Environmental Protection Agency shall remain without substitution;

- (2) "Secretary of the Department of Environment and Natural Resources" shall be substituted for "Administrator," "Regional Administrator," "Assistant Administrator" and "Director" except for 40 CFR 262.55 through 262.57, 264.12(a), 268.5, 268.6, 268.42(b), 268.44, and Part 124 where the references to the Administrator, Regional Administrator, Assistant Administrator and Director shall remain without substitution.

April 4, 1990;
Amended Eff. October 1, 1993; April 1, 1993; October 1, 1992;
December 1, 1991;
Recodified from 15A NCAC 13A .0001 Eff. December 20, 1996;
Amended Eff. August 1, 2004; August 1, 2000; August 1, 1998;
August 1, 1997.

TITLE 18 - SECRETARY OF STATE

18 NCAC 01 .0101 LOCATION

The principal office of the Department of the Secretary of State is located in the Old Revenue Complex, 2 S. Salisbury Street, Raleigh, North Carolina 27601.

History Note: Authority G.S. 143A-19; 147-34;
Eff. February 1, 1976;
Amended Eff. April 1, 2003; September 1, 1988.

18 NCAC 01 .0103 PETITION FOR RULE-MAKING OR DECLARATORY RULING

(a) Petition for Rule-Making. Any person wishing to petition the Department of the Secretary of State requesting the adoption, amendment, or repeal of a rule shall submit his petition in writing to the Department of the Secretary of State, P.O. Box 29622, Raleigh, North Carolina 27626-0622, in the following form:

- (1) Name and address of petitioner;
- (2) Any employment or activity engaged in which would be affected by the adoption, amendment, or repeal of the rule;
- (3) The text of the proposed rule, amendment or rule to be repealed;
- (4) Any data or arguments in support of the petition.

The Secretary of State shall consider the contents of the petition, the opinion of his staff, and the comments of any other interested persons and render a decision within 30 days after submission of a petition

(b) Petition for Declaratory Ruling. Any person aggrieved may submit a request in writing to the Department of the Secretary of State, P.O. Box 29622, Raleigh, North Carolina 27626-0622 for issuance of a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the department or of a rule or order of the department. A request for a declaratory ruling shall contain the following information:

- (1) Name and address of person aggrieved;
- (2) Substance of request;
- (3) Manner in which the person is directly or indirectly affected substantially in their person, property, or public office or employment by the rule, statute or order of the department.

The Secretary of State shall not issue a declaration ruling if he finds that the person requesting the ruling is not directly or indirectly affected substantially in their person, property, or public office or employment by the rule, statute or order of the department which is the subject of the request; or if the ruling would adversely affect a pending contested case or judicial review of a final decision in a contested case.

(c) In the event that there are inconsistencies or duplications in the requirements of those Federal rules incorporated by reference throughout this Subchapter and the State rules set out in this Subchapter, the provisions incorporated by reference shall prevail except where the State rules are more stringent.

(d) 40 CFR 260.1 through 260.3 (Subpart A), "General," are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 260.11, "References", is incorporated by reference including subsequent amendments and editions.

(f) Copies of all materials in this Subchapter may be inspected or obtained as follows:

- (1) Persons interested in receiving rule-making notices concerning the North Carolina Hazardous Waste Management Rules must submit a written request to the Hazardous Waste Section, PO Box 29603, Raleigh, N.C. 27611-9603. A check in the amount of fifteen dollars (\$15.00) made payable to The Hazardous Waste Section must be enclosed with each request. Upon receipt of each request, individuals shall be placed on a mailing list to receive notices for one year.
- (2) Material incorporated by reference in the Federal Register may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 at a cost of seven hundred and sixty four dollars (\$764.00) per year. Federal Register materials are codified once a year in the Code of Federal Regulations and may be obtained at the above address for a cost of: 40 CFR 100-135 forty two dollars (\$42.00), 40 CFR 260-265 forty seven dollars (\$47.00) and 40 CFR 266-299, forty seven dollars (\$47.00), total one hundred thirty six dollars (\$136.00).
- (3) The North Carolina Hazardous Waste Management Rules, including the incorporated by reference materials, may be obtained from the Hazardous Waste Section at the cost to the Section.
- (4) All material is available for inspection at the Department of Environment and Natural Resources, Hazardous Waste Section, 401 Oberlin Road, Raleigh, NC.

History Note: Authority G.S. 130A-294(c); 150B-21.6;
Eff. September 1, 1979;
Amended Eff. June 1, 1989; June 1, 1988; August 1, 1987;
May 1, 1987;
Transferred and Recodified from 10 NCAC 10F .0001 Eff.

History Note: Authority G.S. 150B-18; 150B-20;
Eff. December 10, 1980;
Amended Eff. April 1, 2003; November 1, 1988.

18 NCAC 02 .0102 SECRETARY OF STATE

The Secretary of State is the head of the Department of the Secretary of State. The office of the Secretary of State is located in the Old Revenue Complex, 2 S. Salisbury Street, Raleigh, North Carolina. The mailing address is: North Carolina Department of the Secretary of State, P.O. Box 29622, Raleigh, North Carolina 27626-0622 and the normal business hours are 8:00 a.m. to 5:00 p.m.

History Note: Authority G.S. 143A-19; 147-34;
Eff. February 1, 1976;
Amended Eff. April 1, 2003.

18 NCAC 02 .0302 FORMS

Applications for registration and renewal of marks must be on a current form supplied by the Secretary of State. Requests for forms shall be directed to the Department of the Secretary of State, P.O. Box 29622, Raleigh, North Carolina 27626-0622. The forms are titled "Application for Registration of Trademark or Service Mark" and "Application for Renewal of Registration of Trademark or Service Mark", and both forms contain instructions which must be followed in completing them.

History Note: Authority G.S. 80-3; 80-5;
Eff. February 1, 1976;
Amended Eff. April 1, 2003.

18 NCAC 03 .0101 LOCATION AND HOURS

The publications division of the Department of the Secretary of State is located in the Old Revenue Complex, 2 S. Salisbury Street, Raleigh, North Carolina 27601. The mailing address is: North Carolina Department of the Secretary of State, P.O. Box 29622, Raleigh, North Carolina 27626-0622. Office hours for the public are 7:30 a.m. to 4:30 p.m. Monday through Friday with the exception of state holidays.

History Note: Authority G.S. 147-36; 147-54.1;
Eff. February 1, 1976;
Amended Eff. April 1, 2003; September 1, 1988.

18 NCAC 03 .0701 LOCATION AND HOURS OF OPERATION

The land grant records of North Carolina are located in the Old Revenue Complex, 2 S. Salisbury Street, Raleigh, NC. The mailing address is: North Carolina Secretary of State, Land Records Division, P.O. Box 29622, Raleigh, NC 27626-0622. They are available for public use between 8:00 a.m. and 4:45 p.m. Monday through Friday.

History Note: Authority G.S. 147-39;
Eff. February 1, 1976;
Amended Eff. April 1, 2003; September 1, 1988.

18 NCAC 04 .0101 LOCATION AND HOURS

The corporations division of the Department of the Secretary of State is located in the Old Revenue Complex, 2 S. Salisbury Street, Raleigh, North Carolina 27601. The mailing address is:

North Carolina Corporations Division, Department of the Secretary of State, P.O. Box 29622, Raleigh, North Carolina 27626-0622. The hours of the Division are 8:00 a.m. until 5:00 p.m. Monday through Friday excepting legal holidays.

History Note: Temporary Amendment Eff. July 1, 1990 for a Period of 180 Days to Expire on December 27, 1990;
ARRC Objection Lodged June 21, 1990;
ARRC Objection Removed August 20, 1990;
Authority G.S. 55-1-30;
Eff. February 1, 1976;
Amended Eff. April 1, 2003; February 1, 1991;
September 1, 1988.

18 NCAC 06 .1101 LOCATION AND HOURS

The Securities Division of the Department of the Secretary of State is located at the Old Revenue Complex, 2 S. Salisbury Street, Raleigh, North Carolina 27601. All REGULAR MAIL shall be sent to: North Carolina Securities Division, Department of the Secretary of State, P.O. Box 29622, Raleigh, North Carolina 27626-0622. All OVERNIGHT MAIL shall be sent to: North Carolina Securities Division, Department of the Secretary of State, Old Revenue Complex, 2 S. Salisbury Street, Raleigh, North Carolina 27601. Office hours for the public are 8:00 a.m. to 5:00 p.m. Monday through Friday, except state holidays.

History Note: Authority G.S. 78A-49(a); 147-36;
Eff. April 1, 1981;
Amended Eff. April 1, 2003; October 1, 2000; October 1, 1988;
November 1, 1982.

18 NCAC 06 .1210 SECURITIES EXCHGS/AUTO QUOTATION SYS APPROVED/ADMINISTRATOR

For purposes of G.S. 78A-16(15), the following securities exchanges and automated quotation systems are approved provided such exchanges or systems comply with the provisions of Paragraphs (1) through (4) of the Memorandum of Understanding regarding a Model Uniform Marketplace Exemption From State Securities Registration Requirements [SEC Release 33-6810 (December 16, 1988), CCH NASAA Reports, par. 2,351] or the Memorandum of Understanding between The North American Securities Administrators Association, Inc. and The Philadelphia Stock Exchange, Inc., incorporated herein by reference. The incorporated material may be obtained, free of charge, from the North Carolina Securities Division, Department of the Secretary of State, P.O. Box 29622, Raleigh, North Carolina 27626-0622:

- (1) New York Stock Exchange;
- (2) American Stock Exchange;
- (3) Pacific Stock Exchange;
- (4) Midwest Stock Exchange;
- (5) NASDAQ National Market System;
- (6) Chicago Board Options Exchange; and
- (7) Philadelphia Stock Exchange.

History Note: Authority G.S. 78A-16(15); 150B-21.6;
Eff. February 1, 1991;
Temporary Adoption Eff. December 8, 1990 for a period of 180 days to expire on June 5, 1991;
Temporary Adoption Eff. June 11, 1990 for a period of 180 days to expire on December 8, 1990;

ARRC Objection Lodged June 21, 1990;
ARRC Objection Removed August 20, 1990;
ARRC Objection Lodged December 20, 1990;
Amended Eff. April 1, 2003; October 1, 2000; May 1, 1995;
August 1, 1991.

**18 NCAC 06 .1602 PROCEDURE FOR
APPLICATION FOR REGISTRATION**

(a) A business which seeks to register as either a "qualified business venture" or "qualified grantee business" or to renew such registration shall make written application to the Securities Division of the Department of the Secretary of State of North Carolina on an application form entitled "Application For Registration as a Qualified Business Venture/Qualified Grantee Business" furnished upon request by the Securities Division.

(b) General Information Required in Application. Each application for registration shall contain the following information:

- (1) the classification (either Qualified Business Venture or Qualified Grantee Business) for which the applicant business seeks to qualify;
- (2) an indication as to whether the application is for the initial registration of the applicant business, or for the renewal of a registration;
- (3) the full legal name of the applicant business;
- (4) the street address and, if different, the mailing address of the principal office of the applicant business;
- (5) the telephone number and the Employer Identification Number of the applicant business;
- (6) the date on which the applicant business' fiscal year ends;
- (7) the type of business organization of the applicant business, and a copy of the documents, if any, under which the applicant business is organized (for example, the articles of incorporation or organization; the certificate of limited partnership; trust documents; certificate of assumed name; etc.);
- (8) the name of the authorized representative of the applicant business, his title, street address, mailing address (if different from street address), and telephone number; and
- (9) if the applicant business is a corporation or limited liability company, the date of and state of incorporation or organization.

(c) Specific Information and Representations Required -- Qualified Business Venture. The application for registration of a "qualified business venture" shall contain the following information and representations on a form entitled "Attachment A -- Qualified Business Venture" available upon request from the Securities Division:

- (1) a certification that the facts set forth in G.S. 105-163.013(b) (1)-(6) apply to the applicant business, and a letter which:
 - (A) describes the business activities in which the applicant business is or will be engaged;

- (B) describes how such activities meet the requirements of G.S. 105-163.013(b)(3);
- (C) states whether the applicant business is or will be engaged in any of the activities listed in G.S. 105-163.013(b)(4); and
- (D) states either an estimate of the percentage of the gross revenues expected to be generated by the activities listed in G.S. 105-163.013(b)(4) (for businesses organized after January 1 of the calendar year in which the application is filed) or the actual percentage of gross revenues generated by such activities (for businesses organized prior to January 1 of the calendar year in which the application is filed).

- (2) in initial applications for registration as a qualified business venture, a statement that the applicant business has been organized after January 1 of the calendar year in which the application is filed or a financial statement for its most recent fiscal year, certified by an independent certified public accountant, showing that the applicant business had revenues of five million dollars (\$5,000,000) or less, determined on a consolidated basis using generally accepted accounting principles; and
- (3) in applications for renewal of registration as a qualified business venture, a financial statement for the most recent fiscal year prepared in the same manner and containing the same information as the statement described in Subparagraph (c)(2) of this Rule and, if the applicant business engages in any of the activities set forth in G.S. 105-163.013(b)(4), showing the percentage of gross revenues generated by such activities.

(d) Specific Information and Representations Required -- Qualified Grantee Business. The application for registration of a "qualified grantee business" shall contain the following information and representations on a form entitled "Attachment B -- Qualified Grantee Business" available upon request from the Securities Division:

- (1) a certification that the facts set forth in G.S. 105-163.013(c) apply to the applicant business, and written evidence of the receipt of the grant or funding required by G.S. 105-163.013(c) within the three years preceding the date of the application for registration or for renewal of registration;
- (2) documentary evidence of the receipt of the grant or funding certified to in Subparagraph (1) of this Paragraph.

(e) Signing of the Application. Each application for registration shall be signed by the authorized representative of the applicant business, and each application shall contain the following oath or affirmation by the signing authorized representative: "Under

penalties prescribed by law, I hereby swear and/or affirm that to the best of my knowledge and belief this application is true and complete." This statement shall be verified by a person duly authorized to administer oaths.

(f) Filing Fee. The filing fee shall be payable by check, made payable to the order of "SECRETARY OF STATE", and shall accompany the application for registration.

(g) Where to File Application for Registration. All applications for registration shall be filed by mailing the application, together with any supplemental schedules or statements and the filing fee, to:

QUALIFIED BUSINESS REGISTRATION
Department of the Secretary of State
Securities Division
P.O. Box 29622
Raleigh, North Carolina 27626-0622.

(h) Due Date for Filing Application for Registration. The initial application for registration shall be filed prior to making of the investment for which an income tax credit pursuant to G.S. 105-163.011 will be claimed. The application for renewal of registration shall be filed with the Securities Division no later than the 15th day of the third month following the close of the applicant business' fiscal year.

(i) Review of Application; Notification of Qualification Status.

- (1) The date of filing of all applications for registration (both initial and renewals) shall be recorded at the time of receipt by the Securities Division and shall not be construed to be the date of mailing. Recordation of the date of filing does not indicate that the application is complete.
- (2) The Administrator of the Securities Division shall review all applications and designate those he determines to be complete. In the event that the administrator determines that an application is incomplete in any respect, the applicant shall be notified of the application's deficiencies within 15 days. Except as provided in Subparagraph (i)(3) of this Rule, if the applicant does not remedy such deficiencies within 60 days following a deficiency notice from the Division, the application shall be rejected.
- (3) Upon examination of the application for registration, the administrator shall determine whether the applicant business meets the requirements for classification, qualified business venture or qualified grantee business, as the case may be. If an applicant for registration as a qualified business venture was organized prior to January 1 of the calendar year in which the application is filed and does not produce the financial statement described in Subparagraph (c)(2) of this Rule, the Division shall grant a conditional registration to the applicant, upon written request by the Applicant, subject to the applicant's furnishing to the Division a financial statement meeting the requirements of Subparagraph (c)(3) of this Rule within five months following the end of the applicant's current fiscal year. If such a

financial statement is not filed with the Division within the period provided by this Rule, the applicant's conditional registration shall be canceled as of its initial effective date. When the determination has been made, the administrator shall notify the applicant business of its determination and that persons interested in tax-favored investments with respect to the applicant business may obtain from the Securities Division certificates of such qualified status.

- (4) The submission of any false or misleading information in connection with an application for registration shall be grounds for rejection of the application or revocation of the registration, or both.

History Note: Authority G.S. 105-163.013; Temporary Rule Eff. January 1, 1988 for a Period of 180 Days to Expire on June 29, 1988; Eff. March 1, 1988; Amended Eff. April 1, 2003; March 1, 1996; September 1, 1990.

18 NCAC 06 .1604 OBTAINING CERTIFICATES OF REGISTRATION

Persons who contemplate investment in a qualified business venture or a qualified grantee business may obtain a certificate stating that an applicant business has registered as a "qualified" business with the Securities Division of the Department of the Secretary of State and has met all requirements of qualification by requesting such certificate in writing from:

CERTIFICATE OF QUALIFIED STATUS
Department of Secretary of State
Securities Division
P.O. Box 29622
Raleigh, North Carolina 27626-0622.

History Note: Authority G.S. 105-163.013; Temporary Rule Eff. January 1, 1988 for a Period of 180 Days to Expire on June 29, 1988; Eff. March 1, 1988; Amended Eff. April 1, 2003; March 1, 1996.

TITLE 25 - STATE PERSONNEL

25 NCAC 01D .1945 SPECIAL PROVISIONS

- (a) Child Labor:
 - (1) Age limitations shall be in accordance with 25 NCAC 01H .0605(a)(c).
 - (2) Exceptions to the 18-year age limitation shall conform to the Federal child labor standards.
- (b) Agricultural Workers:
 - (1) Hours worked by agricultural workers may be averaged over a 12-month period. The number of hours worked shall not exceed 2,080 hours. Upon leaving state service, an agricultural worker shall be paid for any accumulated overtime.

APPROVED RULES

- (2) Agricultural workers are defined as workers who cultivate the soil or grow or harvest crops, engage in dairying, or who raise livestock, bees or poultry, or perform closely related research.
- (c) Student Workers: A student shall be considered an employee subject to the State Personnel Act only if the student-employee is employed by the institution on a full-time permanent basis (as defined by rules of the State Personnel Commission) in a permanent position established and governed pursuant to requirements of the State Personnel Commission.
- (d) In-Resident Employment:
 - (1) In-Resident employment includes employees such as Cottage Parents and Dormitory Directors who reside on the employer's premises, or who are usually on duty or subject to call at all times except when the facility is closed. It is necessary that these employees be required to work irregular schedules. The employing agency shall arrive at an agreement with the employee as to what constitutes the normal number of hours worked during a given workweek, taking into consideration the time that the employee engages in private pursuits such as eating, sleeping, entertaining and the time they are able to be away from the facility for personal reasons. The following basis of pay may be adopted for employees in such categories:
 - (2) Salary - The annual salary and monthly salary rates of an employee shall be established under current personnel policy. With the employee's agreement, this salary is to represent the employee's straight-time pay for the agreed upon normal number hours on duty per week.
 - (3) Overtime Compensation - It is anticipated that weekly schedules will fluctuate. When it is necessary to work in excess of the agreed upon workweek hours, the employees will be paid time and one-half the hourly rate for all hours worked in excess of the normal workweek.
- (e) Registered Nurses:
 - (1) When possible, the compensation shall be in the form of time off. When the employee normally has 24 hours responsibility, (as in the case of some supervisors and most directors), overtime compensation provisions shall not be applicable.

- (2) Where an employee is assigned duties at a lower classification level; the base rate of pay may not exceed the maximum rate of the lower level assignment.
- (f) Law Enforcement Activities:
 - (1) The requirements for law enforcement activities are outlined in the Fair Labor Standards Act, Code of Federal Regulations, Title 29, Part 553.200-553.233.
 - (2) Under Section 7(k) of the Act, agencies may choose to pay law enforcement personnel overtime compensation in work periods of 28 consecutive days after 171 hours of work.

History Note: Authority G.S. 126-4; Eff. February 1, 1989; Amended Eff. August 1, 2004.

25 NCAC 01E .0805 ADDITIONAL PERIODS OF ENTITLEMENT FOR RESERVE COMPONENTS OF THE UNITED STATES ARMED FORCES

Periods of entitlement for military leave with pay for members of the uniformed services reserve components for each period of involuntary service are as follows:

- (1) Members of the National Guard shall receive full pay for activities in the interest of the State usually not exceeding one day, when so ordered by the Governor or his authorized representative;
- (2) Members of the uniformed services reserve shall receive full pay for active state duty or federal duty for periods not exceeding 30 consecutive calendar days. For periods in excess of 30 days, employees shall be entitled to military leave with differential pay between military basic pay and regular state pay for any period of involuntary service if military pay is the lesser. Military leave for active state duty shall be considered separate from and in addition to military leave which may be granted for other purposes.

History Note: Authority G.S. 126-4; 127A-116; Eff. February 1, 1976; Amended Eff. December 1, 1980; May 1, 1977; Temporary Amendment Eff. March 18, 2002; Amended Eff. August 1, 2004.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday, May 15, 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, May 9, 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

Jim Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Laura Devan
Thomas Hilliard, III
Robert Saunders

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Dr. Walter Futch
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

May 15, 2003
June 19, 2003 July 17, 2003
August 21, 2003 September 18, 2003
October 16, 2003

Commission Review/Administrative Rules

Log of Filings (Log #197)

March 21, 2003 through April 21, 2003

DEPARTMENT OF ADMINISTRATION

Purpose of Mandatory Settlement Conferences	01 NCAC 30H .0101	Adopt
Initiating the Dispute Resolution Process	01 NCAC 30H .0102	Adopt
Selection of Certified Mediator by Agreement of	01 NCAC 30H .0201	Adopt
Nomination and Public Owner Approval of a Non-Cert	01 NCAC 30H .0202	Adopt
Appointment of Mediator by the SCO	01 NCAC 30H .0203	Adopt
Mediator Information Directory	01 NCAC 30H .0204	Adopt
Disqualification of Mediator	01 NCAC 30H .0205	Adopt
Where Conference Is To Be Held	01 NCAC 30H .0301	Adopt
When Conference Is To Be Held	01 NCAC 30H .0302	Adopt
Request To Extend Deadline For Completion	01 NCAC 30H .0303	Adopt
Recesses	01 NCAC 30H .0304	Adopt
No Cause for Delay	01 NCAC 30H .0305	Adopt
Attendance	01 NCAC 30H .0401	Adopt
Finalizing Agreement	01 NCAC 30H .0402	Adopt
Payment of Fee	01 NCAC 30H .0403	Adopt
Failure to Compensate Mediator	01 NCAC 30H .0404	Adopt
Authority of Mediators	01 NCAC 30H .0501	Adopt
Duties of Mediator	01 NCAC 30H .0502	Adopt
Compensation of the Mediator	01 NCAC 30H .0601	Adopt
Mediator Certification	01 NCAC 30H .0701	Adopt
Rule Making	01 NCAC 30H .0801	Adopt
Definitions	01 NCAC 30H .0901	Adopt
Time Limits	01 NCAC 30H .1001	Adopt

DEPARTMENT OF INSURANCE

Purpose and Scope	11 NCAC 11A .0501	Amend
Filing and Extension for Filing Reports	11 NCAC 11A .0503	Amend
Contents of Annual Audited Financial Report	11 NCAC 11A .0504	Amend
Designation of CPA	11 NCAC 11A .0505	Amend
Qualification of Independent CPA	11 NCAC 11A .0506	Amend

STATE BOARDS/NC LICENSING BOARD FOR GENERAL CONTRACTORS

Renewal of License	21 NCAC 12 .0503	Amend
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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	
Scott Patrick Windsor T/A Depot v. NC Alcoholic Beverage Comm.	02 ABC 0909	Hunter	02/26/03	
NC ABC Commission v. Pantana Bob's, Inc., T/A Pantana Bob's	02 ABC 1145	Mann	03/28/03	
<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	
Patricia Ann Pitts v. Gaston Co. Courthouse, Judge Jesse Caldwell	02 CPS 1134	Morrison	04/08/03	
Phyllis Ponder Duren v. Crime Victims Compensation Commission	02 CPS 1173	Gray	11/06/02	
Judith Simpson v. Crime Victims Compensation Commission	02 CPS 1317	Chess	03/17/03	17:21 NCR 1970
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>AGRICULTURE</u>				
All Creatures Great & Small v. NC Dept. of Ag. & Con. Svcs.	01 DAG 1398	Gray	04/02/03	
<u>HEALTH AND HUMAN SERVICES</u>				

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

CONTESTED CASE DECISIONS

Chiffon R Robeson, Ronald V Robeson v DHHS, Div. of Child Dev.	00 DHR 1030	Gray	02/28/03	
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	
Mary Edge v. DHHS, Div. of Child Development	01 DHR 0720	Gray	04/01/03	
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	
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	
Lollipop's Learning Tree #2, Lori Kirkling, ID #32001062 v. DHHS,	02 DHR 0095	Gray	02/28/03	
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	
Franklin Shane Early v. DHHS, Walter B Jones, ADATC	02 DHR 0239	Gray	04/01/03	
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	
Gemela Kidada Davis v. DHHS, Div. of Facility Services	02 DHR 0283	Lassiter	02/24/03	
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	
Terry A. Bolick v. DHHS	02 DHR 0618	Conner	02/26/03	
Evelyn Denise Humphrey v. DHHS, Div. of Facility Services	02 DHR 0624	Morrison	08/08/02	
Amy D McFarland v DHHS, Div. of Facility Services	02 DHR 0647	Wade	03/28/03	
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	
Stacy L Please-Wilson v. DHHS, Health Care Personnel Registry	02 DHR 0973	Wade	01/31/03	
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	

CONTESTED CASE DECISIONS

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
Jack Irizarry v. DHHS, Div. of Facility Services, Adult Care License Sec.	02 DHR 1331	Elkins	02/19/03
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
LatissueMcRae v. Dept Health Care Personnel Registry Section	02 DHR 1533	Lassiter	01/14/03
Marquelle's Enrichment Center for Edith James & Wilhelmenia Bridges v. Div. of Child Dev. Regulatory Services Section	02 DHR 1537	Gray	01/27/03
Betty J. Hastings v. Office of Administrative Hearings	02 DHR 1592	Lassiter	02/11/03
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
Queen Esther Hampton Fant v DHHS, Div. of Facility Services	02 DHR 1751	Elkins	03/07/03
Sherry D Tucker v. DHHS, Div. of Facility Services	02 DHR 1753	Mann	01/02/03
Mary A. Johnson v. DHHS	02 DHR 1885	Wade	03/13/03
Donna Stillie v. Nurse Registry for CAN's	02 DHR 1940	Chess	01/15/03
Opportunities Industrialization Center of America, Inc. (via counsel, David C. Smith) v. DHHS	02 DHR 1982	Chess	01/27/03
Shirley Suggs v. DHHS, Division of Facility Services	02 DHR 2038	Gray	02/13/03
Ziad El-Hilou, A&T Food v. Food & Nutrition Service – USDA, and DHHS	02 DHR 2165	Elkins	01/08/03
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Darren P Botticelli v. DOJ, Company Police Program	02 DOJ 0898	Lassiter	03/20/03
Sara E Parker v. Consumer Protection [sic] & Rosemary D. Revis	02 DOJ 1038	Gray	08/08/02

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Seth Paul Barham v. Alarm System Licensing Board	02 DOJ 0552	Gray	06/12/02
Christopher Michael McVicker v. Alarm Systems Licensing Board	02 DOJ 0731	Gray	06/07/02
Jeffery Lee Garrett v. Alarm Systems Licensing Board	02 DOJ 0908	Morrison	08/06/02
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
Lottie M Campbell v. Alarm Systems Licensing Board	02 DOJ 1602	Mann	11/27/02
Katherine Claire Willis v Alarm Systems Licensing Board	02 DOJ 1953	Gray	03/04/03
John Courtney Rose v Alarm Systems Licensing Board	02 DOJ 1954	Morrison	12/19/02
Adam David Braswell v Alarm Systems Licensing Board	02 DOJ 1955	Morrison	12/19/02
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Anthony Davon Webster v. Private Protective Services Board	01 DOJ 1857	Gray	06/07/02
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Orlando Carmichael Wall v. Private Protective Services Board	02 DOJ 0729	Gray	06/18/02
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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
Michael A Carrion v. Criminal Justice Educ & Trng Stds. Comm.	02 DOJ 0416	Conner	09/25/02
Wallace A. Hough, Jr. v. Criminal Justice & Training Stds. Comm.	02 DOJ 0474	Morrison	08/08/02
Jerome Martrice Johnson v. Criminal Justice Educ. & Trng. Stds. Comm.	02 DOJ 0484	Elkins	09/23/02
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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	
Eddie Kurt Newkirk v. Sheriffs' Education & Training Stds. Comm.	02 DOJ 0870	Gray	08/28/02	
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Mike Doyle Colvin Jr v. Sheriffs' Educ. & Training Standards Comm.	02 DOJ 1122	Chess	10/25/02	
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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Ricky Hargrove v. Criminal Justice Education & Training Stds. Comm.	02 DOJ 1946	Elkins	01/26/03	
Christopher John Hubacker v Criminal Justice Ed. & Trng. Stds. Comm.	02 DOJ 2118	Morrison	03/21/03	
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Melvin Quincy Etheridge v. Department of Public Instruction	02 EDC 1174	Mann	02/11/03	
<u>ENVIRONMENT AND NATURAL RESOURCES</u>				
Enviro-Soil, Inc. v. St. of NC DENR, Div. of Env. Management	94 EHR 1296	Gray	12/03/02	
Town of Belville v. NC DENR, Div. of Coastal Management	96 EHR 0598	Gray	07/29/02	
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 0363 ⁵	Conner	11/21/02	
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 ²	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	
SRF Dev. Corp. v. NC DENR, Div. of Land Resources	01 EHR 1402 ³	Gray	10/02/02	
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	
Grassy Creek Neighborhood Alliance Inc v. DHHS, Div. of Waste Mgmt, & City of Winston Salem & City/County Utility Commission	01 EHR 1585	Mann	02/07/03	
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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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Kathy Teel Perry v. Environmental Health Division	02 EHR 0576	Chess	10/09/02	
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Michael John Barri v. New Hanover Co. Health Dept./Env. Health	02 EHR 0742	Conner	09/03/02	
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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	
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GT of Hickory, Inc, Cole Alexander Gaither v. NC DENR	02 EHR 1534	Lassiter	11/18/02	
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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	
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Randall E Kissiah v. Richmond Co. Health Dept, Env. Health Section	02 EHR 1945 ⁹	Conner	02/12/03	
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	
Estate of Annie W Mullen v. DENR, Div. of Waste Management	03 EHR 0198	Lassiter	04/03/03	
<u>ENGINEERS AND LAND SURVEYORS</u>				
NC Bd. of Examiners for Engineers & Surveyors v. C Phil Wagoner	01 ELS 0078	Lewis	06/05/02	
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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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James Edward Robinson v. Off. of Juvenile Justice, 7 th Jud. Dist.	00 OSP 0722	Wade	06/28/02	
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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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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	
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Joy Reep Shuford v. Department of Correction	01 OSP 2179	Overby	06/25/02	
Debra R. Dellacroce v. NC DHHS	01 OSP 2185	Conner	09/11/02	
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 Aaaron Yonish v. UNC at Greensboro	01 OSP 2274	Conner	06/25/02	
Theressa Truner v. Albemarle Mental Health Center	01 OSP 2331	Gray	07/11/02	
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James Donoghue v. Department of Correction	02 OSP 0011	Mann	08/26/02	
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Jana S. Rayne v. Onslow Co. Behavioral Health Care	02 OSP 0184	Morrison	08/01/02
Cathy L. White v. NC Department of Corrections	02 OSP 0246	Elkins	05/31/02
Doris J. Berry v. NC Department of Transportation	02 OSP 0247	Elkins	06/17/02
William L. Johnson v. Caledonia Farms Ent. Caledonia Prison Farm	02 OSP 0270	Elkins	06/25/02
Darrell Glenn Fender v. Avery/Mitchell Correctional Institution	02 OSP 0290	Mann	06/14/02
Karen Lynette Smith v Dr. Steven Ashby, Dir. The Durham Center	02 OSP 0316	Elkins	12/18/02
Gerald W Jones v. NC Dept. of Transportation	02 OSP 0318	Wade	10/25/02
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Pamela C. Williams v. Secretary of State	02 OSP 0348	Chess	08/26/02
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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
Lisa A Forbes v Dorothea Dix Hospital	02 OSP 0757	Wade	02/11/03
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 Osborn 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-Tyrrell-Washington Dist. Health Dept.	02 OSP 1037	Conner	10/16/02
JoAnn A Sexton v. City of Wilson	02 OSP 1041	Morrison	07/25/02
Karen C. Weaver v. State of NC Dept. of Administration	02 OSP 1052	Lassiter	10/25/02
Alex Craig Fish v. Town of Smithfield (Smithfield Police Dept.)	02 OSP 1060	Morrison	08/09/02
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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
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Carolyn Pickett v. Nash-Rocky Mt. School Systems, Nash-Rocky Mt. Board of Education	02 OSP 1136	Morrison	07/29/02
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Theodore M Banks v. DOC, Harnett Correctional Institute	02 OSP 1367 ⁷	Gray	12/20/02
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Marie D Barrentine v. Robert William Fisher, NC Probation/Parole	02 OSP 1410	Elkins	02/11/03
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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
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Kevin W Lawrence v DOC, Division of Prisons	02 OSP 1675	Conner	02/18/03
Rashad A Rahman v. South East Region Mental Health	02 OSP 1669	Lassiter	01/09/03
L Ozetta Parker v. Person Co. Dept of Social Svcs; Carole Thomas, Supervisor	02 OSP 2116	Chess	03/27/03
Alwilda G. George v. Sanford Correctional Center	02 OSP 2317	Elkins	02/06/03
William H Haney, Jr. v. DHHS, Div. of Vocational Rehabilitation, Michael Easley, Carmen Hooker Odom, et al.	02 OSP 2327	Elkins	03/26/03
Jennifer Howard v Sampson Correctional Center	03 OSP 0042	Elkins	02/24/03
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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

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- 8 Combined Cases
- 9 Combined Cases

3. Pursuant to N.C.G.S. § 15B-11(a)(6), was the victim participating in a felony at or about the time that the victim's injury occurred?

Based upon the testimony at the hearing, exhibits, and the whole record, the undersigned makes the following:

FINDINGS OF FACT

1. On 28 November 2001 at approximately 5:00 a.m., Petitioner's husband, Clinton Simpson (victim), was thrown from a vehicle and killed following an argument with David Simmons about money. (Respondent's Exhibit C and Hearing Tape 1). Petitioner seeks \$2716.87 for funeral expenses. (Hearing Tape 2, Side B; Respondent's Exhibit 4).
2. Detective Shelia Lingle, of the Salisbury Police Department investigated the victim's death. (Hearing Tape 1, Side A). Detective Lingle has been a detective for eleven (11) years and has been a sworn law enforcement officer for fourteen (14) years. (Hearing Tape 1, Side A).
3. On 28 November 2001, at approximately 5:00 a.m., Salisbury Police Officers responded to a call involving a car accident where someone was trapped under a car in a ditch or creek. (Hearing Tape 1, Side A). The officers' investigation revealed that the individual in the creek was not the driver but that the driver had left the scene. (Hearing Tape 1, Side A). The vehicle was registered to David Simmons. (Hearing Tape 1, Side A). David Simmons was a habitual felon and had been released from prison approximately five months prior to this incident. (Hearing Tape 2, Side A).
4. Detective Lingle's investigation revealed that the victim had been out with David Simmons, all night (the night of 27 November to the early morning of 28 November) smoking crack cocaine. (Hearing Tape 1, Side A). The victim was purchasing the cocaine because he had money. (Hearing Tape 1, Side B). The victim had received his government disability check only a few hours earlier. (Hearing Tape 2, Side A). At some time during the night, the victim and Simmons had gone to their respective homes and had met back at approximately 4:30 a.m. or 5:00 a.m. to obtain more crack cocaine. (Hearing Tape 1, Side A).
5. After the victim and Simmons met back together, they went to at least two separate convenience stores attempting to cash a \$100 bill belonging to the victim. (Hearing Tape 1, Side B). At such an early time of morning, the stores' clerks refused to cash that large of a denomination of currency. (Hearing Tape 1, Side B).
6. At North Shaver Street near Innis Street in Salisbury, the pair stopped at another convenience store and purchased some gasoline. (Hearing Tape 1, Side B). Simmons went in to the store to pay for the gas. Approximately \$85.00 in change was left. (Hearing Tape 1, Side B). When Simmons came back out of the store, he refused to give the victim the change. (Hearing Tape 1, Side B). An argument quickly followed between the two men. (Hearing Tape 1, Side B). Simmons then got into his vehicle. (Hearing Tape 1, Side B). The victim attempted to reach through the door to get his money back from Simmons. (Hearing Tape 1, Side B). The car then proceeded down a hill. (Hearing Tape 1, Side B). The victim was thrown over the hood of the car and landed in a creek. (Hearing Tape 1, Side B). Simmons then left the scene of the wreck. (Hearing Tape 1, Side A).
7. Following Detective Lingle's investigation of the victim's death, Simmons was convicted of manslaughter and larceny from the person. (Hearing Tape 1, Side A).
8. During her investigation, Detective Lingle first learned of the victim's cocaine use from Petitioner, victim's wife. (Hearing Tape 1, Side B). Petitioner and the victim had been married since 1987 and had two children. (Hearing Tape 2, Side A). Petitioner told Detective Lingle that she and the victim, although married, were living separately and had been since 1999 because of the victim's crack cocaine problem. (Hearing Tape 1, Sides A and B; Hearing Tape 2, Side A). Specifically, Petitioner told Detective Lingle that the victim moved out of the house he shared with Petitioner because of his crack cocaine problem. (Hearing Tape 1, Side B; Hearing Tape 2, Side A). Petitioner and the victim had two separate addresses. (Hearing Tape 1, Sides A and B). Petitioner told Detective Lingle that she told victim that he needed to deal with his drug problem before they could get back together. (Hearing Tape 1, Sides A and B).
9. The victim was not employed at the time of his death but was receiving a monthly government disability check. (Hearing Tapes 1, Sides A and B; and Hearing Tape 2, Side A). Petitioner had seen the victim on the night of 27 November 2001, only hours before his death. The victim had received his disability check on 27 November and Petitioner went to his residence to ask him if he could give her money to buy a present for their son. (Hearing Tape 2, Side A). The victim gave the Petitioner some money only hours before he was killed. (Hearing Tape 1, Sides A and B). Petitioner admitted that the victim would use some of his disability check to purchase cocaine. (Hearing Tape 2, Side A).
10. Although a veteran of the United States Army having served in the Persian Gulf War, the victim began using crack cocaine when he and Petitioner lived in Georgia in 1995. (Hearing Tape 2, Side A). Petitioner was aware of the victim's crack cocaine use from 1995 until his death in 2001. The victim was unable to maintain employment and was eventually fired from one job in Salisbury

for not coming to work. (Hearing Tape 2, Side A). Petitioner admitted that the victim's drug use affected this job. (Hearing Tape 2, Side A). Finally, the victim became unemployed and began receiving disability in 1999. (Hearing Tape 2, Side A).

11. Petitioner admitted that the victim's continued cocaine use was a hardship on family life and their marriage. (Hearing Tape 2, Side A). The victim had been through at least three separate cocaine rehabilitation programs in at least three separate states to try to overcome his dependency on crack cocaine. (Hearing Tape 2, Side A). Specifically, the victim had participated in a Veteran's Administration rehabilitation program in 1996 in Georgia; a second rehabilitation program in South Carolina in 1997; and a third in Charlotte, North Carolina in 1999. (Hearing Tape 2, Side A). The victim began the rehabilitation program in Charlotte soon after he moved out of the family home. (Hearing Tape 2, Side A). All programs were unsuccessful. (Hearing Tape 2, Side A).

12. Pursuant to her investigation of the case, Detective Lingle received statements, reports, photographs, and other evidence that she kept in her case file. (Hearing Tape 1, Side A). Only Detective Lingle and the district attorney had access to the file. Included in this file was the victim's autopsy report and toxicology report. (Hearing Tape 1, Side A; Respondent's Exhibit 1).

13. Both the toxicology report and the autopsy report revealed the presence of cocaine in the victim's system. (Hearing Tape 1, Side B; Respondent's Exhibits 1 and 2).

14. The area where the victim was found and where he and Simmons tried to cash the \$100 bill is a high drug (crack cocaine) and alcohol use area. (Hearing Tape 1, Side B). The area is also a high crime area. (Hearing Tape 1, Side B).

15. Detective Lingle told Commission investigators the results of her investigation, as well as the results of the victim's autopsy and toxicology reports. (Hearing Tape 1, Side B).

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The Petitioner bears the burden of establishing that she is entitled to compensation from the Respondent, North Carolina Crime Victims Compensation Commission.

2. North Carolina General Statute § 15B-11(a)(6) does not allow the Commission to use any discretion ("shall deny") to evaluate a claim and make appropriate decisions based on its findings whereas North Carolina General Statutes §§ 15B-11(b)(1) and (b)(2) does allow the Commission to use its discretion ("may deny") to evaluate a claim and make appropriate decisions based on its findings.

3. North Carolina General Statute § 15B-11(a)(6) states that:

An award of compensation **shall be denied** if:

The victim was **participating in a felony** at or about the time that the victim's injury occurred.

4. The offense of possession of a controlled substance is found in Chapter 90 of the North Carolina General Statutes. Specifically, pursuant to N.C.G.S. § 90-95(a)(3) and (d)(2), it is unlawful (Class I felony) for any person to possess any amount of cocaine or "salt, isomer, salts of isomers, compound, derivative, or preparation of" cocaine, coca leaves, or their chemical equivalents. As stated below, based on the totality of known facts, including positive drug test results and other evidence of culpable use, the victim was in possession of cocaine, which, as a felony, is cause for a mandatory non-discretionary denial pursuant to N.C.G.S. § 15B-11(a)(6).

A. Is Presence of Controlled Substance Alone *Per Se* Possession?

There have been no reported cases that have found mere presence of a controlled substance in the body, with nothing more, sufficient to establish the crime of possession of that controlled substance. Courts have instead required other factors (in some cases only one additional factor other than a lab report showing the presence of controlled substance) in determining whether a person used and therefore possessed the controlled substance.

B. Presence of the Controlled Substance Combined with at Least One Factor Showing Use.

Neither the North Carolina Court of Appeals nor the North Carolina Supreme Court has ever ruled specifically on the issue of whether the mere presence of a controlled substance in a victim's system is *per se* possession of the controlled substance. However, several federal courts in North Carolina and other jurisdictions that have addressed this issue. The U.S. Court of Appeals for the 4th Circuit, in United States v. Clark, 30 F.3d 23, 26 (4th Cir. 1994), **held that the presence of a controlled substance in one's system**

combined with evidence of culpable (that is, intentional, voluntary, or knowing) use equals possession. Additionally, the Court reaffirmed its earlier position in United States v. Battle, 993 F.2d 49, 50 (4th Cir. 1993)(holding that if there is "proof of intentional use of a controlled substance [this] is sufficient to establish possession . . ."), by restating that culpable "use" becomes synonymous with "possession." 30 F.3d at 25 quoting United States v. Rockwell, 984 F.2d 1112, 1114 (10th Cir. 1993), cert. denied, 124 L. Ed. 2d 693, 113 S. Ct. 2945 (1993). Therefore, the rule from Clark and other cases is that evidence of intentional use of a substance is sufficient to establish criminal possession of that substance.

One factor courts have stated shows intentional use is a person's admitted use of the controlled substance. United States v. Rockwell, 984 F.2d 1112 (10th Cir. 1993). In Rockwell, the defendant tested positive for controlled substances on three separate occasions yet only admitted use prior to the first test. Id. at 1113. The Tenth Circuit Court of Appeals stated that "there can be no more intimate form of possession than use." Id. at 1114. Further, based on the test results and defendant's admitted use, the Court held that "a controlled substance in a person's body is in the possession of that person . . . assuming the required mens rea." Id. See also United States v. Smith, 978 F.2d 181 (5th Cir. 1992)(admission of drug use and positive urinalysis results for cocaine was sufficient to support conviction of possession of cocaine and defendant failed to show that the cocaine in his system was "administered against his will or by trick").

C. Relationship to Victim Simpson.

Both the victim's toxicology report and autopsy report revealed the presence of cocaine in the victim's system. David Simmons admitted to law enforcement that he and the victim had been smoking crack cocaine all night. Petitioner fails to show that this cocaine was "administered against the victim's will or by trick" and fails to show that it was present in the victim's system from some other means. The positive test for cocaine presence, combined with the following evidence, shows that the victim was in "possession of cocaine," which, as detailed above, is a felony.

First, there is ample evidence of the victim's history of cocaine use. The victim had been using cocaine for a period of at least seven years. This was well known to Petitioner. The victim's repeated cocaine use resulted in failed jobs and eventually led to him moving out of the home he shared with Petitioner and their children. The victim was unsuccessful in his attempts to rehabilitate himself through cocaine use rehabilitation programs. He had tried at least three separate programs in three different states in three separate years.

Second, the victim had readily available resources to purchase and use cocaine. David Simmons told law enforcement that he and the victim were out smoking crack cocaine all night and that the victim was buying because he had money. Moreover, the victim and Simmons were attempting to exchange the victim's \$100 bill at convenience stores in the wee hours of the morning. Petitioner corroborated this by admitting that the victim, who was unemployed, received disability checks from the government and would use part of this money to purchase cocaine. In fact, only hours before he was killed, the victim had received his disability check and gave Petitioner some of the money to buy presents for their children.

Third, David Simmons told authorities that he and the victim had been out all night smoking cocaine and were attempting to exchange the money to buy more cocaine. Petitioner provides no evidence of a contrary reason, lawful or not, why the victim and David Simmons were in a high crime and drug area at 4:30 a.m. or 5:00 a.m. trying to obtain change for a \$100 bill at several convenience stores. David Simmons is a known habitual felon.

5. There were sufficient incriminating facts and circumstances to justify a possession of cocaine charge against the victim.
6. Petitioner has failed to carry her burden of establishing that the victim was not in possession of a controlled substance (cocaine), a felony pursuant to N.C.G.S. § 90-95.
7. Petitioner has failed to carry her burden of establishing that the victim was not engaged in contributory misconduct pursuant to N.C.G.S. § 15B-11(b)(2).
8. North Carolina General Statutes §§ 15B-11(b)(1) and (2) states that:

A claim may be denied or an award of compensation may be reduced if:

- (1) The victim was participating in a nontraffic misdemeanor at or about the time that the victim's injury occurred;
or
- (2) The claimant or a victim through whom the claimant claims **engaged in contributory misconduct.**

The Commission shall use its discretion in determining whether to deny a claim under this subsection. In exercising its discretion, the Commission may consider whether any proximate cause exists between the injury and the misdemeanor or contributory misconduct.

9. The Commission properly followed the discretionary provisions of N.C.G.S. § 15B-11(b)(2) by denying Petitioner's claim pursuant to this provision. The Petitioner fails to show that the victim was not engaged in contributory misconduct.

10. Petitioner is, therefore, not entitled to compensation from the North Carolina Crime Victims Compensation Commission.

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

DECISION

Petitioner is not entitled to compensation by the North Carolina Crime Victims Compensation Commission due to the victim's participation in a felony at or about the time of the victim's injury, pursuant to N.C.G.S. § 15B-11(a)(6) and engaging in contributory misconduct pursuant to N.C.G.S. § 15B-11(b)(2).

NOTICE

The agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this decision issued by the undersigned, and to present written arguments to those in the agency who will make the final decision. N.C.G.S. § 150B-36(a). In accordance with N.C.G.S. § 150B-36 the agency shall adopt each finding of fact contained in the Administrative Law Judge's decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge's decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact. The agency shall adopt the decision of the Administrative Law Judge unless the agency demonstrates that the decision of the Administrative Law Judge is clearly contrary to the preponderance of the admissible evidence in the official record. The agency that will make the final decision in this case is the North Carolina Crime Victims Compensation Commission.

ORDER

It is hereby ordered that the agency making the final decision in this matter serve a copy of the final decision to the Office of Administrative Hearings, P.O. Drawer 27447, Raleigh, North Carolina 27611-7447, in accordance with N.C.G.S. § 150B-36.

IT IS SO ORDERED.

This the 17 day of March, 2003.

Sammie Chess, Jr.
Administrative Law Judge