

NORTH CAROLINA



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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

The North Carolina Administrative Code (NCAC) has four major classifications of rules. Three of these, titles, chapters, and sections are mandatory. The major classification 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. Subchapters are optional classifications to be used by agencies when appropriate.

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES	
1	ADMINISTRATION	1	Acupuncture	
2	AGRICULTURE & CONSUMER SERVICES	2	Architecture	
3	AUDITOR	3	Athletic Trainer Examiners	
4	COMMERCE	4	Auctioneers	
5	CORRECTION	6	Barber Examiners	
6	COUNCIL OF STATE	8	Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10	Chiropractic Examiners	
8	ELECTIONS	11	Employee Assistance Professionals	
9	GOVERNOR	12	General Contractors	
10A	HEALTH AND HUMAN SERVICES	14	Cosmetic Art Examiners	
11	INSURANCE	16	Dental Examiners	
12	JUSTICE	17	Dietetics/Nutrition	
13	LABOR	18	Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19	Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20	Foresters	
16	PUBLIC EDUCATION	21	Geologists	
17	REVENUE	22	Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25	Interpreter/Transliterater (Reserved)	
19A	TRANSPORTATION	26	Landscape Architects	
20	TREASURER	28	Landscape Contractors	
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23	COMMUNITY COLLEGES	31	Marital and Family Therapy	
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		38	Occupational Therapists	
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		46	Pharmacy	
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		50	Plumbing, Heating & Fire Sprinkler Contractors	
		52	Podiatry Examiners	
		53	Professional Counselors	
		54	Psychology Board	
		56	Professional Engineers & Land Surveyors	
		57	Real Estate Appraisal Board	
		58	Real Estate Commission	
		60	Refrigeration Examiners	
		61	Respiratory Care Board	
		62	Sanitarian Examiners	
		63	Social Work Certification	
		64	Speech & Language Pathologists & Audiologists	
		65	Therapeutic Recreation Certification	
		66	Veterinary Medical Board	
		68	Substance Abuse Professionals	
		69	Soil Scientists	
			1	Housing Finance
			2	Agricultural Finance Authority
			3	Safety & Health Review Board
			4	Reserved
			5	State Health Plan Purchasing Alliance Board (Repealed)

Note: Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

NORTH CAROLINA REGISTER
 Publication Schedule for July 2003 – December 2003

FILING DEADLINES			NOTICE OF TEXT		PERMANENT RULE			TEMPORARY RULES
Volume & issue number	Issue date	Last day for filing	Earliest date for public hearing	End of required comment period	Deadline to submit to RRC for review at next meeting	Earliest Eff. Date of Permanent Rule	Delayed Eff. Date of Permanent Rule (first legislative day of the next regular session)	270 th day from publication in the Register
17:13	01/02/03	12/06/02	01/17/03	03/03/03	03/20/03	05/01/03	05/10/04	09/29/03
17:14	01/15/03	12/19/02	01/30/03	03/17/03	03/20/03	05/01/03	05/10/04	10/12/03
17:15	02/03/03	01/10/03	02/18/03	04/04/03	04/21/03	06/01/03	05/10/04	10/31/03
17:16	02/17/03	01/27/03	03/04/03	04/21/03	04/21/03	06/01/03	05/10/04	11/14/03
17:17	03/03/03	02/10/03	03/18/03	05/02/03	05/20/03	07/01/03	05/10/04	11/28/03
17:18	03/17/03	02/24/03	04/01/03	05/16/03	05/20/03	07/01/03	05/10/04	12/12/03
17:19	04/01/03	03/11/03	04/16/03	06/02/03	06/20/03	08/01/03	05/10/04	12/27/03
17:20	04/15/03	03/25/03	04/30/03	06/16/03	06/20/03	08/01/03	05/10/04	01/10/04
17:21	05/01/03	04/09/03	05/16/03	06/30/03	07/21/03	09/01/03	05/10/04	01/26/04
17:22	05/15/03	04/24/03	05/30/03	07/14/03	07/21/03	09/01/03	05/10/04	02/09/04
17:23	06/02/03	05/09/03	06/17/03	08/01/03	08/20/03	10/01/03	05/10/04	02/27/04
17:24	06/16/03	05/23/03	07/01/03	08/15/03	08/20/03	10/01/03	05/10/04	03/12/04
18:01	07/01/03	06/10/03	07/16/03	09/02/03	09/22/03	11/01/03	05/10/04	03/27/04
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18:03	08/01/03	07/11/03	08/16/03	09/30/03	10/20/03	12/01/03	05/10/04	04/27/04
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18:06	09/15/03	08/22/03	09/30/03	11/14/03	11/20/03	01/01/04	05/10/04	06/11/04
18:07	10/01/03	09/10/03	10/16/03	12/01/03	12/22/03	02/01/04	05/10/04	06/27/04
18:08	10/15/03	09/24/03	10/30/03	12/15/03	12/22/03	02/01/04	05/10/04	07/11/04
18:09	11/03/03	10/13/03	11/18/03	01/02/04	01/20/04	03/01/04	05/10/04	07/30/04
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18:11	12/01/03	11/05/03	12/16/03	01/30/04	02/20/04	04/01/04	05/10/04	08/27/04
18:12	12/15/03	11/20/03	12/30/03	02/13/04	02/20/04	04/01/04	05/10/04	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 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 60 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.

Note from the Codifier: The notices published in this Section of the NC Register include the text of proposed rules. The agency must accept comments on the proposed rule(s) for at least 60 days from the publication date, or until the public hearing, or a later date if specified in the notice by the agency. If the agency adopts a rule that differs substantially from a prior published notice, the agency must publish the text of the proposed different rule and accept comment on the proposed different rule for 60 days.
 Statutory reference: G.S. 150B-21.2.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Elizabeth.Kountis@ncmail.net, by calling Elizabeth Kountis at (919) 733-5083 extension 369, or by fax to (919) 715-5637.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR-Environmental Management Commission intends to amend the rules cited as 15A NCAC 02B .0225, .0316.

Comment period ends: February 1, 2003

Proposed Effective Date: May 1, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Public Hearing:

Date: December 18, 2003

Time: 2:30 p.m.

Location: Ground Floor Hearing Room, Archdale Building, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: This rulemaking is proposed as a result of House Bill 566. The proposed permanent rules will amend the North Carolina Administrative Code (NCAC) to reflect the appropriate ORW reclassification and management strategy that were approved for these waters by the North Carolina General Assembly as a result of the legislative review performed under the auspices of House Bill 566. These proposed rules will assign the ORW classification and the ORQ management strategy to the 14 miles of Sandy Creek and Swift Creek that had been identified as possessing excellent water quality. Furthermore, these proposed rules will assign the ORQ management strategy to all the waters draining to these 14 miles.

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

Procedure by which a person can object to the agency on a proposed rule:

The purpose of this announcement is to encourage those interested in this proposal to provide comments. The EMC is very interested in all comments pertaining to the proposed rules. It is very important that all interested and potentially affected persons or parties make their views known to the EMC whether in favor of or opposed to any and all provisions of the proposed rules. You may attend the public hearing and make relevant verbal comments. The Hearing Officer may limit the length of time that you may speak at the public hearing, if necessary, so that all those who wish to speak may have an opportunity to do so. You may also submit written comments, data or other relevant information by February 1, 2003. Written comments may be submitted to Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617, *Elizabeth.Kountis@ncmail.net*, by calling Elizabeth Kountis at (919) 733-5083 extension 369, or by fax to (919) 715-5637.

CHAPTER 02 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 02B - SURFACE WATER AND WETLAND STANDARDS

SECTION .0200 - CLASSIFICATIONS AND WATER QUALITY STANDARDS APPLICABLE TO SURFACE WATERS AND WETLANDS OF NORTH CAROLINA

15A NCAC 02B .0225 OUTSTANDING RESOURCE WATERS

(a) General In addition to the existing classifications, the Commission may classify unique and special surface waters of the state as outstanding resource waters (ORW) upon finding that such waters are of exceptional state or national recreational or ecological significance and that the waters have exceptional water quality while meeting the following conditions:

- (1) that the water quality is rated as excellent based on physical, chemical or biological information;
- (2) the characteristics which make these waters unique and special may not be protected by the

Written comments may be submitted to: Elizabeth Kountis, DENR/Division of Water Quality, Planning Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617,

assigned narrative and numerical water quality standards.

(b) Outstanding Resource Values In order to be classified as ORW, a water body must exhibit one or more of the following values or uses to demonstrate it is of exceptional state or national recreational or ecological significance:

- (1) there are outstanding fish (or commercially important aquatic species) habitat and fisheries;
- (2) there is an unusually high level of water-based recreation or the potential for such recreation;
- (3) the waters have already received some special designation such as a North Carolina or National Wild and Scenic River, Native or Special Native Trout Waters, National Wildlife Refuge, etc, which do not provide any water quality protection;
- (4) the waters represent an important component of a state or national park or forest; or
- (5) the waters are of special ecological or scientific significance such as habitat for rare or endangered species or as areas for research and education.

(c) Quality Standards for ORW

- (1) Freshwater: Water quality conditions shall clearly ~~maintain and be maintained~~ to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site specific basis during the proceedings to classify waters as ORW. At a minimum, no new discharges or expansions of existing discharges shall be permitted, and stormwater controls for all new development activities requiring an Erosion and Sedimentation Control Plan in accordance with rules established by the NC Sedimentation Control Commission or an appropriate local erosion and sedimentation control program shall be required to follow the stormwater provisions as specified in 15A NCAC 2H .1000. Specific stormwater requirements for ORW areas are described in 15A NCAC 2H .1007.
- (2) Saltwater: Water quality conditions shall clearly ~~maintain and be maintained~~ to protect the outstanding resource values of waters classified ORW. Management strategies to protect resource values shall be developed on a site-specific basis during the proceedings to classify waters as ORW. At a minimum, new development shall comply with the stormwater provisions as specified in 15A NCAC 2H .1000. Specific stormwater management requirements for saltwater ORWs are described in 15A NCAC 2H .1007. New non-discharge permits shall meet reduced loading rates and increased buffer zones, to be determined on a case-by-case basis. No dredge or fill activities shall be allowed if those activities would result in a reduction of the beds of submerged aquatic vegetation or a

reduction of shellfish producing habitat as defined in 15A NCAC 3I .0101(b)(20)(A) and (B), except for maintenance dredging, such as that required to maintain access to existing channels and facilities located within the designated areas or maintenance dredging for activities such as agriculture. A public hearing is mandatory for any proposed permits to discharge to waters classified as ORW.

Additional actions to protect resource values shall be considered on a site specific basis during the proceedings to classify waters as ORW and shall be specified in Paragraph (e) of this Rule. These actions may include anything within the powers of the commission. The commission shall also consider local actions which have been taken to protect a water body in determining the appropriate state protection options. Descriptions of boundaries of waters classified as ORW are included in Paragraph (e) of this Rule and in the Schedule of Classifications (15A NCAC 2B .0302 through 2B .0317) as specified for the appropriate river basin and shall also be described on maps maintained by the Division of Water Quality.

(d) Petition Process. Any person may petition the Commission to classify a surface water of the state as an ORW. The petition shall identify the exceptional resource value to be protected, address how the water body meets the general criteria in Paragraph (a) of this Rule, and the suggested actions to protect the resource values. The Commission may request additional supporting information from the petitioner. The Commission or its designee shall initiate public proceedings to classify waters as ORW or shall inform the petitioner that the waters do not meet the criteria for ORW with an explanation of the basis for this decision. The petition shall be sent to:

Director
DENR/Division of Water Quality
1617 Mail Service Center
Raleigh, North Carolina 27699-1617

The envelope containing the petition shall clearly bear the notation: **RULE-MAKING PETITION FOR ORW CLASSIFICATION.**

(e) Listing of Waters Classified ORW with Specific Actions Waters classified as ORW with specific actions to protect exceptional resource values are listed as follows:

- (1) Roosevelt Natural Area [White Oak River Basin, Index Nos. 20-36-9.5-(1) and 20-36-9.5-(2)] including all fresh and saline waters within the property boundaries of the natural area shall have only new development which complies with the low density option in the stormwater rules as specified in 15A NCAC 2H .1005(2)(a) within 575 feet of the Roosevelt Natural Area (if the development site naturally drains to the Roosevelt Natural Area).
- (2) Chattooga River ORW Area (Little Tennessee River Basin and Savannah River Drainage Area): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section. However, expansions of existing

- discharges to these segments shall be allowed if there is no increase in pollutant loading:
- (A) North and South Fowler Creeks;
 - (B) Green and Norton Mill Creeks;
 - (C) Cane Creek;
 - (D) Ammons Branch;
 - (E) Glade Creek; and
 - (F) Associated tributaries.
- (3) Henry Fork ORW Area (Catawba River Basin): the following undesignated waterbodies that are tributary to ORW designated segments shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section:
- (A) Ivy Creek;
 - (B) Rock Creek; and
 - (C) Associated tributaries.
- (4) South Fork New and New Rivers ORW Area [New River Basin (Index Nos. 10-1-33.5 and 10)]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply to ~~waters that are~~ within one mile and ~~drain~~ draining to the designated ORW areas;
 - (B) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall be permitted such that the following water quality standards are maintained in the ORW segment:
 - (i) the total volume of treated wastewater for all upstream discharges combined shall not exceed 50 percent of the total instream flow in the designated ORW under ~~7Q10 conditions; conditions,~~ which are defined in Rule .0206(a)(1) of this Section;
 - (ii) a safety factor shall be applied to any chemical allocation such that the effluent limitation for a specific chemical constituent shall be the more stringent of either the limitation allocated under design conditions (pursuant to 15A NCAC 2B .0206) for the normal standard at the point of discharge, or the limitation allocated under design conditions for one-half the normal standard
- (iii) at the upstream border of the ORW segment;
a safety factor shall be applied to any discharge of complex wastewater (those containing or potentially containing toxicants) to protect for chronic toxicity in the ORW segment by setting the whole effluent toxicity limitation at the higher (more stringent) percentage effluent determined under design conditions (pursuant to 15A NCAC 2B .0206) for either the instream effluent concentration at the point of discharge or twice the effluent concentration calculated as if the discharge were at the upstream border of the ORW segment;
- (C) New or expanded NPDES permitted wastewater discharges located upstream of the designated ORW shall comply with the following:
- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/1, and NH₃-N = 2 mg/1;
 - (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 10 mg/1 for trout waters and to 20 mg/1 for all other waters;
 - (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
 - (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (5) Old Field Creek (New River Basin): the undesignated portion of Old Field Creek (from its source to Call Creek) shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (6) In the following designated waterbodies, no additional restrictions shall be placed on new

or expanded marinas. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges. The Alligator River Area (Pasquotank River Basin) extending from the source of the Alligator River to the U.S. Highway 64 bridge including New Lake Fork, North West Fork Alligator River, Juniper Creek, Southwest Fork Alligator River, Scouts Bay, Gum Neck Creek, Georgia Bay, Winn Bay, Stumpy Creek Bay, Stumpy Creek, Swann Creek (Swann Creek Lake), Whipping Creek (Whipping Creek Lake), Grapevine Bay, Rattlesnake Bay, The Straits, The Frying Pan, Coopers Creek, Babbitt Bay, Goose Creek, Milltail Creek, Boat Bay, Sandy Ridge Gut (Sawyer Lake) and Second Creek, but excluding the Intracoastal Waterway (Pungo River-Alligator River Canal) and all other tributary streams and canals.

(7) In the following designated waterbodies, the only type of new or expanded marina that shall be allowed shall be those marinas located in upland basin areas, or those with less than 10 slips, having no boats over 21 feet in length and no boats with heads. The only new or expanded NPDES permitted discharges that shall be allowed shall be non-domestic, non-process industrial discharges.

(A) The Northeast Swanquarter Bay Area including all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point.

(B) The Neuse-Southeast Pamlico Sound Area (Southeast Pamlico Sound Section of the Southeast Pamlico, Core and Back Sound Area); (Neuse River Basin) including all waters within an area defined by a line extending from the southern shore of Ocracoke Inlet northwest to the Tar-Pamlico River and Neuse River basin boundary, then southwest to Ship Point.

(C) The Core Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin), including all waters of Core Sound and its tributaries, but excluding Nelson Bay, Little Port Branch and Atlantic Harbor at its mouth, and those tributaries of Jarrett Bay that are closed to shellfishing.

(D) The Western Bogue Sound Section of the Western Bogue Sound and Bear

Island Area (White Oak River Basin) including all waters within an area defined by a line from Bogue Inlet to the mainland at SR 1117 to a line across Bogue Sound from the southwest side of Gales Creek to Rock Point, including Taylor Bay and the Intracoastal Waterway.

(E) The Stump Sound Area (Cape Fear River Basin) including all waters of Stump Sound and Alligator Bay from marker Number 17 to the western end of Permuda Island, but excluding Rogers Bay, the Kings Creek Restricted Area and Mill Creek.

(F) The Topsail Sound and Middle Sound Area (Cape Fear River Basin) including all estuarine waters from New Topsail Inlet to Mason Inlet, including the Intracoastal Waterway and Howe Creek, but excluding Pages Creek and Futch Creek.

(8) In the following designated waterbodies, no new or expanded NPDES permitted discharges and only new or expanded marinas with less than 10 slips, having no boats over 21 feet in length and no boats with heads shall be allowed.

(A) The Swanquarter Bay and Juniper Bay Area (Tar-Pamlico River Basin) including all waters within a line beginning at Juniper Bay Point and running south and then west below Great Island, then northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding all waters northeast of a line from a point at Lat. 35E 23N 51O and Long. 76E 21N 02O thence southeast along the Swanquarter National Wildlife Refuge hunting closure boundary (as defined by the 1935 Presidential Proclamation) to Drum Point and also excluding the Blowout Canal, Hydeland Canal, Juniper Canal and Quarter Canal.

(B) The Back Sound Section of the Southeast Pamlico, Core and Back Sound Area (White Oak River Basin) including that area of Back Sound extending from Core Sound west along Shackleford Banks, then north to the western most point of Middle Marshes and along the northwest shore of Middle Marshes (to include all of Middle Marshes), then west to Rush Point on Harker's Island, and along the southern shore of Harker's Island back to Core Sound.

- (C) The Bear Island Section of the Western Bogue Sound and Bear Island Area (White Oak River Basin) including all waters within an area defined by a line from the western most point on Bear Island to the northeast mouth of Goose Creek on the mainland, east to the southwest mouth of Queen Creek, then south to green marker No. 49, then northeast to the northern most point on Huggins Island, then southeast along the shoreline of Huggins Island to the southeastern most point of Huggins Island, then south to the northeastern most point on Dudley Island, then southwest along the shoreline of Dudley Island to the eastern tip of Bear Island.
- (D) The Masonboro Sound Area (Cape Fear River Basin) including all waters between the Barrier Islands and the mainland from Carolina Beach Inlet to Masonboro Inlet.
- (9) Black and South Rivers ORW Area (Cape Fear River Basin) [Index Nos. 18-68-(0.5), 18-68-(3.5), 18-68-(11.5), 18-68-12-(0.5), 18-68-12-(11.5), and 18-68-2]: the following management strategies, in addition to the discharge requirements specified in Subparagraph (c)(1) of this Rule, shall be applied to protect the designated ORW areas:
- (A) Stormwater controls described in Subparagraph (c)(1) of this Rule shall apply within one mile and ~~drain~~ draining to the designated ORW areas;
- (B) New or expanded NPDES permitted wastewater discharges located one mile upstream of the stream segments designated ORW (upstream on the designated mainstem and upstream into direct tributaries to the designated mainstem) shall comply with the following discharge restrictions:
- (i) Oxygen Consuming Wastes: Effluent limitations shall be as follows: BOD = 5 mg/l and NH₃-N = 2 mg/l;
- (ii) Total Suspended Solids: Discharges of total suspended solids (TSS) shall be limited to effluent concentrations of 20 mg/l;
- (iii) Emergency Requirements: Failsafe treatment designs shall be employed, including stand-by power capability for entire treatment works, dual train design for all treatment components, or equivalent failsafe treatment designs;
- (iv) Nutrients: Where nutrient overenrichment is projected to be a concern, effluent limitations shall be set for phosphorus or nitrogen, or both.
- (v) Toxic substances: In cases where complex discharges (those containing or potentially containing toxicants) may be currently present in the discharge, a safety factor shall be applied to any chemical or whole effluent toxicity allocation. The limit for a specific chemical constituent shall be allocated at one-half of the normal standard at design conditions. Whole effluent toxicity shall be allocated to protect for chronic toxicity at an effluent concentration equal to twice that which is acceptable under flow design criteria (pursuant to 15A NCAC 2B .0206).
- (10) Lake Waccamaw ORW Area (Lumber River Basin) [Index No. 15-2]: all undesignated waterbodies that are tributary to Lake Waccamaw shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section.
- (11) Swift Creek and Sandy Creek ORW Area (Tar-Pamlico River Basin) [portion of Index No. 28-78-(0.5) and Index No. 28-78-1-(14)]: all undesignated waterbodies that drain to the designated waters shall comply with Paragraph (c) of this Rule in order to protect the designated waters as per Rule .0203 of this Section and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters.

Authority G.S. 143-214.1.

SECTION .0300 - ASSIGNMENT OF STREAM CLASSIFICATIONS

15A NCAC 02B .0316 TAR-PAMLICO RIVER BASIN

- (a) The schedule may be inspected at the following places:
- (1) Clerk of Court:
 Beaufort County
 Dare County
 Edgecombe County
 Franklin County
 Granville County

- Halifax County
- Hyde County
- Martin County
- Nash County
- Pamlico County
- Person County
- Pitt County
- Vance County
- Warren County
- Washington County
- Wilson County

(2) North Carolina Department of ~~Environment, Health,~~
Environment and Natural Resources:

- (A) Raleigh Regional Office
3800 Barrett Drive
Raleigh, North Carolina
- (B) Washington Regional Office
~~1424 Carolina Avenue~~
943 Washington Square Mall
Washington, North Carolina.

(b) Unnamed Streams. All drainage canals not noted in the schedule are classified "C Sw," except the main drainage canals to Pamlico Sound and its bays which shall be classified "SC."

(c) The Tar-Pamlico River Basin Schedule of Classification and Water Quality Standards was amended effective:

- (1) March 1, 1977;
- (2) November 1, 1978;
- (3) June 8, 1980;
- (4) October 1, 1983;
- (5) June 1, 1984;
- (6) August 1, 1985;
- (7) February 1, 1986;
- (8) August 1, 1988;
- (9) January 1, 1990;
- (10) August 1, 1990;
- (11) August 3, 1992;
- (12) April 1, 1994;
- (13) January 1, 1996;
- (14) ~~September 1, 1996~~-1996;
- (15) ~~October 2, 2003~~;
- (16) May 1, 2004.

(d) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective August 1, 1988 as follows:

- (1) Tar River (Index No. 28-94) from a point 1.2 miles downstream of Broad Run to the upstream side of Tranters Creek from Class C to Class B.

(e) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective January 1, 1990 by the reclassification of Pamlico River and Pamlico Sound [Index No. 29-(27)] which includes all waters within a line beginning at Juniper Bay Point and running due south to Lat. 35° 18' 00", long. 76° 13' 20", thence due west to lat. 35° 18' 00", long 76° 20' 00", thence northwest to Shell Point and including Shell Bay, Swanquarter and Juniper Bays and their tributaries, but excluding the Blowout, Hydeland Canal, Juniper Canal and Quarter Canal were reclassified from Class SA and SC to SA ORW and SC ORW.

(f) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin has been amended effective

January 1, 1990 by adding the supplemental classification NSW (Nutrient Sensitive Waters) to all waters in the basin from source to a line across Pamlico River from Roos Point to Persimmon Tree Point.

(g) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective August 3, 1992 with the reclassification of all water supply waters (waters with a primary classification of WS-I, WS-II or WS-III). These waters were reclassified to WS-I, WS-II, WS-III, WS-IV or WS-V as defined in the revised water supply protection rules, (15A NCAC 2B .0100, .0200 and .0300) which became effective on August 3, 1992. In some cases, streams with primary classifications other than WS were reclassified to a WS classification due to their proximity and linkage to water supply waters. In other cases, waters were reclassified from a WS classification to an alternate appropriate primary classification after being identified as downstream of a water supply intake or identified as not being used for water supply purposes.

(h) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective April 1, 1994 with the reclassification of Blounts Creek from Herring Run to Blounts Bay [Index No. 29-9-1-(3)] from Class SC NSW to Class SB NSW.

(i) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective January 1, 1996 with the reclassification of Tranters Creek [Index Numbers 28-103- (4.5), 28-103- (13.5), 28-103- (14.5) and 28-103-(16.5)] from a point 1.5 miles upstream of Turkey Swamp to the City of Washington's former auxiliary water supply intake, including tributaries, from Class WS-IV Sw NSW and Class WS-IV CA Sw NSW to Class C Sw NSW.

(j) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was amended effective September 1, 1996 with the addition of Huddles Cut (previously unnamed in the schedule) classified as SC NSW with an Index No. of 29-25.5.

(k) The Schedule of Classifications and Water Quality Standards for the Tar-Pamlico River Basin was temporarily amended effective October 7, 2003 and permanently amended May 1, 2004 with the reclassification of a portion of Swift Creek [Index Number 28-78-(0.5)] and a portion of Sandy Creek [Index Number 28-78-1-(14)] from Nash County SR 1004 to Nash County SR 1003 from Class C NSW to Class C ORW NSW, and the waters that drain to these two creek portions to include only the ORW management strategy as represented by "+". The "+" symbol as used in this Paragraph means that all undesignated waterbodies that drain to the portions of the two creeks referenced in this Paragraph shall comply with Paragraph (c) of Rule .0225 of this Subchapter in order to protect the designated waters as per Rule .0203 of this Subchapter and to protect outstanding resource values found in the designated waters as well as in the undesignated waters that drain to the designated waters.

Authority G.S. 143-214.1; 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to adopt the

PROPOSED RULES

rules cited as 15A NCAC 10F .0324, .0369-.0370 and amend the rules cited as 15A NCAC 10F .0317-.0318, .0333, .0347.

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

Proposed Effective Date: May 1, 2004

SUBCHAPTER 10F - MOTORBOATS AND WATER SAFETY

Public Hearing:

Date: January 30, 2004

Time: 9:00 a.m.

Location: Archdale Building, Room 332, 3rd floor, 512 N. Salisbury St., Raleigh, NC

SECTION .0300 - LOCAL WATER SAFETY REGULATIONS

Reason for Proposed Action:

15A NCAC 10F .0317 - To establish a no wake zone within Stanly County.

15A NCAC 10F .0318 - To establish a no wake zone within Warren County.

15A NCAC 10F .0324 - To establish a no wake zone within Davidson County.

15A NCAC 10F .0333 - To establish a no wake zone at Lake Wylie (between Mecklenburg and Gaston Counties).

15A NCAC 10F .0347 - To establish a no wake zone within Craven County.

15A NCAC 10F .0369 - To establish a no wake zone within Swansboro.

15A NCAC 10F .0370 - To establish an exclusionary zone within territorial jurisdiction of the City of Rocky Mount.

Procedure by which a person can object to the agency on a proposed rule: Notification of Joan Troy, 1701 Mail Service Center, Raleigh, NC 27699-1701 or email joan.troy@ncwildlife.org prior to close of comment period on February 16, 2004.

Written comments may be submitted to: Joan Troy, 1701 Mail Service Center, Raleigh, NC 27699-1701.

Comment period ends: February 16, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)
None

15A NCAC 10F .0317 STANLY COUNTY

(a) Regulated Areas. This Rule applies to the following waters and portions of waters described as follows:

- (1) Narrows Reservoir (Badin Lake);
(1) Badin Lake;
(A) Narrows Reservoir.
(B) The mouth of the cove located on the main channel in the Old Whitney portion of Badin Lake.
(2) Lake Tillery;
(A) Turner Beach Cove as delineated by appropriate markers.
(B) Mountain Creek Cove as delineated by appropriate markers

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat launching ramp while on the waters of a regulated area described in Paragraph (a) of this Rule.

(c) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the waters of a regulated area described in Paragraph (a) of this Rule.

(d) Speed Limit. No person shall operate a vessel at greater than no-wake speed within any of the regulated area described in Paragraph (a) of this Rule:

(e) Placement and Maintenance of Markers. The Board of Commissioners of Stanly County is hereby designated a suitable agency for placement and maintenance of the markers implementing this Rule in accordance with the Uniform System.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0318 WARREN COUNTY

(a) Regulated Area. This Rule applies only to that portion of Lake Gaston which lies within the boundaries of Warren County.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat launching ramp while on the waters of Gaston Lake in Warren County.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a lawfully marked mooring area established with the approval of the Executive Director, or his representative, on the waters of Gaston Lake in Warren County.

(d) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any lawfully marked public swimming area established with the approval of the Executive Director, or his representative, on the waters of Gaston Lake in Warren County.

(e) Speed Limit in Specific Zones. No person shall operate a vessel at greater than no-wake speed within 50 yards of the following marked zone located on the regulated area described in Paragraph (a) of this Rule: the entrance of the Camp Willow Run Canoe/Sail Cove, Cove, and the shoreline of the Mariner's Cove Subdivision 50 yards across State Road 1498 off Hubquarter Creek on Lake Gaston.

(f) Placement and Maintenance of Markers. The Board of Commissioners of Warren County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers. With regard to marking Gaston Lake, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0324 DAVIDSON COUNTY

(a) Regulated Areas. This Rule applies only to those portions of High Rock Lake, Tuckertown Lake, and Badin Lake which lie within the boundaries of Davidson County.

(b) Speed Limit. No person shall operate a vessel at greater than no-wake ~~speed: speed within 50 yards of any marked public boat launching ramp, bridge, dock, marina, boat storage structure, boat service area or pier while on the waters of High Rock Lake, Tuckertown Lake, and Badin Lake in Davidson County.~~

(1) within 50 yards of any marked public boat launching ramp, bridge, dock, marina, boat storage structure, boat service area or pier while on the waters of High Rock Lake, Tuckertown Lake, and Badin Lake in Davidson County; or

(2) within 50 yards on either side of the buoy located between lots 19 and 39 Silver Hill Township in the middle of Hi-Roc Shores Cove.

(c) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established with the approval of the Executive Director, or his representative, on the waters of High Rock Lake, Tuckertown Lake, and Badin Lake in Davidson County.

(d) Speed Limit at Mouth of Cove. No person shall operate a vessel at greater than no-wake speed while within 50 yards on either side of the mouth of Beaver Dam Creek Cove located on Badin Lake or in Abbotts Creek Cove of High Rock Lake as delineated by appropriate markers.

(e) Restricted Swimming Areas. No person operating or responsible for the operation of a vessel shall permit it to enter any marked public swimming area established with the approval of the Executive Director, or his representative, on the waters of High Rock Lake, Tuckertown Lake, and Badin Lake in Davidson County.

(f) Placement and Maintenance of Markers. The Board of Commissioners of Davidson County is designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers, if applicable. With regard to marking the regulated areas described in Paragraph (a) of this Rule, all of the

supplementary standards listed in Rule .0301(g) of this Section shall apply.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0333 MECKLENBURG AND GASTON COUNTIES

(a) Regulated Areas. This Rule applies to the following waters of Lake Wylie in Mecklenburg and Gaston Counties:

- (1) McDowell Park – The waters of the coves adjoining McDowell Park and the Southwest Nature Preserve in Mecklenburg County, including the entrances to the coves on either side of Copperhead Island;
- (2) Gaston County Wildlife Club Cove – The waters of the cove at the Gaston County Wildlife Club on South Point Peninsula in Gaston County;
- (3) Buster Boyd Bridge- The areas 250 feet to the north and 150 feet to the south of the Buster Boyd Bridge;
- (4) Highway 27 Bridge – The area beginning 50 yards north of the NC 27 Bridge and extending 50 yards south of the southernmost of two railroad trestles immediately downstream from the NC 27 Bridge;
- (5) Brown's Cove – The area beginning at the most narrow point of the entrance to Brown's Cove and extending 250 feet in both ~~directions; and~~ directions;
- (6) Paradise Point Cove – The waters of the Paradise Point Cove between Paradise Circle and Lakeshore Drive as delineated by appropriate ~~markers, markers; and~~ appropriate markers, markers; and
- (7) Withers Cove - The area 50 feet on either side of Withers Bridge.

(b) Speed Limit Near Ramps. No person shall operate a vessel at greater than no-wake speed within 50 yards of any public boat-launching ramp in Mecklenburg County.

(c) Speed Limit Near Piers. No person shall operate a vessel at greater than no-wake speed limit within 50 yards of any pier operated by Mecklenburg County for public use.

(d) Speed Limit in Mooring Areas. No person shall operate a vessel at greater than no-wake speed while within a marked mooring area established in Mecklenburg County with the approval of the Executive Director, or his representative.

(e) Speed Limit. No person shall operate a vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(f) Restricted Swimming Areas. No person operating a vessel shall permit it to enter any marked swimming area established in Mecklenburg County with the approval of the Executive Director, or his representative.

(g) Speed Limit Near Boating Facilities. No person shall operate a vessel at greater than no-wake speed within 50 yards of any boat launching ramp, dock, pier, marina, boat storage structure or boat service area on that part of Lake Wylie, including the South Fork River arm, which is located in Gaston County.

(h) Placement and Maintenance of Markers. The Boards of Commissioners of Mecklenburg County and Gaston County are

designated suitable agencies for placement and maintenance of markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers. With regard to marking the restricted zones indicated in this Rule, all of the supplementary standards listed in Rule .0301(g) of this Section shall apply.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0347 CRAVEN COUNTY

(a) Regulated Areas. This Rule applies to the following waters in Craven County:

- (1) that portion of Northwest Creek between the entrance buoys at Fairfield Harbour Marina and the mouth of Spring Creek, and to all of Spring Creek, including the bulkheaded area of Fairfield Harbour, in Craven County;
- (2) that area of water between the entrance buoys of the Olde Towne Lake, from the Trent River and including all of Olde Towne Lake and the bulkhead area of Olde Towne Harbour itself;
- (3) Matthews Point Marina. That triangular portion within 300 feet on either side and 150 feet straight off of the main pier at Matthews Point Marina located on Clubfoot and Mitchell Creeks, at the end of SR 1711 in the Harlowe area of Craven County;
- (4) that area of water within 50 yards of the fuel dock at Eastern Carolina Yacht Club, ~~Club~~ Club and
- (5) within the curve at the public dock in Brices Creek adjacent to Creekside Park.

(b) Speed Limit. No person shall operate any vessel at greater than no-wake speed within the regulated areas described in Paragraph (a) of this Rule.

(c) Green Springs Boys Club Swimming Area - No person shall operate a vessel within the Green Springs Boys Club Swimming Area along the Neuse River as designated by marker buoys and float lines.

(d) Placement and Maintenance of Markers. The Board of Commissioners of Craven County is hereby designated a suitable agency for placement and maintenance of the markers implementing this Rule, subject to the approval of the United States Coast Guard and the United States Army Corps of Engineers.

Authority G.S. 75A-3; 75A-15.

15A NCAC 10F .0369 TOWN OF SWANSBORO

(a) Regulated Area. This Rule applies to the waters of the New River from the Highway 24 bridge southward toward Casper's Marina, approximately 50 yards from the east shoreline of the Swansboro Town limits and marked by buoys.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Town of Swansboro is designated a suitable agency for placement and maintenance of the markers implementing this Rule.

Authority G.S. 71A-15; 72A-3.

15A NCAC 10F .0370 CITY OF ROCKY MOUNT

(a) Regulated Areas. This Rule applies to the area 100 yards upstream from North Carolina SR 43 Bridge, also known as the Peachtree Street Bridge, to the edge of the Rocky Mount Mill Dam on the Tar River.

(b) Swimming or boating. No swimming or other entry of a person in or upon a boat, raft or other floating object shall be permitted within the exclusion zone established in Paragraph (a) of this Rule.

(c) Paragraph (b) of this Rule shall not apply to persons who, with consent of the City of Rocky Mount, require access for the purpose of maintaining or repairing facilities associated with the Rocky Mount Mill Dam or the Rocky Mount Mill.

(d) Placement and Maintenance of Markers. The city of Rocky Mount, is designated as a suitable entity for placement and maintenance of buoys and other signs indicating the areas in which boating and swimming are prohibited by this Rule.

Authority G.S. 75A-3; 75A-15.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DENR – Commission for Health Services intends to amend the rules cited as 15A NCAC 18A .1935, .1942, .1969.

Proposed Effective Date: April 1, 2004

Public Hearing:

Date: January 15, 2004

Time: 10:00 a.m.

Location: DEH Training Room 1A 224, Parker Lincoln Building, 2728 Capital Blvd.

Reason for Proposed Action: Rules .1935 and .1942 are proposed for amendment based on a recommended decision and final agency decision in Stephenson v. DENR to adopt temporary rules and a subsequent petition to the Commission for Health Services to amend the temporary rule and finally, to adopt a permanent rule that incorporates methods and procedures for the uniform determination of soil wetness for sites that are monitored, modeled, or a combination for the determination of a reasonable seasonally high water table. Rule .1969 is proposed for technical amendment as required in G.S. 130A-343 as amended by the NC General Assembly for the approval of experimental, controlled demonstration, innovative, and accepted wastewater systems, components, and devices.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to these Rules by contacting Steve J. Steinbeck, 1642 Mail Service Center, Raleigh, NC 27699-1642, voice mail (919) 715-3273, fax (919) 715-3227, and email steve.steinbeck@ncmail.net.

Written comments may be submitted to: Steve J. Steinbeck, 1642 Mail Service Center, Raleigh, NC 27699-1642, phone (919) 715-3273 or 1-800-9SEWAGE, fax (919) 715-3227, and email steve.steinbeck@ncmail.net.

Comment period ends: January 30, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review:

Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

CHAPTER 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .1900 - SEWAGE TREATMENT AND DISPOSAL SYSTEMS

15A NCAC 18A .1935 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Alluvial Soils" means stratified soils without distinct horizons, deposited by flood waters.
- (2) "Alternative System" means any approved ground absorption sewage treatment and disposal system other than an approved privy or an approved septic tank system.
- (3) "Approved" means that which has been considered acceptable to the State or local health department.
- (4) "Approved Privy" means a fly-tight structure consisting of a pit, floor slab, and seat riser constructed in accordance with Rule .1959 of this Section.
- (5) "Approved Public or Community Sewage System" means a single system of sewage collection, treatment, and disposal owned and operated by a sanitary district, a metropolitan sewage district, a water and sewer authority, a county or municipality, or a public utility, constructed and operated in compliance with applicable requirements of the Division of Environmental Management.
- (6) "Areas subject to frequent flooding" means those areas inundated at a 10-year or less frequency and includes alluvial soils and areas subject to tidal or storm overwash.
- (7) "Collection sewer" means gravity flow pipelines, force mains, effluent supply lines,

and appliances appurtenant thereto, used for conducting wastes from building drains to a treatment system or to a ground absorption sewage treatment and disposal system.

- (8) "Designated wetland" means an area on the land surface established under the provisions of the Coastal Area Management Act or the Federal Clean Water Act.
- (9) "Design unit" means one or more dwelling units, places of business, or places of public assembly on:
 - (a) a single lot or tract of land;
 - (b) multiple lots or tracts of land served by a common ground absorption sewage treatment and disposal system; or
 - (c) a single lot or tract of land or multiple lots or tracts of land where the dwelling units, places of business or places of public assembly are under multiple ownership (e.g. condominiums) and are served by a ground absorption system or multiple ground absorption systems which are under common or joint ownership or control.
- (10) "Dwelling unit" means any room or group of rooms located within a structure and forming a single, habitable unit with facilities which are used or intended to be used for living, sleeping, bathing, toilet usage, cooking, and eating.
- (11) "Effluent" means the liquid discharge of a septic tank or other sewage treatment device.
- (12) "Estimated saturated hydraulic conductivity" - means a saturated hydraulic conductivity value based upon the soil profile evaluation and description of the soil texture, soil structure, soil consistency, soil pores, and roots following the procedures in Field Book for Describing and Sampling of Soils, NRCS, USDA and comparison to soil profile saturated hydraulic conductivity data for soil input files for similar soils. The Field Book is hereby incorporated by reference, including any subsequent amendments and editions, in accordance with G.S. 150B-21.6. Copies of the Field Book may be inspected at the Division of Environmental Health Raleigh Office, 2728 Capital Boulevard, Raleigh, 27604, and copies may be downloaded at no cost from the internet at http://soils.usda.gov/procedures/field_bk/main.htm#intro, or obtained from the National Soil Survey Center, MS 34, Room 152,100 Centennial Mall North, Lincoln, NE 68508-3866.
- (12)(13) "Ground absorption sewage treatment and disposal system" means a system that utilizes the soil for the subsurface disposal of partially treated or treated sewage effluent.

PROPOSED RULES

- ~~(13)~~(14) "Horizon" means a layer of soil, approximately parallel to the surface, that has distinct characteristics produced by soil forming processes.
- (15) "Horizon subdivision" - means a portion of a horizon, approximately parallel to the surface that has distinct characteristics produced by soil forming processes.
- (16) "Lateral water movement" - means the movement of water down slope on sites of at least a four percent slope and above a less permeable horizon, and as observed periodically in bore holes, excavations, or monitoring wells.
- (14)(17) "Local health department" means any county, district, or other health department authorized to be organized under the General Statutes of North Carolina.
- (18) "Matrix" - means a volume equivalent to 50 percent or greater of the total volume of a horizon or horizon subdivision.
- (15)(19) "Mean high water mark" means, for coastal waters having six inches or more lunar tidal influence, the average height of the high water over a 19 year period as may be ascertained from National Ocean Survey or U.S. Army Corps of Engineers tide stations data or as otherwise determined under the provisions of the Coastal Area Management Act.
- (20) "Mottle" - means a feature(s) which occupies less than 50 percent of the total volume of a horizon or horizon subdivision.
- (16)(21) "Naturally occurring soil" means soil formed in place due to natural weathering processes and being unaltered by filling, removal, or other man-induced changes other than tillage.
- (17)(22) "Nitrification field" means the area in which the nitrification lines are located.
- (18)(23) "Nitrification lines" means approved pipe, specially designed porous blocks, or other approved materials which receive partially treated sewage effluent for distribution and absorption into the soil beneath the ground surface.
- (19)(24) "Nitrification trench", also referred to as a sewage absorption trench, means a ditch into which a single nitrification line is laid and covered by soil.
- (20)(25) "Non-ground absorption sewage treatment system" means a facility for waste treatment designed not to discharge to the soil, land surface, or surface waters, including but not limited to, approved vault privies, incinerating toilets, mechanical toilets, composting toilets, chemical toilets, and recycling systems.
- (21)(26) "Organic soils" means those organic mucks and peats consisting of more than 20 percent organic matter (by dry weight) and 18 inches or greater in thickness.
- (22)(27) "Parent material" means the mineral matter that is in its present position through deposition by water, wind, gravity or by decomposition of rock and exposed at the land surface or overlain by soil or saprolite.
- (23)(28) "Ped" means a unit of soil structure, such as an aggregate, crumb, prism, block, or granule formed by natural processes.
- (24)(29) "Perched water table" means a saturated soil horizon or horizon subdivision, with a free water surface periodically observed in a bore hole or shallow monitoring well, but generally above the normal water table, or may be as identified by drainage mottles or redoximorphic features, and caused by a less permeable lower horizon.
- (25)(30) "Person" means any individual, firm, association, organization, partnership, business trust, corporation, company, or unit of local government.
- (26)(31) "Place of business" means any store, warehouse, manufacturing establishment, place of amusement or recreation, service station, foodhandling establishment, or any other place where people work or are served.
- (27)(32) "Place of public assembly" means any fairground, auditorium, stadium, church, campground, theater, school, or any other place where people gather or congregate.
- (28)(33) "Privy building" means and includes any and all buildings which are used for privacy in the acts of urination and defecation which are constructed over pit privies and are not connected to a ground absorption sewage treatment and disposal system or a public or community sewage system.
- (29)(34) "Public management entity" means a city (G.S. 160A, Article 16), county (G.S. 153A, Article 15), interlocal contract (G.S. 153A, Article 16), joint management agency (G.S. 160A-461-462), county service district (G.S. 153A, Article 16), county water and sewer district (G.S. 162A, Article 6), sanitary district (G.S. 130A, Article 2), water and sewer authority (G.S. 162A, Article 1), metropolitan water district (G.S. 162A, Article 4), metropolitan sewerage district (G.S. 162A, Article 5), public utility [G.S. 62-3(23)], county or district health department (G.S. 130A, Article 2), or other public entity legally authorized to operate and maintain on-site sewage systems.
- (35) "Redoximorphic features" - means a color pattern of a horizon or horizon subdivision due to a loss (depletion) or gain (concentration) of pigment compared to the matrix color, formed by oxidation/reduction of Fe and/or Mn coupled with their removal, translocation, or accrual; or a soil matrix color controlled by the presence of Fe+2 (see Field Book for Describing and Sampling of Soils, NRCS, USDA which is hereby incorporated by reference, including any subsequent

- amendments and editions, in accordance with G.S. 150B-21.6.
- ~~(30)~~(36) "Relocation" means the displacement of a residence, place of business, or place of public assembly from one location to another.
- ~~(31)~~(37) "Repair area" means an area, either in its natural state or which is capable of being modified, consistent with these Rules, which is reserved for the installation of additional nitrification fields and is not covered with structures or impervious materials.
- ~~(32)~~(38) "Residence" means any home, hotel, motel, summer camp, labor work camp, mobile home, dwelling unit in a multiple-family structure, or any other place where people reside.
- ~~(33)~~(39) "Restrictive horizon" means a soil horizon that is capable of perching ground water or sewage effluent and that is brittle and strongly compacted or strongly cemented with iron, aluminum, silica, organic matter, or other compounds. Restrictive horizons may occur as fragipans, iron pans or organic pans, and are recognized by their resistance in excavation or in using a soil auger.
- ~~(34)~~(40) "Rock" means the body of consolidated or partially consolidated material composed of minerals at or below the land surface. Rock includes bedrock and partially weathered rock that is relatively hard and cannot be dug with hand tools. The upper boundary of rock is "saprolite", "soil", or the land surface.
- ~~(35)~~(41) "Sanitary system of sewage treatment and disposal" means a complete system of sewage collection, treatment and disposal, including approved privies, septic tank systems, connection to public or community sewage systems, incinerators, mechanical toilets, composting toilets, recycling toilets, mechanical aeration systems, or other such systems.
- ~~(36)~~(42) "Saprolite" means the body of porous material formed in place by weathering of igneous or metamorphic rocks. Saprolite has a massive, rock-controlled structure, and retains the fabric (arrangement of minerals) of its parent rock in at least 50 percent of its volume. Saprolite can be dug with hand tools. The lower limit of saprolite is "rock" and its upper limit is "soil" or the land surface. The term "saprolite" does not include sedimentary parent materials.
- (43) "Saturated soils" - means a horizon or horizon subdivision with a free water surface at the corresponding depth and observed in a bore hole or monitoring well.
- ~~(37)~~(44) "Septic tank" means a water-tight, covered receptacle designed for primary treatment of sewage and constructed to:
- (a) receive the discharge of sewage from a building;
 - (b) separate settleable and floating solids from the liquid;
 - (c) digest organic matter by anaerobic bacterial action;
 - (d) store digested solids through a period of detention; and
 - (e) allow clarified liquids to discharge for additional treatment and final disposal.
- ~~(38)~~(45) "Septic tank system" means a subsurface sanitary sewage system consisting of a septic tank and a subsurface disposal field.
- ~~(39)~~(46) "Sewage" means the liquid and solid human waste and liquid waste generated by water-using fixtures and appliances, including those associated with food handling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- ~~(40)~~(47) "Site" means the area in which the sewage treatment and disposal system is to be located and the area required to accommodate repairs and replacement of nitrification field and permit proper functioning of the system.
- ~~(41)~~(48) "Soil" means the naturally occurring body of porous mineral and organic materials on the land surface. Soil is composed of sand-, silt-, and clay-sized particles that are mixed with varying amounts of larger fragments and some organic material. Soil contains less than 50 percent of its volume as rock, saprolite, or coarse-earth fraction (mineral particles greater than 2.0 millimeters). The upper limit of the soil is the land surface, and its lower limit is "rock", "saprolite", or other parent materials.
- (49) "Soil series" - means an official series name established by NRCS, USDA and confirmed to be present on the site by detailed on-site soil profile descriptions and taxonomic classification, and not necessarily the soil series mapped on the county soil survey.
- ~~(42)~~(50) "Soil structure" means the arrangement of primary soil particles into compound particles, peds, or clusters that are separated by natural planes of weakness from adjoining aggregates.
- ~~(43)~~(51) "Soil textural classes" means soil classification based upon size distribution of mineral particles in the fine-earth fraction less than two millimeters in diameter. The fine-earth fraction includes sand (2.0 - 0.05 mm in size), silt (less than 0.05 mm - 0.002 mm or greater in size), and clay (less than 0.002 mm in size) particles. The specific textural classes are defined as follows and as shown in Soil Taxonomy, Appendix I, which is hereby adopted by reference in accordance with G.S. 150B-14(c):
- (a) "Sand" means soil material that contains 85 percent or more of sand; the percentage of silt plus 1.5 times

the percentage of clay shall not exceed 15.

- (b) "Loamy sand" means soil material that contains at the upper limit 85 to 90 percent sand, and the percentage silt plus 1.5 times the percentage of clay is not less than 15; at the lower limit it contains not less than 70 to 85 percent sand, and the percentage of silt plus twice the percentage of clay does not exceed 30.
- (c) "Sandy loam" means soil material that contains either 20 percent clay or less, and the percentage of silt plus twice the percentage of clay exceeds 30, and contains 52 percent or more sand; or less than seven percent clay, less than 50 percent silt, and between 43 and 52 percent sand.
- (d) "Loam" means soil material that contains seven to 27 percent clay, 28 to 50 percent silt, and less than 52 percent sand.
- (e) "Silt loam" means soil material that contains 50 percent or more silt and 12 to 27 percent clay; or contains 50 to 80 percent silt and less than 12 percent clay.
- (f) "Silt" means soil material that contains 80 percent or more silt and less than 12 percent clay.
- (g) "Sandy clay loam" means soil material that contains 20 to 35 percent clay, less than 28 percent silt, and 45 percent or more sand.
- (h) "Clay loam" means soil material that contains 27 to 40 percent clay and 20 to 45 percent sand.
- (i) "Silty clay loam" means soil material that contains 27 to 40 percent clay and less than 20 percent sand.
- (j) "Sandy clay" means soil material that contains 35 percent or more clay and 45 percent or more sand.
- (k) "Silty clay" means soil material that contains 40 percent or more clay and 40 percent or more silt.
- (l) "Clay" means soil material that contains 40 percent or more clay, less than 45 percent sand, and less than 40 percent silt.
- (44)(52) "State" means the Department of Environment, Health, Environment and Natural Resources, Division of Environmental Health.
- (45)(53) "Stream" means a natural or manmade channel, including groundwater lowering ditches and devices, in which water flows or stands most of the year.
- (46)(54) "Subsurface disposal" means the application of sewage effluent beneath the surface of the

ground by distribution through approved nitrification lines.

Authority G.S. 130A-335(e) and (f).

15A NCAC 18A .1942 SOIL WETNESS CONDITIONS

~~(a) Soil wetness conditions caused by a seasonal high water table, perched water table, tidal water, seasonally saturated soils or by lateral water movement shall be determined by observations of colors of chroma 2 or less (Munsell color chart) in mottles or a solid mass. If drainage modifications have been made, the Department may make a determination of the soil wetness conditions by direct observations of the water surface during periods of typically high water elevations. However, colors of chroma 2 or less which are relic from minerals of the parent material shall not be considered indicative of a soil wetness condition. Sites where soil wetness conditions are greater than 48 inches below the naturally occurring soil surface shall be considered SUITABLE with respect to soil wetness. Sites where soil wetness conditions are between 36 inches and 48 inches below the naturally occurring soil surface shall be considered PROVISIONALLY SUITABLE with respect to soil wetness. Sites where soil wetness conditions are less than 36 inches below the naturally occurring soil surface shall be considered UNSUITABLE with respect to soil wetness.~~

~~(b) Where the site is UNSUITABLE with respect to soil wetness conditions, it may be reclassified PROVISIONALLY SUITABLE after an investigation indicates that a modified or alternative system can be installed in accordance with Rule .1956 or Rule .1957 of this section.~~

(a) Soil wetness conditions caused by seasonal high-water table, perched water table, tidal water, seasonally saturated soil or by lateral water movement shall be determined by field evaluation for soil wetness colors and field observations, and may be assessed by well monitoring, computer modeling, or a combination of monitoring and modeling as required by this Rule. All sites shall be evaluated by an Authorized Agent of the Department using Basic Field Evaluation Procedures pursuant to Paragraph (b) of this Rule.

(b) Basic Field Evaluation Procedures:

(1) A soil wetness condition shall be determined by the indication of colors of chroma 2 or less (Munsell Color Charts) at =2% of soil volume in mottles or matrix of a horizon or horizon subdivision. However, colors of chroma 2 or less which are relic from minerals of the parent material shall not be considered indicative of a soil wetness condition.

(2) A Soil wetness condition shall also be determined by the periodic direct observation or indication of saturated soils or a perched water table, or lateral water movement flowing into a bore hole, monitoring well, or open excavation above a less permeable horizon or horizon subdivision, that may occur without the presence of colors of chroma 2 or less. A soil wetness condition caused by saturated soils or a perched water table shall be confirmed to extend for at least three consecutive days. The shallowest depth to soil wetness condition determined by

Subparagraph (b)(1) or (b)(2) of this Rule shall take precedence.

(c) Site Suitability as to Soil Wetness: Initial suitability of the site as to soil wetness shall be determined based upon the findings of the Basic Field Evaluation Procedures made pursuant to Paragraph (b) of this Rule. Sites where soil wetness conditions are greater than 48 inches below the naturally occurring soil surface shall be considered SUITABLE with respect to soil wetness. Sites where soil wetness conditions are between 36 and 48 inches below the naturally occurring soil surface shall be considered PROVISIONALLY SUITABLE with respect to soil wetness. Sites where soil wetness conditions are less than 36 inches below the naturally occurring soil surface shall be considered UNSUITABLE with respect to soil wetness. Sites where a soil wetness condition is determined based upon the observation or indication of lateral water movement within 48 inches of the naturally occurring soil surface shall be considered UNSUITABLE, except when such water can be intercepted in accordance with 15A NCAC 18A .1956(4).

(d) Alternative Procedures for Soil Wetness Determination: The Owner or the Owner's Legal Representative (Applicant) shall have the opportunity to submit documentation that the soil wetness condition and resultant site classification be alternately determined and reclassified by direct monitoring, computer modeling, or a combination of monitoring and modeling, in accordance with a Direct Monitoring Procedure, Monitoring and Modeling Procedure, or Modeling Procedure made pursuant to Paragraphs (e), (f), or (g) of this Rule. This determination shall take precedence over the determination made pursuant to the Basic Field Evaluation Procedures [Paragraph (b) of this Rule], when the conditions of Paragraphs (e), (f), or (g) of this Rule are met. Determination by one of these Monitoring or Modeling procedures shall also be required when:

- (1) the Owner proposes to use a wastewater system requiring a deeper depth to a soil wetness condition than the depth determined by the Basic Field Evaluation Procedures pursuant to Paragraph (b) of this Rule; or
- (2) the Owner proposes to use sites with Group III or IV soil within 36 inches of the surface and where drainage modifications are proposed to be made, including the installation of subsurface drain tile, open drainage ditches, or surface landscape modifications, or on such sites when fill is proposed to be used in conjunction with existing or proposed drainage modifications. Final determination of soil wetness condition for these sites shall be made pursuant to the Modeling Procedure in Paragraph (g) of this Rule.

(e) Direct Monitoring Procedure. Soil wetness conditions may be determined by direct observation of the water surface in wells during periods of typically high water elevations utilizing the following monitoring procedures and interpretation method.

- (1) The applicant shall notify the local health department of the intent to monitor water surface elevations by submitting a proposal that includes a site plan, well and soil profile at each monitoring location, and a monitoring plan no later than 30 days prior to the monitoring period. An applicant other than the

property owner shall have written authorization from the owner to be the owner's legal representative. Soil wetness and rainfall monitoring shall be conducted under the responsible charge of a third-party consultant(s), licensed or registered in accordance with G.S. 89C (Engineers), G.S. 89E (Geologists), G.S. 89F (Soil Scientists), or G.S. 90A Article 4 (Registered Sanitarians), or by the property owner/applicant. The Owner shall submit the name(s) of the consultant(s) performing any monitoring on their behalf to the local health department.

- (2) The applicant shall submit a site plan showing proposed sites for wastewater system, shall provide the longitude and latitude of the site, location of monitoring wells, and all drainage features that may influence the soil wetness conditions, and specify any proposed fill and drainage modifications.
- (3) The applicant shall submit a monitoring plan indicating the proposed number, installation depth, screening depth, soil and well profile, materials and installation procedures for each monitoring well, and proposed method of analysis. A minimum of three water level monitoring wells shall be installed for water surface observation at each site. Additional wells shall be required for sites handling systems with a design flow greater than 600 gallons per day (minimum of one additional well per 600 gallons per day increment).
- (4) The local health department shall be given the opportunity to conduct a site visit and verify the appropriateness of the proposed plan. Well locations shall include portions of the initial and replacement drainfield site(s) containing the most limiting soil/site conditions. Prior to installation of the wells the local health department shall approve the plan. If the plan is disapproved, the local health department shall include specific changes necessary for approval of the monitoring plan.
- (5) Wells shall extend at least five feet below the natural soil surface, or existing soil surface for fill installed prior to July 1, 1977 meeting the requirements for consideration of a site with existing fill of G.S. 130A-341 and the rules adopted pursuant thereto. However, a well or wells which extend(s) down only 40 inches may be used if they provide a continuous record of the water table for at least half of the monitoring period, and one or more shallower wells may be required on sites where shallow lateral water movement or perched soil wetness conditions are anticipated.
- (6) Water surface in the monitoring wells shall be recorded at least daily from January 1 to April 30, taken at the same time during the day (plus or minus three hours). A rain (precipitation) gauge is required within one-half mile of the

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site. At least daily rainfall shall be recorded beginning no later than December 1 through April 30 (the end of the well monitoring period).

- (7) Interpretation Method for Direct Monitoring Procedure: The following method of determining depth to soil wetness condition from water surface observations in wells shall be used when the 60-day weighted rainfall

$$WRI_{60} = 0.5P_D + P_J + P_F + P_M + 0.5P_A$$

Where WRI_{60} = 60-day weighted rainfall index for January to April

P_D = Total December rainfall

P_J = Total January rainfall

P_F = Total February rainfall

P_M = Total March rainfall

P_A = Total April rainfall

The Department shall prepare contour maps for each county where this interpretation procedure is proposed. Contours shall be prepared following standard interpolation procedures using normalized data collected from all National Weather Service Stations, or equivalent, from which appropriate data are available, at least prior to February 1 of the monitoring season. Data from each station shall be normalized by fitting a 2-parameter gamma distribution to the 60-day weighted rainfall index computed for at least the most recent three decades of historic data, in accordance with procedures outlined in Chapter 18 of the National Engineering Handbook, NRCS, USDA. From this fitted

index for the January through April monitoring period equals or exceeds the site's long-term (historic) 60-day weighted rainfall index for January to April rainfall with a 30 percent recurrence frequency (wetter than the 9th driest year of 30, on average). The 60-day weighted rainfall index for the monitoring period and historic rainfall record shall be computed as:

distribution, the 60-day weighted rainfall index for January through April rainfall with a 30%, 50%, 70% and 80% recurrence frequency shall be computed for each Station, to provide the raw data points from which the contour maps shall be prepared. From these maps, the site's 60-day weighted rainfall index for the January through April monitoring period shall be compared to the long-term (historic) January to April 60-day weighted rainfall index at different expected recurrence frequencies. The soil wetness condition shall be determined as the highest level that is continuously saturated for the number of consecutive days during the January through April monitoring period shown in the following table:

<u>Recurrence Frequency Range January to April 60-Day Weighted Rainfall Index</u>	<u>Number of Consecutive Days of Continuous Saturation for Soil Wetness Condition</u>
<u>30% to 49.9%</u>	<u>3 days or 72 hours</u>
<u>50% to 69.9%</u>	<u>6 days or 144 hours</u>
<u>70% to 79.9%</u>	<u>9 days or 216 hours</u>
<u>80% to 100%</u>	<u>14 days or 336 hours</u>

- (8) If monitoring well data is collected during monitoring periods that span multiple years, the year which yields the highest (shallowest) soil wetness condition shall be applicable.

(f) Monitoring and Modeling Procedure: A combination of monitoring and modeling may be used to determine a soil wetness condition utilizing the following monitoring procedures and interpretation method.

- (1) The procedures described for the Direct Monitoring Procedure in Subparagraphs (e)(1), (2), (3), (4), (5), and (6) of this Rule shall be used to monitor water surface elevation and precipitation for determining soil wetness conditions by a combination of direct observation and modeling, except that the rainfall gauge and each monitoring well

shall use a recording device and a data file (DRAINMOD-compatible) shall be submitted with the report to the local health department (devices shall record rainfall at least hourly and well water level at least daily).

- (2) The ground water simulation model DRAINMOD shall be used to predict daily water levels over at least a 30 year historic time period after the model is calibrated using the water surface and rainfall observations made on-site during the monitoring period. The soil wetness condition shall be determined as the highest level predicted by the model to be saturated for a 14-day continuous period between January 1 and April 30 with a recurrence

frequency of 30 percent (an average of at least nine years in 30).

(A) Weather input files, required to run the DRAINMOD, shall be developed from hourly rainfall gauge data taken within a half-mile of the site and from daily temperature and hourly or daily rainfall data collected over a minimum 30-year period from the closest available National Weather Service, or equivalent, measuring station to the site. DRAINMOD weather data files on file with the Department shall be made available upon request to the applicant or applicant's consultants. Daily maximum and minimum temperature data for the January 1 through April 30 monitoring period, plus for at least 30 days prior to this period, shall be obtained from the closest available weather station.

(B) Soil and Site inputs for DRAINMOD, including a soils data file closest to the soil series identified, depths of soil horizons, estimated saturated hydraulic conductivity of each horizon, depth and spacing of drainage features and depression storage, shall be selected in accordance with procedures outlined in the DRAINMOD Users Guide, and guidance is also available in Reports 333 and 342 of the University of North Carolinas Water Resources Research Institute. DRAINMOD soils data files on file with the Department shall be made available upon request to the applicant or applicant's consultants.

(C) Inputs shall be based upon site specific soil profile descriptions. Soil and site input factors shall be adjusted during the model calibration process to achieve a best fit by least squares analysis of the daily observations over the whole monitoring period (mean absolute deviation between measured and predicted values no greater than eight inches), and to achieve the best possible match between the highest water table depth during the monitoring period (measured-vs-predicted) that is saturated for 14 consecutive days.

(D) For sites intended to receive over 1500 gallons per day, the soil wetness determination using DRAINMOD shall take into consideration the impact of wastewater application on the projected water table surface.

(E) The ground water simulation analysis shall be prepared and submitted to the local health department by individuals qualified to use DRAINMOD by training and experience and who are licensed or registered in North Carolina if required in G.S. 89C (Engineers), G.S. 89E (Geologists), and G.S. 89F (Soil Scientists). The local health department or Owner may request a technical review by the Department prior to approval of the soil wetness condition determination.

(g) Modeling Procedure: A soil wetness condition may be determined by application of DRAINMOD to predict daily water levels over at least a 30 year historic time period after all site-specific input parameters have been obtained, as outlined in the DRAINMOD Users Guide. This modeling procedure shall be used when a ground water lowering system is proposed for a site with Group III or IV soils within 36 inches of the naturally occurring soil surface. This procedure shall also be used to evaluate sites with Group III or IV soils within 36 inches of the naturally occurring soil surface, where the soil wetness condition was initially determined using a procedure described in Paragraphs (e) or (f) of this Rule and where drainage modifications are proposed or when fill is proposed to be used in conjunction with existing or proposed drainage modifications. The soil wetness condition shall be determined as the highest level predicted by the model to be saturated for a 14-day continuous period between January 1 and April 30 with a recurrence frequency of 30 percent (an average of at least nine years in 30).

(1) Weather input files, required to run DRAINMOD, shall consist of hourly rainfall and daily temperature data collected over the entire period of record but for at least a 30-year period from the closest available National Weather Service, or equivalent, measuring station to the site. DRAINMOD weather data files on file with the Department shall be made available upon request to the applicant or applicant's consultants.

(2) Soil and Site inputs for DRAINMOD, including a soils data file closest to the soil series identified, depths of soil horizons, hydraulic conductivity of each horizon, depth and spacing of proposed drainage features and surface storage and drainage parameters, shall be selected in accordance with procedures outlined in the DRAINMOD User's Guide. DRAINMOD

soils data files on file with the Department shall be made available upon request to the applicant or applicant's consultants. Inputs shall include:

- (A) Soil input file with the soil moisture characteristic curve and data for the soil profile that is closest to the described soil profile that is present on the site;
- (B) Soil horizon depths determined on site;
- (C) Site measured or proposed drain depth and spacing, and drain outlet elevation;
- (D) In-situ saturated hydraulic conductivity measurements for at least three representative locations on the site and at each location for at least three most representative soil horizons within five feet of the surface. Conductivity measurements shall be for one representative soil horizon at or above redoximorphic depletion features and two representative soil horizons at and below redoximorphic concentration features at each location on the site;
- (E) All other model parameters based upon the DRAINMOD User's Guide, or other accepted values consistent with the simulation model; and
- (F) A sensitivity analysis shall be conducted for the following model parameters:
 - (i) Soil input files for at least two other most closely related soil profiles;
 - (ii) Saturated hydraulic conductivity of each of horizons measured on-site;
 - (iii) Drain depth and spacing; and
 - (iv) Surface storage and depth of surface flow inputs.

The sensitivity analysis shall be used to evaluate the range of soil and site characteristics for choosing input parameters related to the soil profiles, hydraulic conductivity input values based upon the range of hydraulic conductivity values measured on the site, and inputs for surface and subsurface drainage features based upon the range of possible elevations and distances that occur or may occur after installation of improvements. The sensitivity analysis shall establish which parameters are most critical for determination of the depth to soil wetness condition. Conservative values for the most

critical parameters shall be used in applying the model to the site.

- (3) For sites designed to receive over 600 gallons per day, the soil wetness determination using DRAINMOD shall take into consideration the impact of wastewater application on the projected water table surface.
- (4) The ground water simulation analysis shall be prepared and submitted to the local health department by individuals qualified to use DRAINMOD by training and experience and who are licensed or registered in North Carolina if required in G.S. 89C (Engineers), G.S. 89E (Geologists), and G.S. 89F (Soil Scientists). The local health department shall submit the ground water simulation analysis to the Department for technical review prior to approval of the soil wetness condition determination.

(h) A report of the investigations made for the Direct Monitoring Procedure, Monitoring and Modeling Procedure or Modeling Procedure pursuant to Paragraphs (e), (f), or (g) of this Rule shall be prepared prior to approval of the soil wetness condition determination. Reports prepared by a licensed or registered professional shall bear the professional seal of the person(s) whom conducted the investigation (Engineer, Geologist, Soil Scientist or Registered Sanitarian). A request for technical review of the report by the Department shall include digital copies of monitoring data and digital copies of model inputs, output data, and graphic results, as applicable.

(j) Where the site is UNSUITABLE with respect to soil wetness conditions, it may be reclassified PROVISIONALLY SUITABLE if a modified, alternative or innovative system can be installed in accordance with 15A NCAC 18A .1956, .1957, or .1969.

Authority G.S. 130A-335(e).

15A NCAC 18A .1969 APPROVAL AND PERMITTING OF ON-SITE SUBSURFACE WASTEWATER SYSTEMS,

TECHNOLOGIES, COMPONENTS, OR DEVICES

Experimental and innovative Experimental, controlled demonstration, innovative, and accepted wastewater systems (hereinafter referred to as E & I systems) ~~I~~-systems are any wastewater systems, system components, or devices that are not specifically described in Rules .1955, .1956, .1957, or .1958 of this Section, including any system for which reductions are proposed in the minimum horizontal or vertical separation requirements or increases are proposed to the maximum long-term acceptance rates of this ~~Section~~ Section; or any E & I systems as defined by G.S. 130A-343(a) and approved pursuant to applicable Laws and this Rule. This Rule shall provide for the approval and permitting of E & I systems.

- (1) An application shall be submitted in writing to the State for an E & I system. The application shall include the following, as applicable:

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- (a) specification of the type of approval requested as either innovative, controlled demonstration, ~~experimental~~ experimental, accepted or both; a combination;
 - (b) description of the system, including materials used in construction, and its proposed use;
 - (c) summary of pertinent literature, published research, and previous experience and performance with the system;
 - (d) results of any available testing, research or monitoring of pilot systems or full-scale operational systems conducted by a third party research or testing organization;
 - (e) identity and qualifications of any proposed research or testing organization and the principal investigators, and an affidavit certifying that the organization and principal investigators have no conflict of interest and do not stand to gain financially from the sale of the E & I system;
 - (f) objectives, methodology, and duration of any proposed research or testing;
 - (g) specification of the number of systems proposed to be installed, the criteria for site selection, and system monitoring and reporting procedures;
 - (h) operation and maintenance procedures, system classification, proposed management entity and system operator;
 - (i) procedure to address system malfunction and replacement or premature termination of any proposed research or ~~testing; and testing;~~
 - (j) notification of any proprietary or trade secret information, system, component, or ~~device; device; and~~
 - (k) Fee payment as required by G.S. 130A-343(k), by corporate check, money order or cashier's check made payable to: North Carolina On-Site Wastewater System Account or NC OSWW System Account, and mailed to the On-Site Wastewater Section, 1642 Mail Service Center, Raleigh, NC 27699-1642 or hand delivered to Rm. 1A-245, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC.
- (2) The State shall review all applications submitted and evaluate at least the following:
 - (a) the completeness of the application, and whether additional information is needed to continue the review;
 - (b) whether the system meets the standards of an innovative system under Paragraph (3) of this Rule, or whether the system meets the standards of an experimental system under Paragraph (4) of this Rule, as applicable.
 - (3) **INNOVATIVE SYSTEMS:** Innovative systems, technologies, components, or devices shall be reviewed and approved by the State, and the local health department ~~may~~ shall permit innovative systems in accordance with the following:
 - (a) The State shall approve the system as an innovative system if the following standards have been met:
 - (i) The system, shall have been demonstrated to perform equal or superior to a system, which is described in Rules .1955, .1956, .1957, or .1958, of this Section, based upon controlled pilot-scale research studies or statistically-valid monitoring of full-scale operational systems.
 - (ii) Materials used in construction shall be equal or superior in physical properties and chemical durability, compared to materials used for similar proposed systems, specifically described in Rules .1955, .1956, .1957, or ~~.1958, of this Section.~~
 - (b) When a system is approved as innovative by the State, the applicant shall be notified in writing. Such notice shall include any conditions for permitting, siting, installation, use, monitoring, and operation.
 - (c) A local health department shall issue an Improvement Permit and a Construction Authorization for any innovative system approved by the State upon a finding that the provisions of this ~~Rule~~ Section including any conditions of the approval are met. Use of an innovative system and any conditions shall be described on the

- ~~Improvement Permit, Permit and the Certificate of Completion Construction Authorization, or Operation Permit.~~
- (4) **EXPERIMENTAL SYSTEMS:** A system may be approved for use as an experimental system as part of a research or testing program which has been approved by the State. The research or testing program shall be conducted by a third party research or testing organization which has knowledge and experience relevant to the proposed research or testing and has no conflict of interest and does not stand to gain financially from the sale of the proposed system.
- (a) To be approved by the State, the proposed research or testing program shall include the following:
- (i) The research program shall be designed such that, if the objectives ~~are~~ were met, the system would satisfy the standards for approval as an innovative system under Paragraph (3) of this Rule.
- (ii) Research design and testing methodology shall have a reasonable likelihood of meeting the objectives.
- (b) The State shall notify the applicant and the applicable local health departments when the proposed research or testing program has been approved for an experimental system. Such notice shall include, but not be limited to, conditions for permitting, siting, operation, monitoring and maintenance, and number of systems which can be installed.
- (c) A local health department ~~may~~ shall issue an Improvement Permit and Construction Authorization for an experimental system when the following conditions are met:
- (i) There is an application for an Improvement Permit in accordance with Rule .1937(c) of this Section, with the proposed use of an experimental system specified.
- (ii) The proposed site is included as part of an approved research or testing program and any

- conditions specified for use of the system have been met.
- (iii) When an experimental system is proposed to serve a residence, place of business or place of public assembly, there shall be a repair area using a non-experimental backup system in accordance with the provisions of Rule .1945(b) or an accepted system of Rule .1969 of this Section, except:
- (A) When an existing and properly functioning wastewater system is available for immediate use, including connection to a public or community wastewater system; or
- (B) When the experimental system is used as a repair to an existing malfunctioning system; or
- (C) When the experimental system is to serve a vehicular, portable structure built on a chassis and designed to be used as a residence, place of business, or place of public assembly without a permanent foundation, in which case sufficient available space shall be reserved for the installation of a replacement system at least equal to the initial experimental system.

- (iv) When an experimental system is proposed which shall not serve a residence, place of business, or place of public assembly, a repair area or backup system shall not be required.
- (v) The application for an experimental system shall include statements that the property owner is aware of its experimental nature, that the local health department and State do not guarantee or warrant that these systems will function in a satisfactory manner for any period of time, and that use of the system may need to be discontinued if the system malfunctions and is found to be non-repairable, or if the proposed research or testing program is prematurely terminated. Such statements shall be signed by the owner.
- (vi) The owner of the site on which an experimental system is proposed shall execute a easement granting rights of access to the system at reasonable hours for monitoring and evaluation to the research or testing organization. This easement shall specify that it is granted for the purposes of researching and testing an experimental wastewater system and shall remain valid as long as the system is to be part of the proposed research or testing program. The easement shall be recorded with the county register of deeds.
- (vii) Provisions shall be made for operation and maintenance of the system.
- (viii) Any special conditions required for the installation of the experimental system shall be specified in the Improvement ~~Permit~~ and

the ~~Construction Authorization~~. Use of an experimental system and any conditions shall be described on the Improvement ~~Permit~~ Permit, Construction Authorization and any subsequent operation permits, with provisions for a repair area and backup system specified. A condition of the Improvement Permit and Construction Authorization shall be that the installation be under the direct field supervision of the research or testing organization.

- (ix) The proposed Improvement ~~Permit~~ Permit, Construction Authorization and any subsequent operation permits for experimental systems shall be reviewed by the State and found to be consistent with the approved research or testing program prior to issuance by the local health department.

(d) Upon completion of the installation and prior to use, an Experimental System Operation Permit (ESOP) shall be issued by the local health department. The ESOP shall be valid for a specified period of time not to exceed five years. Special maintenance, monitoring and testing requirements shall be specified as permit conditions, in accordance with the approved research or testing program. Failure to carry out these conditions shall be grounds for permit suspension or revocation.

(e) Prior to expiration of the ESOP and based upon satisfactory system performance as determined during the research or testing program, the local health department shall issue an Operation Permit. Premature termination of the research or testing program shall be grounds for ESOP suspension or revocation.

(f) Upon completion of monitoring, research and testing, the research or testing organization shall prepare a final report including

recommendations on future use of the system. If the State determines that the results indicate that the standards of Paragraph (3) of this Rule are met, the State shall approve the use as an innovative system.

- (5) Any proposed changes or modifications in the E & I system shall be submitted for review and approval by the State.
- (6) The State ~~shall~~ may ~~modify~~, suspend or revoke the approval of an E & I system ~~upon a finding as follows: as provided for in G.S. 130A-343(c).~~
 - (a) ~~The information submitted in the application is falsified~~ The E & I system approval shall be modified as necessary to comply with subsequent changes in Laws or Rules which affect their approval.
 - (b) ~~The approval of an E & I system may be modified, suspended or revoked upon a finding as follows:~~
 - (i) ~~subsequent experience with the system results in altered conclusions about system performance, reliability, or design design;~~
 - (ii) ~~the system or component fails to perform in compliance with performance standards established for the system;~~ or
 - (iii) ~~the system or component or the E & I system applicant fails to comply with wastewater system Laws, Rules or conditions of the approval.~~
- (7) ~~Modification, suspension~~ Suspension or revocation of an E & I System approval shall not affect systems previously installed pursuant to the approval.
- (8) ~~Reductions in total nitrification trench length allowed for E & I systems, as compared to the system sizing requirements delineated in Rule .1955 of this Section for conventional systems based upon excavated trench width, apply only to drainfields receiving septic tank effluent of domestic strength or better quality. The system may be used for facilities producing higher strength wastewater with nitrification trench length and trench bottom area determined based upon excavated trench width equal to what is required by Rule .1955 of this Section for a conventional gravel trench system , with no reduction or application of an equivalency factor. However, reductions~~

up to 25 percent when allowed for approved innovative or accepted system models may be applied for facilities producing higher strength wastewater following a specifically approved pretreatment system designed to assure effluent strength equal to or better than domestic septic tank effluent, with a BOD less than 150 mg/l, TSS less than 100 mg/l and FOG less than 30 mg/l.

- (9) A Performance Warranty shall be provided by the manufacturer of any approved innovative or accepted wastewater system (warranty system) handling untreated septic tank effluent which allows for a reduction in the total nitrification trench length of more than twenty-five percent as compared to the total nitrification trench length required for a 36-inch wide conventional wastewater system, pursuant to G.S. 130A-343(j). The Department shall approve the warranty when found in compliance with the applicable Laws and these Rules. When a warranty system is proposed to serve a residence, place of business, or place of public assembly, the site shall include a repair or replacement area in accordance with Rule .1945(b) of this Section or an innovative or accepted system approved under this Rule with no more than a 25 percent reduction in excavated trench bottom area.
 - (a) The Manufacturer shall provide the approved Performance Warranty in effect on the date of the Operation Permit issuance to the owner or purchaser of the system. The warranty shall be valid for a minimum of five-years from the date the warranty system is placed into operation.
 - (b) The Manufacturer shall issue the Performance Warranty to the property owner through its authorized installer who shall sign the Performance Warranty indicating the system has been installed in accordance with the manufacturer's specifications, any conditions of the system approval granted by the Department, and all conditions of the Authorization to Construct a Wastewater System by the local health department. The installer or contractor shall promptly return a copy of the signed Performance Warranty to the Manufacturer indicating the physical address or location of the facility served by the warranty system, date the system was

installed or placed into use, and type and model of system installed.

(c) The Performance Warranty shall provide that the manufacturer furnishes all materials and labor necessary to replace a malfunctioning warranty system as defined in Rule .1961(a) of this Section or a warranty system that failed to meet any performance conditions of the approval with a fully functional wastewater system at no cost to the Owner, in accordance with this Section and applicable Laws.

(d) Performance Warranty repairs such as full replacement of the nitrification system, extension of the nitrification system or other repairs shall be completed pursuant to a repair Authorization to Construct that is issued by the local health department in accordance with this Section.

(e) The Performance Warranty shall be attached to the Operation Permit issued by the Health Department for the wastewater system. The Performance Warranty remains in effect, notwithstanding change in ownership, to the end of the five-year warranty period.

(10) Manufacturers of proprietary systems approved under this Rule shall provide a list of manufacturer's authorized installers to the Department and applicable local health departments, and update this list whenever there are additions or deletions. No Operation Permit shall be issued for a proprietary system installed by a person not authorized by the Manufacturer, unless the Manufacturer of the proprietary system specifically approves the installation in writing.

Authority G.S. 130A-335(e),(f); 130A-343.

Public Hearing:

Date: December 18, 2003

Time: 10:00 a.m.

Location: NC State Board of Cosmetic Art, 1201-110 Front St., Raleigh, NC

Reason for Proposed Action: To make changes in the school curriculum and continuing education.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to these proposed rules by contacting Dee Williams, NC State Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, NC 27609

Written comments may be submitted to: Dee Williams, NC State Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, NC 27609, (919) 733-4117, ext. 222, fax (919) 733-4127, and email wdee17@yahoo.com.

Comment period ends: January 30, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review:

Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
- Local
- Substantive (≥\$3,000,000)
- None

SUBCHAPTER 14A - DEPARTMENTAL RULES

SECTION .0100 - ORGANIZATIONAL RULES

21 NCAC 14A .0101 DEFINITIONS

The following definitions apply in this Chapter:

- (1) "Beauty Establishment" refers to both cosmetic art schools and cosmetic art shops.
- (2) "Cosmetology School" is any cosmetic art school which teaches cosmetic art as defined by, G.S. 88B-2(5), but is not a manicurist or an esthetics school.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Cosmetic Art Examiners intends to adopt the rules cited as 21 NCAC 14R .0101-.0104, amend the rules cited as 21 NCAC 14A .0101; 14B .0603; 14J .0206, .0501; 14P .0108, .0113, and repeal the rules cited as 21 NCAC 14Q .0101-.0106, .0108-.0110.

Proposed Effective Date: April 1, 2004

- (3) "Cosmetology Student" is a student in any cosmetic art school whose study is the full curriculum.
- (4) "Manicurist School" is a cosmetic art school that teaches only the cosmetic arts of manicuring.
- (5) "Manicurist Student" is a student in any cosmetic art school whose study is limited to the manicurist curriculum set forth in 21 NCAC 14K .0102.
- (6) "Successful Completion" is the completion of an approved cosmetic art curriculum with a minimum grade of "C" or 70%, whichever is deemed as passing by the cosmetic art school.
- (7) "Esthetician School" is any cosmetic art school which teaches only the cosmetic arts of skin care.
- (8) "Esthetician Student" is a student in any cosmetic art school whose study is limited to the esthetician curriculum set forth in 21 NCAC 14O. 0102.
- (9) "Esthetics" refers to any of the following practices: giving facials, applying makeup, performing skin care, removing superfluous hair from the body of any person by the use of depilatories, tweezers or waxing, or applying eyelashes to any person (this is to include brow and lash color), beautifying the face, neck, arms or upper part of the human body, by use of cosmetic preparations, antiseptics, tonic, lotions or creams, massaging, cleaning, or stimulating the face, neck, ears, arms, hands, bust, torso, legs or feet, by means of the hands, devices, apparatus, or appliances, with the use of cosmetic preparations, antiseptics, tonics, lotions or creams.
- (10) Natural Hair Braiding. Natural hair braiding is a service that results intension on hair strands or roots by twisting, wrapping, weaving, extending, locking, or braiding by hand or mechanical device, provided that the service does not include hair cutting or the application of dyes, reactive chemicals, or other preparations to alter the color of the hair or to straighten, curl, or alter the structure of the hair.
- (11) Natural Hair Styling. Natural hair styling is the provision of natural hair braiding services together with any of the services or procedures defined within the regulated practice of cosmetic art, and is subject to regulation pursuant to this chapter, and those persons practicing natural hair styling shall obtain and maintain a cosmetologist license as applicable to the services offered or performed. Establishments offering natural hair styling services shall be licensed as cosmetic art shops.

- (12) Biennial licensing period. Biennial licensing period means the two-year period beginning on the first day of October of an even-numbered year and ending on the 30th day of September of an even-numbered year.
- (13) Provider. Provider means a nonprofit professional cosmetic art association, community college or high school, vocational school, postsecondary proprietary school of cosmetic art licensed by the Board, manufacturer of supplies or equipment used in the practice of cosmetic art, the State Board or an agent of the State Board, any individual or entity which owns and operates five or more licensed salons, or that employs at least 50 licensees. Any individual or entity not meeting this definition may petition the Board for review and approval from the Board in order to be considered a provider.

Authority G.S. 88B-2; 88B-4.

SUBCHAPTER 14B - RULE-MAKING PROCEDURES

SECTION .0600 – FEES

21 NCAC 14B .0603 POSTAGE AND HANDLING

There shall be a ~~five dollar (\$5.00)~~ ten dollar (\$10.00) charge for postage and handling for all mailings.

Authority G.S. 12-3.1; 150B-19.

SUBCHAPTER 14J - COSMETOLOGY CURRICULUM

SECTION .0200 - ADVANCED DEPARTMENT

21 NCAC 14J .0206 EQUIPMENT IN ADVANCED DEPARTMENT

The advanced department must be equipped with the following minimum equipment in the department:

- (1) 20 to 29 stations, two manicure tables and stools, 30 or more stations, 4 manicure tables and stools;
- (2) 20 to 29 stations, ~~40~~ eight dryers and chairs, 30 or more stations, ~~45-12~~ dryers and chairs;
- (3) eight shampoo bowls and chairs;
- (4) 20 dressing tables and styling chairs;
- (5) 20 to 29 stations, one facial chairs, 30 or more stations, two facial chairs;
- (6) three marcel heaters; and
- (7) three marcel irons.

Authority G.S. 88-23.

SECTION .0500 - CREDIT FOR COSMETOLOGY STUDY OUTSIDE OF NORTH CAROLINA

21 NCAC 14J .0501 APPROVAL OF CREDIT FOR COSMETOLOGY INSTRUCTION/ANOTHER STATE

(a) An applicant may receive credit for instruction taken in another state if the conditions set forth in the Rule are met.

(b) The applicant's record shall be certified by the state agency or department that issues licenses to practice in the cosmetic arts. If the agency or department does not maintain any student records or if the state does not give license to practice in the cosmetic arts, then the records may be certified by any state department or state agency that does maintain such records and is willing to certify their accuracy. If no state department or board will certify the accuracy of the student's records, then the Board shall review the student's records on a case-by-case basis.

(c) If the requirements of Paragraph (b) of the Rule are met, then the Board will give credit for hours of course work and for mannequin and live model performances to the extent certified, up to the amount of credit that the student would receive for instruction in a school licensed by the Board. If the certification includes only total hours and does not specify what performances have been completed, the Board will not give any credit for performances completed as part of the out-of-state instruction. If the certification shows that a state board examination was not taken, then a N. C. state board examination will be required.

Authority G.S. 88B-12; 88B-13.

SUBCHAPTER 14P - CIVIL PENALTY

21 NCAC 14P .0108 REVOCATION OF LICENSES AND OTHER DISCIPLINARY MEASURES

(a) The presumptive civil penalty for allowing unlicensed practitioners to practice in a licensed cosmetic art shop is:

- | | | |
|-----|-------------------------|------------|
| (1) | 1 st offense | \$250.00 |
| (2) | 2 nd offense | \$500.00 |
| (3) | 3 rd offense | \$1,000.00 |

(b) The presumptive civil penalty for practicing cosmetology, manicuring or esthetics with a license issued to another person is:

- | | | |
|-----|-------------------------|------------|
| (1) | 1 st offense | \$300.00 |
| (2) | 2 nd offense | \$500.00 |
| (3) | 3 rd offense | \$1,000.00 |

(c) The presumptive civil penalty for altering a license, permit or authorization issued by the Board is:

- | | | |
|-----|-------------------------|----------|
| (1) | 1 st offense | \$300.00 |
| (2) | 2 nd offense | \$400.00 |
| (3) | 3 rd offense | \$500.00 |

(d) The presumptive civil penalty for submitting false or fraudulent documents:

- | | | |
|-----|-------------------------|------------|
| (1) | 1 st offense | \$500.00 |
| (2) | 2 nd offense | \$800.00 |
| (3) | 3 rd offense | \$1,000.00 |

(e) The presumptive civil penalty for refusing to present photographic identification:

- | | | |
|-----|-------------------------|----------|
| (1) | 1 st offense | \$100.00 |
| (2) | 2 nd offense | \$250.00 |
| (3) | 3 rd offense | \$500.00 |

(f) The presumptive civil penalty for advertising by means of knowingly false or deceptive statement:

- | | | |
|-----|-------------------------|--------------------|
| (1) | 1 st offense | warning (\$300.00) |
| (2) | 2 nd offense | \$400.00 |
| (3) | 3 rd offense | \$500.00 |

(g) The presumptive civil penalty for permitting an individual to practice cosmetic art with an expired license.

- | | | |
|-----|-------------------------|--------------------|
| (1) | 1 st offense | warning (\$300.00) |
| (2) | 2 nd offense | \$400.00 |
| (3) | 3 rd offense | \$500.00 |

(h) The presumptive civil penalty for practicing or attempting to practice by fraudulent misrepresentation:

- | | | |
|-----|-------------------------|-----------|
| (1) | 1 st offense | \$500.00 |
| (2) | 2 nd offense | \$800.00 |
| (3) | 3 rd offense | \$1000.00 |

(i) The presumptive civil penalty for the illegal use of equipment or Methyl Methacrylate Monomer (MMA) in a cosmetic art shop or school is:

- | | | |
|-----|-------------------------|-----------|
| (1) | 1 st offense | \$300.00 |
| (2) | 2 nd offense | \$500.00 |
| (3) | 3 rd offense | \$1000.00 |

Authority G.S. 88B-4; 88B-24; 88B-29.

21 NCAC 14P .0113 OPERATIONS OF SCHOOLS OF COSMETIC ART

(a) The presumptive civil penalty for failure to record student's hours of daily attendance is:

- | | | |
|-----|-------------------------|--------------------|
| (1) | 1 st offense | warning (\$100.00) |
| (2) | 2 nd offense | \$200.00 |
| (3) | 3 rd offense | \$300.00 |

(b) The presumptive civil penalty for failure to report withdrawal or graduation of a student within 30 working days is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |

(c) The presumptive civil penalty for failure to submit cosmetology enrollments within 30 working days or manicurist and esthetician enrollments within 15 working days is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
| (2) | 2nd offense | \$100.00 |
| (3) | 3rd offense | \$200.00 |

(d) The presumptive civil penalty for failure to display a copy of the sanitary rules is:

- | | | |
|-----|-------------------------|-------------------|
| (1) | 1 st offense | warning (\$50.00) |
| (2) | 2 nd offense | \$100.00 |
| (3) | 3 rd offense | \$200.00 |

(e) The presumptive civil penalty for failure to post consumer sign "Cosmetic Art School - Work Done Exclusively by Students" is:

- | | | |
|-----|-------------------------|-------------------|
| (1) | 1 st offense | warning (\$50.00) |
| (2) | 2 nd offense | \$100.00 |
| (3) | 3 rd offense | \$200.00 |

(f) The presumptive civil penalty for allowing a cosmetic art shop to operate within a cosmetic art school is:

- | | | |
|------------|-------------------------------|-----------------|
| <u>(1)</u> | <u>1st offense</u> | <u>\$200.00</u> |
| <u>(2)</u> | <u>2nd offense</u> | <u>\$400.00</u> |
| <u>(3)</u> | <u>3rd offense</u> | <u>\$600.00</u> |

(g) The presumptive civil penalty for a cosmetic art school that is not separated from cosmetic art shop and/or other business by a solid wall, floor to ceiling, with an separate entrance and a door that stays closed at all time is:

- | | | |
|------------|-------------------------------|-----------------|
| <u>(1)</u> | <u>1st offense</u> | <u>\$200.00</u> |
|------------|-------------------------------|-----------------|

PROPOSED RULES

(2)	2 nd offense	\$400.00
(3)	3 rd offense	\$600.00

Authority G.S. 88B-4; 88B-16; 88B-29.

SUBCHAPTER 14Q - CONTINUING EDUCATION

SECTION .0100 - TEACHER CONTINUING EDUCATION

21 NCAC 14Q .0101 TEACHER CONTINUING EDUCATION

(a) ~~Teacher's continuing education (CE) programs shall be approved by the NC State Board of Cosmetic Art Examiners (Board), if they meet the rules adopted by the Board. Each program shall be conducted and monitored by one of the following statewide organizations in conjunction with the Board:~~

- (1) ~~National Cosmetology Association of North Carolina;~~
- (2) ~~High School Cosmetology Educators of North Carolina;~~
- (3) ~~NC State Beauticians and Cosmetologists Association;~~
- (4) ~~Cosmetologist Instructors Association of the NC Community College System;~~
- (5) ~~NC Private School Owners Association; or~~
- (6) ~~NC Aestheticians Association.~~

Note: If a provider is associated with or a member of any of the preceding associations, they may be approved.

(b) ~~Any other group or association who can present a program meeting the criteria in Paragraph (c) of this Rule to the Board, shall be eligible to conduct a program.~~

(c) ~~The Continuing Education Program shall meet the following criteria for approval:~~

- (1) ~~all seminars must include at least 50% of subject matter in the cosmetic arts and/or teacher training techniques. Esthetician teachers and manicurist teachers must complete CE only in that area in which they are licensed. CE must not promote a particular system or product;~~
- (2) ~~all seminars shall be monitored by the responsible organization including signing in and out of participants to assure the presence of participants for the required contact hours; and~~
- (3) ~~all organizations/providers shall present to the Board Curriculum Committee, no earlier than July 1, 2002 and no later than August 30th of each year, a program outline which shall include, but may not be limited to, the following:~~
 - (A) ~~Date;~~
 - (B) ~~Time;~~
 - (C) ~~Place;~~
 - (D) ~~Instructors Name(s);~~
 - (E) ~~Course outline including lesson plans;~~
 - (F) ~~List of monitors; and~~
 - (G) ~~Fees.~~

~~Programs approved by the Curriculum Committee will be submitted to the Board during their October meeting for full approval. Programs will be approved through September 30th of the following year.~~

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0102 ATTENDANCE VERIFICATION

~~All providers shall complete an attendance verification form, provided by the Board, verifying participant attendance.~~

- (1) ~~The monitor shall verify the participants' attendance and signature on the verification form.~~
- (2) ~~Each provider shall mail completed forms to the Board Operations Officer.~~
- (3) ~~The forms shall be kept on record with the Board as verification that the participant has met the Continuing Education requirements.~~
- (4) ~~All participants shall receive from the Board, a Continuing Education Unit (CEU) certificate proving verification.~~

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0103 CERTIFICATING AGENT

The Board shall serve as the certificating agent providing CEU certificates for participants when the following conditions are met:

- (1) ~~The program submitted by any of the program producing associations/providers must be approved by the Board. Upon notification of approval, the association/provider must submit a five dollars (\$5.00) postage/handling/copying fee no less than 30 days prior to a proposed seminar date. Failure to meet this requirement shall result in CE cancellation;~~
- (2) ~~All attendance verification forms and monitor forms shall be sent to the appropriate association/provider at least two weeks prior to the start of the seminar(s);~~
- (3) ~~All attendance verification forms must be forwarded to the Board before the certificating process can begin. Certificates shall be mailed to the participants;~~
- (4) ~~The postage/handling/copying fee shall include:~~
 - (a) ~~a CEU certificate for participant; and~~
 - (b) ~~attendance verification forms, seminar monitor forms; and~~
 - (c) ~~permanent transcripts developed and maintained on each participant. Retrieval of transcripts by participants shall be subject to a five dollars (\$5.00) postage/handling fee.~~
- (5) ~~Attendance verification forms shall be necessary for all participants in order to complete the certificating process.~~

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0104 PROGRAM SITES

Each association/provider shall submit to the Board Curriculum Committee by August 30th of each year all program sites. The Board shall be notified of any changes in sites during the year the programs are ongoing.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0105 GENERAL PROGRAM FORMAT, TIME FRAME, SPACE

- (a) The program shall consist of no more than six clock hours per day. This does not include breaks and lunch periods.
- (b) No promotion of, or selling of products/systems shall take place.
- (c) All associations/providers shall adhere to the approved program outline.
- (d) Any change in the approved program outline must receive approval by the Board Executive Director.
- (e) If the program for any reason is late starting, the ending time shall be extended accordingly.
- (f) There shall be no early dismissals.
- (g) Adequate space shall be provided so that each attendee shall be able to see and hear all segments of the program.
- (h) Comfortable chairs shall be provided.
- (i) Smoking shall be prohibited while the program is in session. Smoking shall take place only during breaks and lunch periods and only in designated areas.
- (j) Regular cosmetic art school classes shall not take place during the same time as the CE Program is taking place in the same school.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0106 INSTRUCTORS AND MONITORS OF CONTINUING EDUCATION PROGRAMS

Each association/provider shall by August 30th of each year submit to the Board a list of instructors and monitors for the following fiscal years' program. For programs limited to 15 students or less, the instructor may also serve as the program monitor. An association/provider shall notify the Board of any deviation from the list of instructors and monitors submitted.

- (1) Instructors shall not receive CEU credit for any Continuing Education Program they teach.
- (2) A monitor shall be on duty at all times while the program is ongoing.
- (3) Monitors shall see that all attendees sign a check in and check out form for the morning and afternoon sessions.
- (4) The Monitor shall see that order is maintained at all times and that the attendance verification forms are properly completed.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14Q .0108 PROOF OF ATTENDANCE

After completion of the program and within 10 working days, monitor forms and all attendance verification forms must be sent to the Board. The Board must also be notified in writing of the cancellation of any seminar within 10 working days following the proposed seminar date.

Authority 88B-4; 88B-21(e).

21 NCAC 14Q .0109 BOARD TO OBSERVE PROGRAM

The Board or its designated agents may observe any Continuing Education Program at any time.

Authority 88B-4; 88B-21(e).

21 NCAC 14Q .0110 VIOLATIONS

(a) Any sponsor/provider, having been cited by the Board for two violations of any Rules in this Subchapter, may be called before the Board. If the Board finds the violation(s) to adversely affect the program, the provider, depending on the severity of the charges, may:

- (1) receive a verbal reprimand and warning that if the situation continues, the provider will be subject to either items (2), (3) or (4), or
- (2) be disqualified from conducting any Continuing Education Program for a period of time determined by the Board; or
- (3) be disqualified from conducting any further Continuing Education Program for the remainder of the year; or
- (4) be disqualified from ever conducting any further Continuing Education Program.

(b) For esthetician teachers, of the total 16 CE hours they are required to complete in each two year cycle, a minimum of eight hours must be completed in either a basic or an advanced esthetician seminar.

Authority G.S. 88B-4, 88B-21(e).

SUBCHAPTER 14R – CONTINUING EDUCATION

21 NCAC 14R .0101 CONTINUING EDUCATION REQUIREMENTS

- (a) Licensees shall be exempt from all continuing education requirements until the biennial licensing period commencing after their initial licensure.
- (b) The continuing education requirement for all teacher licensees is 16 hours per biennium. No licensee shall receive credit for course duplication completed during the biennial licensing period. Course instructors shall not receive credit for any course taught them.
- (c) Courses completed prior to an individual being licensed by the Board do not qualify for continuing education credit. A licensee shall not receive continuing education credit for any course given in North Carolina that does not have the prior approval of the Board.
- (d) Esthetician and manicurist teachers must complete courses in their subject area.
- (e) All "Providers" shall allow any official representative or employee of the Board entrance into any Board approved

continuing education requirement course at no cost to the Board.

(f) The Board shall keep a current roster of approved continuing education courses. Copies of the roster shall be mailed to all teacher licensees on a quarterly basis. Additional copies of the roster shall be available to teacher licensees and the public upon request to the Board.

(g) Out-of-state continuing education hours shall be submitted for approval to the Board within 30 days of completing the course in order to be acceptable in meeting biennial requirements.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14R .0102 APPLICATION CRITERIA AND CONTINUING EDUCATION COURSE

APPROVAL

(a) Application for course approval shall be completed on forms provided by the Board and demonstrate that the applicant is:

- (1) An eligible provider as defined in 21 NCAC 14A .0101;
- (2) Submitting a fifty dollar (50.00), per course, non-refundable processing fee, per calendar year;
- (3) Submitting the form to the Board's office at least 30 days prior to the proposed initial date of the course offering;
- (4) Proposing a course offering which must include at least 50% of subject matter in the cosmetic arts and/or cosmetic art teacher training techniques; and
- (5) Providing a short resume of all course instructors.

(b) The following offerings shall not be approved by the Board for continuing education credit:

- (1) That portion of any offering devoted to any breaks including: breakfast, lunch and dinner or other refreshments; and
- (2) Any application, which fails to meet the standards of this Rule.

(c) A continuing education number will be assigned to each approved course.

(d) Applications for course approval must be in the Board's office at least 10 days prior to a published statutory Board meeting, to allow time for review and Board approval.

(e) Processing fees are only valid during the calendar year for which payment is made. Approved courses may be conducted as often as desired during that time.

Authority G.S. 88-B 4; 88B-21(e).

21 NCAC 14R .0103 CRITERIA FOR CONTINUING EDUCATION COURSES

(a) Programs shall not be approved by the Board in segments of less than one hour.

(b) Providers must use an attendance sign-in sheet provided by the Board, listing the licensee's name and teacher's license number, to verify attendance. Forms may be copied.

(c) No approved provider shall certify the attendance of a person who was not physically present during at least 90

percent of the course time. All courses must be successfully completed.

(d) A provider shall maintain for four years a record of attendance of each person attending a course including the following information:

- (1) Board approved continuing education number;
- (2) Name and license number of attendee;
- (3) Course title and description;
- (4) Hours of attendance;
- (5) Date of course;
- (6) Name and signature of instructor/monitor in employ of provider; and
- (7) The provider shall certify the items above and furnish a copy to the attendee within 30 days after completion of the course.

(e) Courses by individuals or entities whose principal residence or place of business is not located in North Carolina shall be approved if they comply with the requirements herein.

(f) Course attendance may be restricted to teacher licensees due to valid course prerequisites for admission or by the maximum number of participants allowable as determined by the provider and fully disclosed during the application criteria and procedures for continuing education approval.

(g) Passage of an examination by a licensee shall not be a requirement for successful completion of a continuing education course. Correspondence and Internet continuing education courses are not authorized.

(h) Minimum attendance of a course for credit purposes is four attendees.

(i) Each provider shall notify the Board, at least one day in advance, of any additional course dates, or any changes including locations, times, and changes of course instructors.

(j) Each provider shall submit to the Board, within 10 days after completion of each course, an attendance list of licensees who successfully completed the course. The list shall include for each licensee:

- (1) Course title;
- (2) Date conducted;
- (3) Address location where the course was conducted;
- (4) Licensee name;
- (5) Licensee's license number;
- (6) Course continuing education number; and
- (7) CE hours earned.

(k) The Board may suspend, revoke, or deny the approval of an instructor or provider, who fails to comply with any provision of these Rules. Written justification of the suspension, denial, or revocation shall be given.

Authority G.S. 88B-4; 88B-21(e).

21 NCAC 14R .0104 LICENSE RENEWAL PROCEDURES

After completion of the continuing education requirements for any biennial licensing period, the licensee shall provide copies of completion certificates and forward them to the Board with the licensee's license renewal application, the license renewal fee, and the applicable processing fee.

Authority G.S. 88B-4; 88B-21(e).

CHAPTER 17 - BOARD OF DIETETICS/NUTRITION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Board of Dietetics/Nutrition intends to amend the rule cited as 21 NCAC 17 .0114.

Proposed Effective Date: July 1, 2004

Public Hearing:

Date: December 17, 2003

Time: 10:00 a.m.

Location: Olson Management Group Offices, 1500 Sunday Dr., Suite 102, Raleigh, NC

Reason for Proposed Action: To clarify certain standards of conduct, to delete certain standards as unnecessarily duplicative and otherwise, and to add new standards of conduct, all to assist the licensees with compliance with the Code of Ethics and to assist the agency with the administration of its Practice Act and rules.

Procedure by which a person can object to the agency on a proposed rule: Any person who objects to the adoption of a permanent rule may submit written comments to the agency or to its rule-making coordinator. A person objecting to the adoption of a permanent rule may also submit written objections to the Rules Review Commission.

Written comments may be submitted to: Kim Dove, Rule-making Coordinator, 1500 Sunday Drive, Suite 102, Raleigh, NC 27607

Comment period ends: January 30, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)
None

21 NCAC 17 .0114 CODE OF ETHICS FOR PROFESSIONAL PRACTICE AND CONDUCT

Licensees, under the Act, shall comply with the following Code of Ethics in their professional practice and conduct. The Code reflects the ethical principles of the dietetic/nutrition professional and outlines obligations of the licensee to self, client, society and the profession. profession and sets forth mandatory standards of conduct for all licensees.

- (1) The licensee shall provide professional services with objectivity and with respect for the unique needs and values of individuals as determined through the nutritional assessment.
(2) The licensee shall not deny services or employment to individuals based on that individual's race, creed, religion, sex, age, national origin or handicap.
(3) The licensee shall conduct all practices of dietetics/nutrition with honesty and integrity.
(4) The licensee shall present substantiated information and interpret controversial information without personal bias, recognizing that legitimate differences of opinion exist. The licensee shall make all reasonable effort to avoid bias of any kind in the professional evaluation of others.
(5) The licensee shall practice dietetics/nutrition based on scientific principles and current information.
(6) The licensee shall assume responsibility and accountability for personal competence in practice.
(7) The licensee shall inform the public of his/her services by using factual information and shall not advertise in a false or misleading manner.
(8) The licensee shall not exercise undue influence on a client, including the promotion of or the sale of services or products. The licensee shall be alert to any conflicts of interest and shall provide full disclosure when a real or potential conflict of interest arises.
(9) The licensee shall not reveal information about a client obtained in a professional capacity, without prior consent of the client, except as authorized or required by law and shall make full disclosure about any limitations on his/her ability to guarantee this.
(10) The licensee shall recognize and exercise professional judgment within the limits of the licensee's qualifications and shall not accept or perform professional responsibilities which the licensee knows or has reason to know that he or she is not qualified to perform.

- (11) The licensee shall take reasonable action, with prior consent of the client, to inform a client's physician or other ~~allied~~-health care practitioner in cases where a client's nutritional status indicates a change in health status.
- (12) The licensee shall give sufficient information based on the client's ability to process information such that the client can make his or her own informed decisions. The licensee shall not guarantee that nutrition care services will cause any certain outcome or particular result for the client.
- ~~(13) The licensee shall accurately present professional qualifications and credentials according to G.S. 90-640 of Article 37 and as follows:~~
- ~~(a) The licensee shall use "LDN" when license is current.~~
- ~~(b) The licensee shall provide accurate information and comply with all rules of the North Carolina Board of Dietetics/Nutrition when seeking continued credentials from the North Carolina Board of Dietetics/Nutrition.~~
- ~~(c) The licensee shall not aid another person in violating any North Carolina Board of Dietetics/Nutrition rules or aid another person in representing himself/herself as an "LD", "LN" or "LDN" when he/she is not.~~
- ~~(14)(13) The licensee shall permit use of that licensee's name for the purpose of certifying that dietetic/nutrition services have been rendered only if the licensee has provided or supervised those services.~~
- ~~(15)(14) When providing supervision to a student, trainee, provisional licensee, or person aiding the practice of dietetics/nutrition, the licensee shall assume responsibility for the person being supervised. The licensee shall notify the Board in writing within 30 days of the occurrence of any of the following:~~
- ~~(a) The Licensee seeks any medical care or professional treatment for the chronic or persistent use of intoxicants, drugs or narcotics.~~
- ~~(b) The Licensee is adjudicated to be mentally incompetent.~~
- ~~(c) The Licensee has been convicted or entered into a plea of guilty or nolo contendere to any crime involving moral turpitude.~~
- ~~(d) The licensee has been disciplined by an agency of another state that regulates the practice of dietetics or nutrition.~~
- ~~(16)(15) The licensee shall comply with all laws and rules concerning the profession.~~
- ~~(17)(16) The licensee shall uphold the Code of Ethics for professional practice and conduct by reporting suspected misrepresentations and violations of the Code and the Act to the Board.~~
- ~~(18)(17) The licensee shall not interfere with an investigation of or disciplinary proceeding by willful misrepresentation of facts to the Board or its representative or by the use of threats or harassment against any person.~~
- ~~(19)(18) The licensee may be subject to disciplinary action by the Board under the following circumstances: Conduct and circumstances which may result in disciplinary action by the Board include, but are not limited to, the following:~~
- ~~(a) The licensee is a chronic or persistent user of intoxicants, drugs or narcotics to the extent that the same impairs his/her ability to practice dietetics/nutrition.~~
- ~~(b) The licensee has been adjudged to be mentally incompetent in a court of competent jurisdiction or a determination thereof by other lawful means. This adjudication of mental incompetency shall be conclusive proof of unfitness to practice dietetics/nutrition unless or until such person shall have been subsequently lawfully declared to be mentally competent.~~
- ~~(c)(b) The licensee is mentally, emotionally, or physically unfit to practice dietetics/nutrition and is afflicted with such a mental, emotional or physical disability as to be dangerous to the health and welfare of a client.~~
- ~~(d) The licensee has been convicted of or entered a plea of guilty or nolo contendere to any felony charge or to any misdemeanor charge involving moral turpitude under the laws of the United States or any of the states.~~
- ~~(e)(c) The licensee has been disciplined by an agency of another state that regulates the practice of dietetics or nutrition and at least one of the grounds for the discipline is the same or substantially equivalent to the grounds for discipline in this state.~~
- ~~(f) The licensee has committed an act of misfeasance or malfeasance in the practice of dietetics/nutrition as determined by a court of competent jurisdiction, a licensing board, or an agency of a governmental body.~~

PROPOSED RULES

(g)(d) The licensee has violated any provisions of the ~~act~~ Act or any of these Rules. the rules in this Chapter.

(20)(19) The licensee shall not engage in kissing, fondling, touching or ~~engaging~~ in any activities, advances, or comments of a sexual nature with any ~~person with whom the licensee interacts within the professional setting-client or, while under the licensee's supervision, with any student, trainee, provisional licensee or person aiding the practice of dietetics/nutrition.~~

Comment period ends: January 30, 2004

Procedure for Subjecting a Proposed Rule to Legislative Review: Any person who objects to the adoption of a permanent rule may submit written comments to the agency. A person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the 6th business day preceding the end of the month in which a rule is approved. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Authority G.S. 90-356(3).

CHAPTER 40 - BOARD OF OPTICIANS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC State Board of Opticians intends to amend the rule cited as 21 NCAC 40 .0108.

Proposed Effective Date: April 1, 2004

Public Hearing:

Date: December 16, 2003

Time: 2:00-4:00 p.m.

Location: 222 N. Person St. (Small Conference Room), Raleigh, NC

Reason for Proposed Action: Most recent fee revision was in 1998. Comparison of other states' licensing and examination fees shows NC's fees significantly less. Technological changes in the office, and increased awareness campaigns call for additional funding.

Procedure by which a person can object to the agency on a proposed rule: Notify the agency Rule-making Coordinator, in writing, within the 60 day comments period. Objections can also be noted and taken at the scheduled public hearing.

Written comments may be submitted to: Sue M. Kornegay, NC State Board of Opticians, PO Box 25336, Raleigh, NC, phone (919) 733-9321 and fax (919) 733-0040.

Fiscal Impact

- State
Local
Substantive (>=\$3,000,000)
None

SECTION .0100 - LOCATION

21 NCAC 40 .0108 FEES

Fees charged by the Board shall be as follows:

Table with 2 columns: Fee Description and Amount. Rows include: Each examination (\$150.00/\$200.00), Each initial license (\$40.00/\$50.00), Each renewal of license (\$75.00/\$100.00), Each license issued to a practitioner (Of another state to practice In this state \$175.00/\$200.00), Each registration of an optical Place of business (\$35.00/\$50.00), Each application for registration as An opticianry apprentice or Intern, and renewals thereof (\$25.00), Each registration of a training Establishment (\$25.00), Each license verification requiring File search (\$10.00)

Authority G.S. 90-246; 90-249(a)(9).

APPROVED RULES

*This Section includes the Register Notice citation to Rules approved by the Rules Review Commission (RRC) at its meeting October 16, 2003, pursuant to G.S. 150B-21.17(a)(1) and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules is published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules, unless otherwise noted, will become effective on the 31st legislative day of the 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**

01	NCAC	35	.0101*	16:21 NCR
01	NCAC	35	.0103*	16:21 NCR
01	NCAC	35	.0201-.0203*	16:21 NCR
01	NCAC	35	.0204	16:21 NCR
01	NCAC	35	.0205*	16:21 NCR
01	NCAC	35	.0301-.0302*	16:21 NCR
01	NCAC	35	.0304-.0306*	16:21 NCR
01	NCAC	35	.0308	16:21 NCR
01	NCAC	35	.0309*	16:21 NCR
02	NCAC	38	.0705	17:17 NCR
02	NCAC	52B	.0204*	17:13 NCR
02	NCAC	52C	.0603	17:17 NCR
10A	NCAC	14C	.1101	18:02 NCR
10A	NCAC	14C	.1501-.1503*	18:02 NCR
10A	NCAC	14C	.2202-.2203*	18:02 NCR
10A	NCAC	14C	.2403*	18:02 NCR
10A	NCAC	14C	.2701	18:02 NCR
10A	NCAC	14C	.2703*	18:02 NCR
10A	NCAC	14C	.3603*	18:02 NCR
10A	NCAC	14C	.3701	18:02 NCR
10A	NCAC	14C	.3703*	18:02 NCR
10A	NCAC	41A	.0101	17:24 NCR
10A	NCAC	41A	.0208*	17:17 NCR
10A	NCAC	41A	.0213	17:24 NCR
10A	NCAC	43F	.1203*	17:24 NCR
10A	NCAC	70E	.0301*	18:04 NCR
10A	NCAC	70E	.0506*	18:04 NCR
10A	NCAC	70F	.0102*	18:04 NCR
10A	NCAC	70F	.0205*	18:04 NCR
10A	NCAC	70I	.0201-.0202*	18:04 NCR
11	NCAC	08	.0702*	17:21 NCR
11	NCAC	08	.0706*	17:07 NCR & 17:21 NCR
12	NCAC	09G	.0101*	not required G.S. 150B-21.5(a)(2)
15A	NCAC	02I	.0601*	17:20 NCR
15A	NCAC	07H	.1401	17:24 NCR
15A	NCAC	07H	.1402*	17:24 NCR
15A	NCAC	07H	.1404-.1405*	17:24 NCR
15A	NCAC	07J	.0701-.0702*	17:24 NCR
15A	NCAC	07J	.0703	17:24 NCR
18	NCAC	06	.1205	17:24 NCR
18	NCAC	06	.1208	17:24 NCR
18	NCAC	06	.1211	17:24 NCR
18	NCAC	06	.1401-.1402*	17:24 NCR
18	NCAC	06	.1417	17:24 NCR

19A	NCAC	02E	.1101-.1104*	17:20 NCR
19A	NCAC	02E	.1105	17:20 NCR
19A	NCAC	02E	.1106-.1108*	17:20 NCR
19A	NCAC	02E	.1204*	17:20 NCR
19A	NCAC	03D	.0232-.0233*	18:04 NCR
19A	NCAC	03D	.0234-0236	18:04 NCR
21	NCAC	16Q	.0101*	17:20 NCR
21	NCAC	16Q	.0201*	17:20 NCR
21	NCAC	16Q	.0301-.0303*	17:20 NCR
21	NCAC	16Q	.0401*	17:20 NCR
21	NCAC	29	.0401-.0402*	17:16 NCR
21	NCAC	29	.0502-.0503*	17:16 NCR
21	NCAC	32B	.0104*	18:01 NCR
21	NCAC	46	.1204	not required G.S. 150B-21.5(a)(4)
25	NCAC	01J	.1001-.1011	17:21 NCR
25	NCAC	01J	.1012*	17:21 NCR
26	NCAC	02C	.0104	17:10 NCR
26	NCAC	02C	.0303	17:10 NCR
26	NCAC	02C	.0306	17:10 NCR
26	NCAC	02C	.0410	17:10 NCR

TITLE 1 - DEPARTMENT OF ADMINISTRATION

01 NCAC 35 .0101 DEFINITIONS

In addition to definitions found in G.S. 143-3.3(a), the following definitions shall apply:

- (1) "Audit" or "audited financial statement." An examination of financial statements of an organization by a CPA, conducted in accordance with generally accepted auditing standards, to determine whether, in the CPA's opinion, the statements conform with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.
- (2) "State Employees Combined Campaign" or "SECC." The official name of the state employees charitable fund-raising drive.
- (3) "Federation" or "Federated Group" means a group of voluntary charitable human health and welfare agencies organized for purposes of supplying common fund-raising, administrative, and management services to its constituent members.
- (4) "Fund-raising expenses" (supporting activities) means expenses of all activities that constitute, or are an integral and inseparable part of, an appeal for financial support. Fund-raising expenses represent the total expenses incurred in soliciting contributions, gifts, grants, etc.; participating in federated fund-raising campaigns; maintaining donor mailing lists; preparing and distributing fund-raising manuals, instructions and other materials; and conducting other activities involved with soliciting contributions.
- (5) "Administrative expenses" (supporting activities) means expenses for reporting and informational activities related to business management and administrative activities

which are neither educational, nor direct conduct of program services, nor fund-raising services.

- (6) "Program service expenses" means expenses for those activities that the reporting organization was created to conduct which fulfill the purpose or mission for which the organization exists, exclusive of fund-raising and administrative expenses, and which, along with any activities commenced subsequently, form the basis of the organization's current exemption from tax.
- (7) "Fund-raising consultant" means, a consultant as defined in G.S. 131F-2(10).
- (8) "Fund-raising solicitor" means a solicitor, as defined in G.S. 131F-2(19).
- (9) "Review" or "reviewed financial statement." An examination of financial statements of an organization by a CPA. The CPA performs inquiry and analytical procedures that provide the CPA with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statements in order for them to be in conformity with generally accepted accounting principles or, if applicable, with another comprehensive basis of accounting.

History Note: Authority G.S. 143-3.3; 143-340(26); 143B-10; Eff. February 1, 1984; Amended Eff. December 1, 1994; December 1, 1993; May 1, 1987; Temporary Amendment Eff. February 15, 2002; Amended Eff. August 1, 2004.

01 NCAC 35 .0103 ORGANIZATION OF THE CAMPAIGN

The State Employees Combined Campaign is organized as follows:

- (1) Chair. Each year the Governor shall appoint the Statewide Combined Campaign Chair "or Statewide Campaign Chair" from one of the Executive Cabinet, Council of State, System of Community Colleges, or University Administration agencies. The Statewide Campaign Chair shall serve as director of the campaign. The responsibilities of the Chair include enlisting the support and cooperation of the head of each state department and university in coordinating an effective campaign, promoting the participation of state employees, setting the dates of and approving the published materials for the Combined Campaign, contracting for the selection of the Statewide Campaign Organization as set out in these rules, and appointing members to and serving as chair of the SECC Advisory Committee. For the purposes of selecting the Statewide Campaign Organization, the Statewide Campaign Chair shall consider the following criteria:
- (a) The organization must have ability to manage a state-wide fund-raising campaign.
 - (b) The organization must have the ability and willingness to work with a statewide system of local organizations capable of managing local combined campaigns.
 - (c) The organization must have an audit to demonstrate financial accountability.
 - (d) The organization must be a tax-exempt organization under the Internal Revenue Code.
 - (e) The organization shall verify a bond or proof of insurance in an amount that covers the total amount of designated and undesignated funds to be allocated to each of the respective member agencies.
- (2) SECC Advisory Committee. This committee serves as an application point for all charitable organizations applying to participate in the SECC. The duties of the SECC Advisory Committee include the following:
- (a) The committee shall recommend policy for the campaign to the Governor, the Statewide Campaign Chair, and state agencies and shall recommend the criteria for participation by charitable organizations. The committee shall review the recommendations made by the Statewide Campaign Organization and shall accept or reject its recommendations. Prior to each year's campaign, the SECC Advisory Committee shall approve a budget to cover all of its costs related to the campaign and shall develop an annual work plan.
 - (b) The committee shall be composed of at least 20 state employee members appointed by the Statewide Campaign Chair. Members shall serve four-year staggered terms. If a vacancy occurs, the Statewide Campaign Chair shall appoint a replacement to fill the unexpired term. No member shall serve more than two consecutive terms of four years.
 - (c) The SECC Advisory Committee shall meet at the discretion of the Statewide Campaign Chair; however, no fewer than four meetings per year will be held. The SECC Advisory Committee shall conduct business only when a quorum of one-third of the committee membership, including the Statewide Campaign Chair or his designee is present.
 - (d) Any State employee who serves on the SECC Advisory Committee shall not participate in any decision where that employee may have a conflict of interest or the appearance of a conflict of interest, either of a personal nature or with regard to the agency in which the employee works. Any SECC Advisory Committee member who is also a member of a charitable organization's board shall recuse himself from taking part in deliberation or voting on matters by which that charitable organization may be impacted.
- (3) Statewide Campaign Organization. The Statewide Campaign Organization shall be selected by the Statewide Campaign Chair. The entity selected to manage the campaign shall conduct its own organization operations separately from duties performed as the Statewide Campaign Organization. The duties of the Statewide Campaign Organization include the following:
- (a) serving as the financial administrator of the SECC;
 - (b) determining if the applicant agencies meet the requirements of Rule .0202 of this Chapter;
 - (c) submitting to the Statewide Campaign Chair a list of organizations to serve as Local Campaign Organizations;
 - (d) providing centralized pledge processing services in order to process all pledge forms of state employees;
 - (e) compiling reports for the SECC Advisory Committee and notifying

- federations and independent agencies no later than March 1 following the close of the campaign on December 1 of the amounts designated to them and their member agencies and of the amounts of the undesignated funds allocated to them;
- (f) transmitting quarterly to each federation and independent agency its share of the state employee's funds. Interest earnings shall be disbursed to each participating federation and independent agency based on its proportionate share of the campaign's total gross contributions if an interest bearing account is established. Undesignated funds shall be distributed in accordance with the rules in this Chapter;
 - (g) printing and distributing the pledge form, the campaign report form and collection envelopes to the Local Campaign Organizations;
 - (h) maintaining an accounting of all funds raised and submitting an interim unaudited end-of-campaign report of the following:
 - (i) amounts contributed and pledged;
 - (ii) number of contributions; and
 - (iii) amounts distributed to each participating agency;
 - (i) preparing a list of all accepted organizations and distributing them to all applicants;
 - (j) coordinating an annual statewide or regional training session for Local Campaign Organizations and state employee volunteers;
 - (k) serving as liaison to participating charitable organizations;
 - (l) providing staff to administer the SECC in consultation with SECC Advisory Committee;
 - (m) preparing a budget of anticipated campaign and administrative expenses for the SECC;
 - (n) preparing a suggested annual work plan of goals and objectives for the SECC;
 - (o) educating state employees in the services provided through their support;
 - (p) overseeing the operations of the Local Campaign Organizations to ensure that they are performing their duties;
 - (q) deducting, before disbursements are made, direct costs of operating the campaign from the gross contributions and charging each federation or independent agency its proportionate share of the campaign's operational cost as determined in Subitem (7)(a) of this Rule. The Statewide Campaign Organization and each Local Campaign Organization shall justify the actual costs of the campaign, which shall not exceed 10% respectively of gross contributions.
 - (r) maintaining records related to campaign activities; and.
 - (s) providing such other central management functions as may be agreed upon as essential in its contract with the State Campaign Chair.
- (4) Local Campaign Chair. The Governor, if asked by the local charitable organizations accepted into the Combined Campaign, may appoint area representatives from either state government or the University of North Carolina system to serve as Local Chairs. These people shall be responsible for forming Local Advisory Committees for recruitment of volunteer state employees, enlisting and confirming management support, communicating to area state employees the Local Chairs' support for and participation in the campaign, and providing that the local campaign is conducted pursuant to these rules.
- (5) Local Advisory Committees. Each Committee shall be responsible for the review of prior local campaign results, the establishment of local goals as needed, the distribution of any undesignated funds made available for distribution, the development of budgets and campaign plans, the approval of local publicity materials, the conduct of campaigns and the recognition of volunteers and contributors.
- (a) Each committee shall be composed of at least 10 state employee members appointed by Local Campaign Chairs. Members shall serve four-year staggered terms. If a vacancy occurs, the Local Campaign Chair shall appoint a replacement to fill the unexpired term. No member shall serve more than two consecutive terms of four years.
 - (b) Each Local Advisory Committee shall meet at the discretion of the Local Campaign Chair. The Local Advisory Committee shall conduct business only when a quorum of one-third of the committee membership, and the Local Campaign Chair or his designee is present.
- (6) The State Campaign Chair shall approve or reject the State Campaign Organization's recommendation for Local Campaign Organization and name an agency as the Local

Campaign Organization. The Local Campaign Organization must identify itself on all printed materials as the local SECC organization. The necessary elements of the Local Campaign Organization are the following:

- (a) Any SECC charitable organization wishing to be selected as a Local Campaign Organization shall submit an application in accordance with the deadline set by the State Campaign Chair that includes:
 - (i) A written campaign plan sufficient in detail to allow the SCO to determine if the applicant could administer an efficient and effective Campaign. The campaign plan must include a proposed local campaign budget that details all estimated costs required to operate the local campaign. The budget shall not be based on the percentage of funds raised in the local campaign;
 - (ii) A statement signed by the applicant's director or equivalent pledging to:
 - (A) administer the local campaign fairly and equitably;
 - (B) conduct local campaign operations (such as training, kick-off and other events) separate from the applicant's non-SECC operations; and
 - (C) abide by the directions, decisions and supervision of the Statewide Campaign Organization, SECC Advisory Committee and the Local Advisory Committee.
 - (iii) A statement signed by the applicant's director or equivalent acknowledging that applicant is subject to the provisions of Title 1, Chapter 35, North Carolina Administrative Code, State Employees Combined Campaign.

- (b) For the purpose of selecting a Local Campaign Organization, the Statewide Campaign Chair and Statewide Campaign Organization shall consider the following criteria:
 - (i) whether the local organization is willing to conduct a local SECC;
 - (ii) whether the organization agrees to comply with the terms of the State/Local Organization's contract;
 - (iii) whether the organization has community and state employee support and volunteer involvement;
 - (iv) whether the organization has an ability and history of managing fund-raising campaigns that include:
 - (A) development of campaign strategy;
 - (B) development of campaign materials;
 - (C) development of volunteer campaign structures;
 - (D) training of volunteer solicitors;
 - (E) a financial structure and resources that can efficiently manage, account for, and disburse funds;
 - (F) being a participant organization of the campaign;
 - (G) ability to develop financial relationships with a network of statewide organizations so as to ensure the orderly transmittal, disbursement, accounting of, and reporting of donations and pledges;
 - (v) whether the organization is willing and able to provide a bond, if required, in an amount satisfactory to the SECC Advisory Committee to protect the participant organizations and contributors.
- (c) Each Local Campaign Organization shall assist the Local Campaign Chair

- and Local Advisory Committee in the training of volunteers, the ordering and distribution of campaign literature, and the collection of pledge reports and envelopes from the state agency volunteers.
- (7) A three-year contract between the state and the Statewide Campaign Organization, and the Statewide and each Local Campaign Organization, shall be executed in order to develop an audit trail. The contracts shall allow a charge for campaign expenses to be claimed by the Statewide Campaign Organization and each Local Organization. All terms and conditions of these contracts shall be subject to approval by the Statewide Campaign Chair. These contracts shall contain the following terms and conditions.
- (a) The Statewide Campaign Organization and each Local Campaign Organization shall recover from gross receipts of the campaign their expenses which shall reflect the actual costs of administering the campaign. Actual costs of the campaign to be recovered shall be documented and shall not exceed 10% of budgeted gross receipts. The campaign expenses shall be shared proportionately by all the recipient organizations reflecting their percentage share of gross campaign receipts. No costs associated with the campaign shall be borne by the State. All costs shall be borne by the proceeds from the campaign.
- (b) The failure of the Statewide Campaign Organization or the Local Campaign Organization to perform any of its respective responsibilities listed in this Rule may be grounds for removal and disqualification by the Chair to serve in its capacity for one year. Before deciding on removing or disqualifying an organization, the Chair shall give the organization an opportunity to respond to any allegations or failure to perform its responsibilities. The organization must submit its response to the Chair within 10 days from notification postmark date. The Chair shall issue a written determination based on a review of all of the information submitted.
- (8) Solicitation Campaign Organization. The campaign shall be divided into no more than 15 local administrative regions, and managed within each state department or university according to the following structure:
- (a) State Department Head or University Chancellor. The director or chancellor of each state department or university shall set the tone and provide leadership for the campaign in the following manner: This person shall ensure that voluntary fundraising within the department or university is conducted in accordance with these Rules, communicate support for the campaign to all employees, and appoint Department Executives within the agency's or university's central office.
- (b) Department Executives. Department Executives shall manage the campaign at the agency or university level. The Department Executives shall ensure that personal solicitations are organized and conducted in accordance with the procedures set forth in these rules and shall appoint local agency coordinators at agency institutions or local offices and shall provide direction and guidance to the local coordinators.
- (c) Local Agency Coordinators. Local agency coordinators shall be appointed by their respective Department Executives and shall manage the campaign in agency institutions or local offices. The local agency coordinators shall undertake the official campaign within their institution or local office and assist in setting campaign goals. The local agency coordinators shall ensure that personal solicitations are organized and in accordance with the procedures set forth in these rules and shall work with solicitors.
- (d) Local Agency Solicitors. Solicitors shall work with local agency coordinators to promote the campaign. Solicitors shall communicate the importance of the campaign to their fellow workers, encourage participation by payroll deduction, explain how to designate gifts and answer questions regarding the campaign. Solicitors shall personally solicit employees in their assigned area, report all pledges and contributions to the local agency coordinator and ensure that pledge forms are distributed, completed and collected. Solicitors shall also assist in planning campaign strategies and events.

History Note: Authority G.S. 143-3.3; 143-340(26);

143B-10;

Eff. February 1, 1984;

Amended Eff. December 1, 1994; December 1, 1993;

February 3, 1992; June 1, 1988;

Temporary Amendment Eff. February 15, 2002;

Amended Eff. August 1, 2004.

01 NCAC 35 .0201 APPLICATIONS

(a) To be eligible to participate in the State Employees Combined Campaign, an organization must apply annually for consideration, either as an independent organization or as a federation.

(b) Independent organizations or federations wishing to receive an application can do so by making a request in writing to the Statewide Campaign Organization. Such written requests may be made by letter, facsimile or email communication; however, telephone or verbal requests shall not be honored.

(c) Any independent organization or federation which was eligible to participate in the State Employees Combined Campaign immediately preceding the campaign for which application is currently made shall be required to submit to the Statewide Campaign Organization only its most recent information, which shall specifically update the requirements of 01 NCAC 35 .0202 and include a completed Certificate of Compliance.

History Note: Authority G.S. 143-3.3; 143-340(26);

143B-10;

Eff. February 1, 1984;

Amended Eff. December 1, 1993;

Temporary Amendment Eff. February 15, 2002;

Amended Eff. August 1, 2004.

01 NCAC 35 .0202 CONTENT OF APPLICATIONS

(a) All organizations seeking inclusion in the State Employees Combined Campaign submit an application to the state campaign. The application shall include a completed State Employees Combined Campaign Certificate of Compliance, provided by the Statewide Campaign Organization. Included in or attached to the Certificate of Compliance shall be:

- (1) A letter from the board of directors requesting inclusion in the campaign.
- (2) A complete description of services provided; the service area of the organization; and the percentage of its total support and revenue that is allocated to administration and fund-raising or copies of its annual report, newsletters, brochures or fact sheets as long as they include the required information.
- (3) The most recent audited financial statement prepared within the past two years.
- (4) A completed and signed copy of the organization's IRS 990 form exclusive of other IRS schedules regardless of whether or not the IRS requires the organization to file the form, to indicate program services, administrative and fund-raising expenses.
- (5) A statement of that assures compliance with all applicable State and Federal laws dealing with employment, board membership and client services. The policy shall be board

approved, in written form, and available to the SECC.

- (6) A description of the origin, purpose and structure of the organization or copies of articles of incorporation and bylaws.
- (7) A list of the current members of the board, including their addresses.
- (8) A letter from the board of directors certifying compliance with the eligibility standards listed in Paragraph (b) of this Rule.

(b) A federation may submit applications on behalf of its member agencies; however, the application shall include a completed and signed Certificate of Compliance for each member agency. If any member agency is new to the federation, or did not participate in the SECC during the previous year, the federation shall provide a completed application and sufficient documentation to show that the member agency is in compliance with all eligibility criteria. By the submission of such, the federations shall certify that all of its member agencies comply with all the SECC rules, unless there are exceptions. If there are exceptions to the rules, the federations shall disclose such. The SECC Advisory Committee shall accept or reject the certifications of the eligibility of the member agencies of the federations based upon criteria in these rules. If the Committee requests information supporting a certification of eligibility, that information shall be furnished promptly. Failure to furnish such information within 10 days of the notification postmark date constitutes grounds for the denial of eligibility of that member agency.

(c) The SECC Advisory Committee may elect to decertify a federation or independent agency which makes a false certification, subject to the requirement that any federation or independent agency that the Committee proposes to decertify shall be notified by the Statewide Campaign Organization of the Committee's decision stating the grounds for decertification.

The federation or independent agency may file an appeal to the Committee within 10 days of the notification postmark date. False certifications are presumed to be deliberate. The presumption may be overcome by evidence presented at the appeal hearing.

(d) Organizations shall meet the following criteria to be accepted as participants in the Combined Campaign:

- (1) Shall be licensed to solicit funds in North Carolina if a license is required by law and provide written proof of the same. All organizations applying as domestic or foreign nonprofit corporations shall also submit a certificate of existence (for domestic corporations) or a certificate of authorization (for foreign corporations) issued by the office of the North Carolina Secretary of State pursuant to G.S. 55A-1-28.
- (2) Shall provide written proof of tax exempt status for both federal income tax under section 501(c)(3) of the Internal Revenue Code and state tax purposes under Sections 105-125 and 105-130.11(3), respectively, of the North Carolina General Statutes, but the organization shall not be a private foundation as defined in section 509(a) of the Internal Revenue Code. Organizations shall certify that contributions

- from state employees are tax deductible by the donor under N.C. and federal law.
- (3) Shall prepare and make available to the general public an audited financial statement prepared by a CPA within the past two years. The SECC Advisory Committee shall permit organizations with annual budgets of less than three hundred thousand dollars (\$300,000) total support and revenue to submit an audited financial statement or review prepared by a CPA. Total support and revenue is determined by the IRS 990 form covering the organization's most recent fiscal year ending not more than two years prior to the current year's campaign date. The CPA opinion rendered on the financial statements shall be unqualified. The year-end of such audited financial statement or review shall be no more than two years prior to the current year's campaign date. The SECC Advisory Committee may grant an exception to this requirement if an organization has filed its Articles of Incorporation with the Secretary of State's Office since March 1 of the preceding year of the current campaign.
- (4) Shall provide a completed and signed copy of the organization's IRS 990 form exclusive of other IRS schedules regardless of whether or not the IRS requires the organization to file the form, to indicate program services, administrative and fund-raising expenses. The IRS 990 form and CPA audit or review shall cover the same fiscal year and, if revenue and expenses on the two documents differ, these amounts shall be reconciled on an accompanying statement by the CPA who completed the financial audit or review. The SECC may reject any application from an agency with fund-raising and administrative expenses in excess of 25 percent of total revenue, unless the agency demonstrates to the Committee that its actual expenses for those purposes are reasonable under all the circumstances of the case.
- (5) Shall certify that all publicity and promotional activities are truthful and non-deceptive and that all material provided to the SECC is truthful, non-deceptive, includes all material facts, and makes no exaggerated or misleading claims.
- (6) Shall agree to maintain the confidentiality of the contributor list unless otherwise required by law.
- (7) Shall not permit payments of commissions, kickbacks, finders fees, percentages, bonuses, or overrides for fund-raising, and permit no paid solicitations by a fund-raising consultant or solicitor in the SECC.
- (8) Shall have a written board policy that assures compliance with all applicable State and Federal laws dealing with clients of the

agency, employees of the agency and members of the governing board. Nothing herein denies eligibility to any organization which is otherwise eligible because it is organized by, on behalf of or to serve persons of a particular race, color, religion, sex, age, national origin or physical or mental disability.

- (9) Shall provide benefits or services to state employees or their families within a solicitation area and be available through a telephone number to respond to inquiries from state employees.

However, an international organization which provides health and welfare services overseas, whose activities do not require a local presence and which meet the other eligibility criteria in these Rules, may be accepted for participation in the campaign.

- (10) Shall not use SECC contributions for lobbying activities

History Note: Authority G.S. 143-3.3; 143-340(26); 143B-10; Eff. February 1, 1984; Amended Eff. December 1, 1994; December 1, 1993; February 3, 1992; June 1, 1988; Temporary Amendment Eff. February 15, 2002; Amended Eff. August 1, 2004.

01 NCAC 35 .0203 REVIEW AND SCHEDULE

- (a) Completed applications must be submitted to the Statewide Campaign Organization by February 15 to be included in the following fall campaign. The SECC Advisory Committee (the "Committee") shall not consider incomplete applications.
- (b) The Statewide Campaign Organization and the Committee shall review the application materials for accuracy, completeness and compliance with these rules. The Statewide Campaign Organization shall report to the Committee its recommendation on each application within four weeks of the closing deadline.
- (c) The Committee may reject an application for failing to meet any of the criteria outlined in these Rules.
- (d) Failure to supply any of the information required by the application may be judged a failure to comply with the requirements of public accountability, and the applicant may be ruled ineligible for inclusion.
- (e) The burden of demonstrating eligibility shall rest with the applicant.
- (f) If the due date in Paragraph (a) of this Rule falls on a Saturday, Sunday or a legal holiday, then the information must be received by the Statewide Campaign Organization or postmarked by the end of the next day which is not a Saturday, Sunday or a legal holiday.

History Note: Authority G.S. 143-3.3; 143-340(26); 143B-10; Eff. February 1, 1984; Amended Eff. February 3, 1992; May 1, 1987; Transferred and Recodified from 1 NCAC 35 .0301 Eff. December 1, 1993; Amended Eff. December 1, 1994; December 1, 1993; Temporary Amendment Eff. February 15, 2002;

Amended Eff. August 1, 2004.

01 NCAC 35 .0205 AGREEMENTS

(a) Following acceptance into the SECC, federations and charitable organization(s) shall execute a contract with the State. The parties shall agree to abide by the terms and conditions of the rules. The contract shall be signed by the State Chair, the SECC Executive Director, the organization's board chair and the organization's chief executive officer.

(b) Each federation shall be responsible for the accuracy of the distribution amount to their member agencies. Each federation shall have a policy to deduct no more than 10% of gross receipts. Each federation shall justify amounts deducted from their disbursements to participating agencies based on this policy. Each federation shall verify a bond or proof of insurance in an amount that covers the total amount of designated and undesignated funds to be allocated to each of the respective member agencies.

(c) Each federation is expected to disburse on the basis of actual funds received, both designated and undesignated, rather than the amount pledged. Each federation shall disburse contributions quarterly to participating member agencies.

(d) The SECC Advisory Committee may discontinue distribution of funds to any charitable organization(s) that ceases to comply with the criteria and procedures as set forth in these Rules. The remainder of the agency funds shall be distributed as the SECC Advisory Committee may designate.

(e) In the event a federation ceases to comply with the criteria and procedures as set forth in these Rules, the SECC Advisory Committee shall distribute the funds contributed to the federation, designated and undesignated, equally among the SECC charitable organizations under said federation.

(f) In the event a SECC charitable organization in a federation ceases to comply with the criteria and procedures as set forth in these Rules, the SECC Advisory Committee will distribute the funds contributed to that organization, designated and undesignated, to the federation for distribution in accordance with federation policy, notwithstanding 01 NCAC 35.0306(c).

(g) In the event a SECC charitable organization or any of its directors, officers or employees are the subject of any investigation or legal proceeding by any federal, state or local law enforcement authority based upon its charitable solicitation activities, delivery of program services, or use of funds, the organization must disclose the same to the SECC within 10 days of its learning of the investigation or proceeding. It must also disclose within 10 days the outcome of any such investigation or proceeding.

History Note: Authority G.S. 143-3.3; 143-340(26); 143B-10; Eff. December 1, 1994; Temporary Amendment Eff. February 15, 2002; Amended Eff. August 1, 2004.

01 NCAC 35 .0301 OTHER SOLICITATION PROHIBITED

No charitable organization shall engage in any solicitation activity independent of the SECC at any state employee work site. The prohibition does not include Red Cross sponsored Bloodmobiles or employee association solicitations.

History Note: Authority G.S. 143-3.3; 143-340(26); 143B-10; Eff. February 1, 1984; Transferred and Recodified from 1 NCAC 35 .0401 Eff. December 1, 1993; Amended Eff. December 1, 1993; Temporary Amendment Eff. February 15, 2002; Amended Eff. August 1, 2004.

01 NCAC 35 .0302 COERCIVE ACTIVITIES PROHIBITED

(a) In order to insure that donations are made on a voluntary basis, actions that do not allow free choice or that create an impression of required giving are prohibited. Peer solicitation is encouraged. Employee gifts shall be kept confidential, unless otherwise required by law except that employees may have their designated contributions acknowledged by the recipient organizations.

(b) All activities of the campaign shall be conducted in a manner that promotes a unified solicitation on behalf of all participants. While it is permissible to individually identify, describe or explain the charitable organizations in the campaign for informational purposes, no person affiliated with the campaign shall engage in any campaign activity that is construed to either advocate or criticize any specific charitable organization.

(c) The following activities are not permitted:

- (1) The providing and using of contributor lists for purposes other than the collection, forwarding, and acknowledgement of contributions. Recipient organizations that receive the names and addresses of state employees must segregate this information from all other lists of contributors and use the lists only for acknowledgement purposes. This segregated list shall not be sold or released to anyone outside of the recipient organization. Failure to protect the integrity of this information may result in penalties up to expulsion from the campaign;
- (2) The establishment of personal dollar goals or quotas; and
- (3) The developing and using of lists of non-contributors.

(d) Violations of these Rules by a participant organization may result in the decertification of the organization. The organization shall be given notice of and an opportunity to be heard prior to any action being taken by the Committee. Any organization that is dissatisfied with the determination of its decertification may file an appeal to the Committee within 10 days of the notification postmark date. An organization that is dissatisfied with the appeal determination of the Committee may commence a contested case by filing a petition under G.S. 150B-23 within 60 days of notification postmark date of the Committee's decision.

History Note: Authority G.S. 143-3.3; 143-340(26); 143B-10; Eff. February 1, 1984; Transferred and Recodified from 1 NCAC 35 .0402 Eff. December 1, 1993;

*Amended Eff. December 1, 1994; December 1, 1993;
Temporary Amendment Eff. February 15, 2002;
Amended Eff. August 1, 2004.*

01 NCAC 35 .0304 METHODS OF GIVING AND TERMS OF CONTRIBUTION

For purposes of this Chapter, the following definitions apply:

- (1) Payment may be made by payroll deduction, cash, personal check or credit card. If an employee chooses to use the payroll deduction method of contributing, he/she must agree to have the deduction continue for one year with equal amounts deducted from each check (monthly, semi-monthly or biweekly depending on the payroll). If the employee authorizes payroll deduction, the minimum amount of the deduction is five dollars (\$5.00) per month. All deductions will start with the January payroll and continue through December. If the employee discontinues employment, or chooses to discontinue payment, the state shall not be responsible for the collection of the unpaid pledge. No deduction shall be made for any period in which the employee's net pay, after all legal and previously authorized deductions, is insufficient to cover the allotment. No adjustments shall be made in subsequent periods to make up for deductions missed. An employee who wishes to participate in a subsequent campaign must file a new pledge form valid for the subsequent campaign.
- (2) The State of North Carolina shall provide new employees the opportunity to contribute to the SECC when any State or university human resources office is reviewing the details of employment with each new employee. There shall be no implication that a contribution is a requirement for employment, but material and an interpretation of the state policy and SECC shall be provided.
- (3) An employee transferred from one state agency to another must request a copy of the employee's payroll deduction authorization form from the first state agency and submit the copy to the second state agency or complete and submit an additional form if required by the second state agency.
- (4) Temporary, contract and retired state employees shall be eligible to participate in the SECC.

*History Note: Authority G.S. 143-3.3; 143-340(26); 143B-10;
Eff. February 1, 1984;
Amended Eff. February 3, 1992; May 1, 1987;
Transferred and Recodified from 1 NCAC 35 .0403 Eff. December 1, 1993;
Amended Eff. December 1, 1993;
Temporary Amendment Eff. February 15, 2002;
Amended Eff. August 1, 2004.*

01 NCAC 35 .0305 CAMPAIGN LITERATURE

(a) Each charitable organization accepted as a part of the campaign:

- (1) Shall provide information about its services including administrative and fund-raising costs, to the Local Campaign Organization for use in the local campaign;
- (2) Shall not be listed more than one time in the campaign literature unless the SECC Advisory Committee and the Statewide Campaign Organization, each determines the following:
 - (A) It is in contributors' interests to more specifically direct their gifts to separate geographic locations; and
 - (B) The organization maintains records that determine that gifts so designated to that geographic area accrue only to the benefit and purposes of the organization in that designated area;

(b) The State Employees Combined Campaign shall provide a campaign brochure designed by the SECC Advisory Committee and all publicity shall be subject to the State Chair's approval. Publicity shall not favor one agency or federation over another.

(c) The State Chair shall approve, prior to distribution, the content of any campaign pledge or distribution card to ensure that the information contained is accurate and complies with the State Controller's requirements for format and substance.

*History Note: Authority G.S. 143-3.3; 143-340(26); 143B-10;
Eff. February 1, 1984;
Amended Eff. May 1, 1987;
Transferred and Recodified from 1 NCAC 35 .0404 Eff. December 1, 1993;
Amended Eff. December 1, 1994; December 1, 1993;
Temporary Amendment Eff. February 15, 2002;
Amended Eff. August 1, 2004.*

01 NCAC 35 .0306 DESIGNATION CAMPAIGN

(a) Each employee may designate which agency or group of agencies shall benefit from his or her contribution to the State Employees Combined Campaign. The SECC shall provide each employee with a list of the approved agencies in the campaign in order to help them make the decision. The state employee may designate only the federations and agencies that are listed. Write-ins are prohibited.

(b) Designations made to organizations not listed are invalid, but shall be treated as undesignated funds and distributed accordingly.

(c) Contributions designated to a federation shall be shared in accordance with the federation's policy unless the federation has failed to comply with the criteria and procedures as set forth in these Rules. In the event of non-compliance by the federation, funds shall be distributed pursuant to Rule .0205(e) of this Chapter.

(d) All designated contributions shall be a minimum contribution of ten dollars (\$10.00) annually per agency designated. If a designation does not comply with the minimum required, the designation is invalid, and shall be treated as undesignated funds and distributed accordingly.

(e) An employee shall not change the designated agency or group of agencies designated to receive amounts pledged outside the time the campaign is being conducted.

History Note: Authority G.S. 143-3.3; 143-340(26); 143B-10; Eff. February 1, 1984; Transferred and Recodified from 1 NCAC 35 .0405 Eff. December 1, 1993; Amended Eff. December 1, 1994; December 1, 1993; Temporary Amendment Eff. February 15, 2002; Amended Eff. August 1, 2004.

01 NCAC 35 .0309 CAMPAIGN OPERATION

- (a) The official name of the state employee giving system of North Carolina is the State Employees Combined Campaign.
- (b) The campaign solicitation period shall be conducted annually during the period between August 1 and November 30. The Statewide Campaign Chair may specify the campaign period to be uniform statewide.
- (c) The fiscal year for the State Employees Combined Campaign shall be January 1 through December 31.

History Note: Authority G.S. 143-3.3; 143-340(26); 143B-10; Temporary Adoption Eff. February 15, 2002; Eff. August 1, 2004.

TITLE 2 - DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

02 NCAC 52B .0204 IMPORTATION REQUIREMENTS: BRUCELLOSIS

- (a) All cattle imported into North Carolina are subject to the following requirements:
 - (1) all cattle shall be identified by ear tag, or tattoo;
 - (2) cattle originating from any certified brucellosis -free State, as defined in 9 Code of Federal Regulations (CFR) 78.1, may enter North Carolina provided the following is recorded on the official health certificate:
 - (A) individual identification of each animal; and
 - (B) brucellosis status of the State of origin;
 - (3) no cattle shall be accepted (other than those consigned to immediate slaughter) which have been adult vaccinated, in accordance with the current edition of the Uniform Methods and Rules for Brucellosis Eradication of the United States Department of Agriculture -Animal and Plant Health Inspection Service, against brucellosis or originate from infected, exposed or quarantined herds.
- (b) In addition to the requirements of Paragraph (a) of this Rule, cattle imported from brucellosis class A states, as defined in 9 CFR 78.1, shall comply with the following:
 - (1) all females and bulls eight months of age and older must test negative for brucellosis within

30 days prior to entry into North Carolina, except:

- (A) dairy heifers under 20 months of age that are vaccinated against brucellosis;
 - (B) heifers of the beef breeds less than 24 months of age that are vaccinated against brucellosis; or
 - (C) cattle originating from any certified, brucellosis-free herd, as defined in 9 CFR 78.1, provided the following is recorded on the official health certificate:
 - (i) individual identification of each animal;
 - (ii) herd certification number;
 - (iii) date of last herd test; and
- (2) cattle from class A states which originate from the farm of origin and move directly to a state or federally licensed stockyard or to a farm in North Carolina in compliance with this Rule are not required to be tested between 45 and 120 days after entry. However, retests may be performed by a representative of the State Veterinarian at no expense to the owner. Eligible cattle which have been commingled in a stockyard prior to importation must, in addition to the requirements of this Rule, test negative for brucellosis between 45 and 120 days after arrival in this state.
- (c) In addition to the requirements of Paragraph (a) of this Rule, cattle imported from class B states, as defined in 9 CFR 78.1, shall comply with the following:
- (1) a permit must be issued to the person importing the cattle by the State Veterinarian of North Carolina prior to entry;
 - (2) all females and bulls eight months of age or older must test negative within 30 days prior to entry into North Carolina except:
 - (A) dairy heifers under 20 months of age that are vaccinated against brucellosis;
 - (B) heifers of the beef breeds less than 24 months of age that are vaccinated against brucellosis;
 - (C) cattle originating from any certified brucellosis-free herd, as defined in 9 CFR 78.1, provided that the following is recorded on the official health certificate:
 - (i) individual identification of each animal;
 - (ii) herd certification number; and
 - (iii) date of last herd test;
 - (3) all cattle shall be quarantined upon arrival and must test negative between 45 and 120 days after arrival in order to be released from quarantine.

History Note: Authority G.S. 106-307.5;

*Eff. April 1, 1984;
Amended Eff. August 1, 2004; May 1, 1992; June 1, 1988;
December 1, 1987.*

**TITLE 10A - DEPARTMENT OF HEALTH &
HUMAN SERVICES**

10A NCAC 14C .1501 DEFINITIONS

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

- (1) "Bereavement counseling" means counseling provided to a hospice patient's family or significant others to assist them in dealing with issues of grief and loss.
- (2) "Caregiver" means the person whom the patient designates to provide the patient with emotional support, physical care, or both.
- (3) "Care plan" means a plan as defined in 10A NCAC 13K .0102 of the Hospice Licensing Rules.
- (4) "Continuous care" means care as defined in 42 CFR 418.204, the Hospice Medicare Regulations.
- (5) "Home-like" means furnishings of a hospice inpatient facility or a hospice residential care facility as defined in 10A NCAC 13K .1110 or .1204 of the Hospice Licensing Rules.
- (6) "Homemaker services" means services provided to assist the patient with personal care, maintenance of a safe and healthy environment and implementation of the patient's care plan.
- (7) "Hospice" means any coordinated program of home care as defined in G.S. 131E-176(13a).
- (8) "Hospice inpatient facility" means a facility as defined in G.S. 131E-176(13b).
- (9) "Hospice residential care facility" means a facility as defined in G.S. 131E-176(13c).
- (10) "Hospice service area" means for residential care facilities, the county in which the hospice residential care facility will be located and the contiguous counties for which the hospice residential care facility will provide services.
- (11) "Hospice services" means services as defined in G.S. 131E-201(5b).
- (12) "Hospice staff" means personnel as defined in 10A NCAC 13K .0102 of the Hospice Licensing Rules.
- (13) "Interdisciplinary team" means personnel as defined in G.S. 131E-201(6).
- (14) "Palliative care" means treatment as defined in G.S. 131E-201(8).
- (15) "Respite care" means care provided as defined in 42 CFR 418.98.

*History Note: Authority G.S. 131E-177(1);
Eff. July 1, 1994;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. August 1, 2004.*

10A NCAC 14C .1502 INFORMATION REQUIRED OF

APPLICANT

(a) An applicant proposing to develop a hospice shall complete the application form for Hospice Services. An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall complete the application form for Hospice Inpatient and Hospice Residential Care Services.

(b) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall provide the following information:

- (1) the annual unduplicated number of hospice patients projected to be served in each of the first two years following completion of the project and the methodology and assumptions used to make the projections;
- (2) the projected number of hospice patients to be served by quarter for the first 24 months following completion of the project and the methodology and assumptions used to make the projections;
- (3) the projected number of patient care days, by level of care (i.e., routine home care, respite care, and inpatient care), by quarter, to be provided in each of the first two years of operation following completion of the project and the methodology and assumptions used to make the projections shall be clearly stated;
- (4) the projected number of hours of continuous care to be provided in each of the first two years of operation following completion of the project and the methodology and assumptions used to make these projections;
- (5) the projected average annual cost per hour of continuous care for each of the first two operating years following completion of the project and the methodology and assumptions used to make the projections;
- (6) the projected average annual cost per patient care day, by level of care (i.e., routine home care, respite care, and inpatient care), for each of the first two operating years following completion of the project and the methodology and assumptions used to project the average annual cost; and
- (7) documentation of attempts made to establish working relationships with sources of referrals to the hospice services and copies of proposed agreements for the provision of inpatient care.

(c) An applicant proposing to develop a hospice shall commit that it shall comply with all certification requirements for participation in the Medicare program within one year after issuance of the certificate of need.

(d) An applicant proposing to develop hospice inpatient or hospice residential care facility beds shall also provide the following information:

- (1) a description of the means by which hospice services shall be provided in the patient's own home;
- (2) copies of the proposed contractual agreements, with a licensed hospice or a licensed home care agency with a hospice designation on its

- license, for the provision of hospice services in the patient's own home;
- (3) a copy of the admission policies, including the criteria that shall be used to select persons for admission and to assure that terminally ill patients are served in their own homes as long as possible; and
- (4) documentation that a home-like setting shall be provided in the facility.

History Note: Authority G.S. 131E-177(1); 131E-183; Eff. July 1, 1994; Amended Eff. November 1, 1996; Temporary Amendment Eff. January 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 14C .1503 PERFORMANCE STANDARDS

(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall demonstrate that:

- (1) the average occupancy rate of the licensed hospice beds in the facility is projected to be at least 50% for the last six months of the first operating year following completion of the project;
- (2) the average occupancy rate for the licensed hospice beds in the facility is projected to be at least 65% for the second operating year following completion of the project; and
- (3) if the application is submitted to address the need for a hospice residential care facility, each existing facility which is located in the hospice service area and which has licensed hospice beds of the type proposed by the applicant attained an occupancy rate of at least 65% for the 12 month period reported on that facility's most recent Licensure Renewal Application Form.

(b) An applicant proposing to add beds to an existing hospice inpatient facility or hospice residential care facility shall document that the average occupancy of the licensed hospice inpatient and hospice residential care facility beds in its existing facility was at least 65% for the nine months immediately preceding the submittal of the proposal.

(c) An applicant proposing to develop a hospice shall demonstrate that no less than 80% of the total combined number of days of hospice care furnished to Medicaid and Medicare patients will be provided in the patients' residences in accordance with 42 CFR 418.302(f)(2).

History Note: Authority G.S. 131E-177(1); Eff. July 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. January 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 14C .2202 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes to increase dialysis stations in an existing certified facility or relocate stations must provide the following information:

- (1) Utilization rates;
- (2) Mortality rates;
- (3) The number of patients that are home trained and the number of patients on home dialysis;
- (4) The number of transplants performed or referred;
- (5) The number of patients currently on the transplant waiting list;
- (6) Hospital admission rates, by admission diagnosis, i.e., dialysis related versus non-dialysis related;
- (7) The number of patients with infectious disease, i.e., hepatitis and AIDS, and the number converted to infectious status during last calendar year.

(b) An applicant that proposes to increase the number of dialysis stations in an existing facility, or establish a new dialysis station, or the relocation of existing dialysis stations must provide the following information requested on the End Stage Renal Disease (ESRD) Treatment application form:

- (1) A signed written agreement with an acute care hospital that specifies the relationship with the dialysis facility and describes the services that the hospital will provide to patients of the dialysis facility. The agreement must comply with 42 C.F.R., Section 405.2100.
- (2) A written agreement with a transplantation center describing the relationship with the dialysis facility and the specific services that the transplantation center will provide to patients of the dialysis facility. The agreements must include the following:
 - (A) timeframe for initial assessment and evaluation of patients for transplantation,
 - (B) composition of the assessment/evaluation team at the transplant center,
 - (C) method for periodic re-evaluation,
 - (D) criteria by which a patient will be evaluated and periodically re-evaluated for transplantation, and
 - (E) signatures of the duly authorized persons representing the facilities and the agency providing the services.
- (3) Documentation that the water supply will comply with 42 C.F.R., Section 405.2100.
- (4) Documentation of standing service from a power company and back-up capabilities.
- (5) The location of the site on which the services are to be operated. If such site is neither owned by nor under option to the applicant, the applicant must provide a written commitment to pursue acquiring the site if and when the approval is granted, must specify a

- secondary site on which the services could be operated should acquisition efforts relative to the primary site ultimately fail, and must demonstrate that the primary and secondary sites are available for acquisition.
- (6) Documentation that the services will be provided in conformity with applicable laws and regulations pertaining to staffing, fire safety equipment, physical environment, and other relevant health and safety requirements.
 - (7) The projected patient origin for the services. All assumptions, including the methodology by which patient origin is projected, must be stated.
 - (8) For new facilities, documentation that at least 80 percent of the anticipated patient population resides within 30 miles of the proposed facility.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. March 1, 1989; Temporary Amendment Eff. January 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 14C .2203 PERFORMANCE STANDARDS

- (a) An applicant proposing to establish a new End Stage Renal Disease facility shall document the need for at least 10 dialysis stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the facility.
- (b) An applicant proposing to increase the number of dialysis stations in an existing End Stage Renal Disease facility shall document the need for the additional stations based on utilization of 3.2 patients per station per week for the total number of certified dialysis as of the end of the first operating year of the additional stations.
- (c) An applicant shall provide all assumptions, including the methodology by which patient utilization is projected.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2003; January 1, 2002; Eff. April 1, 2003; Amended Eff. August 1, 2004;

10A NCAC 14C .2403 PERFORMANCE STANDARDS

- (a) An applicant proposing to add ICF/MR beds to an existing facility shall not be approved unless the average occupancy, over the six months immediately preceding the submittal of the application, of the total number of ICF/MR beds within the facility in which the new beds are to be operated was at least 90 percent.
- (b) An applicant proposing to establish new ICF/MR beds shall not be approved unless occupancy is projected to be at least 90 percent for the total number of ICF/MR beds proposed to be operated in the entire facility, no later than one year following the completion of the proposed project.
- (c) An applicant proposing to establish new ICF/MR beds shall comply with one of the following models:
 - (1) a residential community based freestanding facility with six beds or less, i.e., group home model;

- (2) a community-based facility with 7 to 15 beds if documentation is provided that a facility of this size is necessary because adequate residential community based freestanding facilities are not available in the Area Authority catchment area to meet the needs of the population to be served; or
- (3) a facility with greater than 15 beds if the proposed new beds are to be established in response to an adjusted need determination contained in the 2003 State Medical Facilities Plan.
- (d) No more than three intermediate care facilities for the mentally retarded housing a combined total of 18 persons shall be developed on contiguous pieces of property, with the exception that this standard shall be waived for beds proposed to be established in response to an adjusted need determination contained in the 2003 State Medical Facilities Plan.

History Note: Authority G.S. 131E-177(1), (5); 131E-183; Eff. November 1, 1996; Temporary Amendment Eff. January 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 14C .2703 PERFORMANCE STANDARDS

- (a) An applicant proposing to acquire a mobile magnetic resonance imaging (MRI) scanner shall:
 - (1) if an applicant operates an existing mobile MRI scanner in the Health Service Area(s), demonstrate that at least 2900 MRI procedures were performed in the last year on each of its existing mobile MRI scanners operating in the Health Service Area(s), (e.g., HSA I), in which the proposed mobile MRI scanner will be located [Note: This is not the average number of procedures performed on all of the applicant's mobile MRI scanners.];
 - (2) demonstrate annual utilization in the third year of operation is reasonably projected to be at least 2900 MRI procedures on each of its existing, approved and proposed mobile MRI scanners to be operated in the Health Service Area(s), (e.g., HSA I), in which the proposed equipment will be located [Note: This is not the average number of procedures performed on all of the applicant's mobile MRI scanners.];
 - (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (b) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on the utilization of fixed MRI scanners, shall:
 - (1) if an applicant operates an existing MRI scanner in the proposed MRI service are, demonstrate that its existing MRI scanners, except mobile MRI scanners, operating in the proposed MRI service area in which the proposed MRI scanner will be located

performed an average of at least 2900 MRI procedures per scanner in the last year;

(2) demonstrate annual utilization in the third year of operation is reasonably projected to be an average of 2900 procedures per scanner for all existing, approved and proposed MRI scanners or mobile MRI scanners to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and

(3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(c) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on utilization of mobile MRI scanners, shall:

- (1) if the applicant does not own or lease an MRI scanner or have an approved MRI scanner, demonstrate annual utilization in the third year of operation is reasonably projected to be at least 2080 MRI procedures per year for the proposed MRI scanner;
- (2) if the applicant already owns or leases an MRI scanner or has an approved MRI scanner, demonstrate annual utilization is reasonably projected to be an average of 2900 MRI procedures per scanner for all existing, approved and proposed MRI scanners or mobile MRI scanners to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and
- (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(d) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on the absence of an existing or approved fixed MRI scanner in the MRI service area shall:

- (1) demonstrate annual utilization of the proposed MRI scanner in the third year of operation is reasonably projected to be at least 2080 MRI procedures per year; and
- (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

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

effective April 1, 2001; Temporary Amendment Eff. January 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective, August 1, 2002; Temporary Amendment effective January 1, 2003; Amended Eff. August 1, 2004; April 1, 2003.

10A NCAC 14C .3603 PERFORMANCE STANDARDS

An applicant proposing to acquire a gamma knife shall:

- (1) demonstrate that the gamma knife shall be utilized at an annual rate of at least 250 procedures per machine based on utilization in the fourth quarter of the third year of operation following completion of the project, multiplied by four, and shall provide all assumptions and data supporting the methodology used for the projections;
- (2) provide the number of procedures projected to be performed for clinical purposes and the number of procedures projected to be performed for research purposes in each of the first operating years of the proposed gamma knife.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 14C .3703 PERFORMANCE STANDARDS

(a) An applicant proposing to acquire a dedicated PET scanner, including a mobile dedicated PET scanner, shall demonstrate that:

- (1) the proposed dedicated PET scanner, including a proposed mobile dedicated PET scanner, shall be utilized at an annual rate of at least 1,220 PET procedures by the end of the third year following completion of the project;
- (2) if an applicant operates an existing dedicated PET scanner, its existing dedicated PET scanners, excluding those used exclusively for research, performed an average of 1,220 PET procedures per PET scanner in the last year; and
- (3) its existing and approved dedicated PET scanners shall perform an average of at least 1,220 PET procedures per PET scanner during the third year following completion of the project.

(b) The applicant shall describe the assumptions and provide data to support and document the assumptions and methodology used for each projection required in this Rule.

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

Eff. January 4, 1994;
Temporary Amendment Eff. January 1, 2002; January 1, 2001;
Amended Eff. August 1, 2002;
Temporary Amendment effective January 1, 2002 amends and
replaces the permanent rule effective August 1, 2002;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. August 1, 2004; April 1, 2003.

**10A NCAC 41A .0208 CONTROL MEASURES --
 SMALLPOX; VACCINIA DISEASE**

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

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

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

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

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

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

History Note: Authority G.S. 130A-144;
Temporary Adoption Eff. February 14, 2003;
Eff. August 1, 2004.

10A NCAC 43F .1203 SCREENING REQUIREMENTS

(a) Medical facilities that provide birthing or inpatient neonatal services shall:

- (1) Physiologically screen each newborn in each ear for the presence of permanent hearing loss before the infant is discharged from the medical facility after birth unless medical complications prevent such; and
- (2) Maintain the equipment necessary to physiologically screen each newborn for the presence of permanent hearing loss.

(b) Any physician that attends a newborn within 30 days of birth and determines that the newborn has not been physiologically screened in each ear for the presence of

permanent hearing loss shall refer the patient for such screening within 30 days of birth or as soon as is practical.

(c) Parents or guardians may object to the hearing screening in accordance with G.S. 130A-125(b).

(d) When an attending physician has issued an order that diagnostic auditory evoked response testing be performed for an infant who exhibits medically recognized risk factors of auditory deficits, a hearing screening is not required to be performed on the infant. The outcome of the diagnostic testing procedure shall be reported in accordance with 10A NCAC 43F .1204.

History Note: Authority G.S. 130A-125; S.L. 1998, c. 131, s. 13;

Temporary Adoption Eff. October 1, 1999;
Eff. August 1, 2000;
Amended Eff. August 1, 2004.

10A NCAC 70E .0301 DEFINITIONS

Except when the context of the Rule indicates that the term has a different meaning the following definitions shall apply to the rules in Chapter 70:

- (1) Agency means a county department of social services or a private child placing agency that is authorized by law to receive children for purposes of placement in family foster homes or adoptive homes.
- (2) Owner means any individual who is a sole proprietor, co-owner, partner or shareholder holding an ownership or controlling interest of five percent or more of the applicant entity. Owner includes a "principal" or "affiliate" of the agency.

History Note: Authority G.S. 131D; 131D-10.3; 131D-10.5; 143B-153;

Eff. July 1, 1982;
Temporary Amendment Eff. February 1, 2002;
Amended Eff. July 18, 2002;
Temporary Amendment Eff. July 1, 2003;
Amended Eff. August 1, 2004.

10A NCAC 70E .0506 REVOCATION OR DENIAL

(a) The Department of Health and Human Services may revoke licenses when an agency authorized by law to investigate allegations of abuse or neglect finds the foster parent has abused or neglected a child.

(b) The Department of Health and Human Services may revoke a license when the foster family home is not in compliance with licensing standards.

(c) The Department of Health and Human Services shall base the revocation on the following:

- (1) a child's circumstances;
- (2) a child's permanency plan;
- (3) the nature of the non-compliance; and
- (4) the circumstances of the placement.

(d) The Department of Health and Human Services must make the foster parents aware of the reasons for the agency's decision to revoke their license.

(e) When foster parents' license have been revoked, they must submit their license to the agency for it to be returned to the Division of Social Services, Children's Services Section.

(f) The Department of Health and Human Services shall deny licensure to an applicant when an applicant meets any of the following conditions:

- (1) owns a facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license revoked;
- (2) owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or
- (3) owns a facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) or G.S. 131D, Article 1A.

(g) The denial of licensure pursuant to Paragraph (f) of this Rule shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at www.ncleg.net/Statutes/Statutes.html.

(h) Appeal procedures specified in 10A NCAC 70L .0102, WAIVER OF LICENSING RULES AND APPEAL PROCEDURES, shall be applicable for persons seeking an appeal to the Department's decision to revoke or deny a license. If the action is reversed on appeal, the applicant may re-apply for licensure.

History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153; Eff. July 1, 1982; Amended Eff. May 1, 1990; February 1, 1986; Temporary Amendment Eff. February 1, 2002; Amended Eff. July 18, 2002; Temporary Amendment Eff. July 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 70F .0102 LICENSURE

(a) Licenses issued shall be in effect for two years unless suspended or revoked. Appeal procedures specified in 10A NCAC 70L .0102 shall apply for persons seeking an appeal of the licensing authority's decision to deny, suspend, or revoke a license.

(b) Licensure shall be denied to an applicant when an applicant meets any of the following conditions:

- (1) Owns a facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license revoked;
- (2) Owns a facility or agency licensed under G.S. 122C and that facility or agency incurred a penalty for a Type A or B violation under Article 3 of G.S. 122C; or
- (3) Owns facility or agency licensed under G.S. 122C or G.S. 131D and that facility or agency had its license suspended or downgraded to provisional status as a result of violations under G.S. 122C-24.1(a) or G.S. 131D, Article 1A.

(c) The denial of licensure pursuant to Paragraph (b) of this Rule shall be in accordance with G.S. 122C-23(e1) and G.S. 131D-10.3(h). A copy of these statutes may be obtained through the internet at www.ncleg.net/Statutes/Statutes.html

History Note: Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153; Eff. February 1, 1986; Amended Eff. July 18, 2002; July 1, 1990; Temporary Amendment Eff. July 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 70F .0205 RESPONSIBILITY TO LICENSING AUTHORITY

(a) The agency shall annually submit to the Department of Health and Human Services the information and materials to document compliance with the licensure regulations and to support issuance of a license.

(b) The agency shall submit to the Department of Health and Human Services an annual statistical report of program activities.

(c) The agency shall provide written notification immediately to the Department of Health and Human Services of change in the administrator.

(d) When the agency receives a report alleging abuse or neglect in a home supervised or a facility operated by the agency, the agency shall immediately notify the legal custodian and the Department of Health and Human Services.

(e) The agency shall submit to the, Department of Health and Human Services, within 30 days of the case decision, a report on the circumstances of the allegation and results of the investigation of the allegation of abuse or neglect. This report shall be reviewed and evaluated by the Department of Health and Human Services and used in consultation and technical assistance with the agency and the county department of social services conducting the investigation to assist them in providing services to protect children in placement.

(f) When there is a death of a child in placement in a home supervised by the agency, the director or his designee shall immediately notify the Department of Health and Human Services.

(g) The agency shall provide to the Department of Health and Human Services at the time of license application the legal name and social security number of each individual who is an owner.

(h) The agency shall provide to the Department of Health and Human Services written notification of a change in the legal name of any owner and individuals holding an interest of at least five percent within 30 days following the changes.

(i) The agency shall notify the mental health area program or county program responsible for the catchment area where services are being provided within 24 hours of placement that a child may require MH/SAS/DD services.

(j) If the agency is monitored by a mental health area program or county program, the agency shall provide data to the mental health area program or county program as required by Department of Health and Human Services for monitoring and reporting to the General Assembly.

History Note: Authority G.S. 131D-1; 131D-10.3; 131D-10.5; 143B-153; Eff. February 1, 1986; Amended Eff. July 18, 2002; July 1, 1990; Temporary Amendment Eff. July 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 70I .0201 DEFINITIONS

In addition to the definitions found in G.S. 131D-10.2, the following definitions apply to the rules in Subchapters 70I and 70J.

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| <p>(1) Case Plan means a written document, the Family Services Case Plan, that describes the social and child welfare services and activities to be provided by the county department of social services or other state and local agencies for the purpose of achieving a permanent family relationship for the child.</p> <p>(2) Child-Caring Institution means a residential child-care facility utilizing permanent buildings located on one site for 10 or more foster children.</p> <p>(3) Children's Foster Care Camp means a residential child-care facility that provides foster care at either a permanent camp site or in a wilderness setting.</p> <p>(4) Direct Service Personnel means staff responsible for the direct services provided to children and their families including, but not limited to, child-care workers, residential counselors, house/teaching parents, social workers, recreation and education staff.</p> <p>(5) Director means the person who is in charge of the agency and who is responsible for developing and supervising the program of residential child care and services.</p> <p>(6) Emergency Shelter Care means 24 hour care provided in a residential child-care facility for a period not to exceed 90 days, in accordance with 10A NCAC 70J .0200.</p> <p>(7) Family Time means specific period arranged for a child who resides in a residential child-care facility to spend with kin either on-site or away from the residential child-care facility.</p> <p>(8) Foster Child means an individual less than 18 years of age who has not been emancipated under North Carolina law, or one who is 18 to 21 years of age and continues to reside in the residential child-care facility, who is dependent, neglected, abandoned, destitute, orphaned, delinquent, or otherwise in need of care away from home and not held in detention.</p> <p>(9) Full License means a license issued for one year when all licensing requirements are met.</p> <p>(10) Group Home means a residential child-care facility operated either under public or private auspices that receives for 24-hour care no more than nine children. This number includes the caregivers' own relatives residing in the home under the age of 18. The composition of the group shall include no more than two children under the age of two, four children under the age of six, and six children under the age of 12. A group home shall not provide day care, nor shall it be available to adults in the community who wish to rent rooms.</p> | <p>(11) Individualized Service Plan means a written document that describes a child's needs, goals and objectives in a residential child-care facility and the direct services staff tasks and assignments to meet a child's and family's needs, goals and objectives.</p> <p>(12) License means permission granted in writing to a corporation, agency or county government by the Department of Health and Human Services to engage in the provision of full-time child care or child-placing activities based upon an initial determination, and annually thereafter, that such corporation, agency, or a county government has met and complied with standards set forth in this Subchapter.</p> <p>(13) Owner means any individual who is a sole proprietor, co-owner, partner or shareholder holding an ownership or controlling interest of five percent or more of the applicant entity. Owner includes a "principal" or "affiliate" of the residential child care facility.</p> <p>(14) Private Agency Residential Child-Care Facility means a residential child-care facility under the auspices of a licensed child-placing agency or another private residential child-care facility.</p> <p>(15) Private Residential Child-Care-Facility means a residential child-care facility under the control, management and supervision of a private non-profit or for-profit corporation, sole proprietorship or partnership that operates independently of a licensed child-placing agency or any other residential child-care facility.</p> <p>(16) Provisional License means a license issued for a maximum of six months enabling a facility to operate while some below standard component of the program is being corrected. A provisional license for the same below standard program component shall not be renewed.</p> <p>(17) Public Agency Residential Child-Care Facility means a residential child-care facility under the control, management or supervision of a county department of social services.</p> <p>(18) Public Residential Child-Care Facility means a residential child-care facility under the control, management or supervision of a county government other than a county department of social services.</p> <p>(19) Visiting Resource means volunteers from the community whose homes children visit on the weekends, holiday or vacations.</p> <p>(20) Volunteer means a person working in a staff position for an agency who is not paid.</p> |
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History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153; Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30); Amended Eff. July 18, 2002; Temporary Amendment Eff. July 1, 2003;

Amended Eff. August 1, 2004.

10A NCAC 70I.0202 RESPONSIBILITY TO DIVISION OF SOCIAL SERVICES

- (a) The residential child-care facility shall annually submit to the Division of Social Services the information and materials required by rules in Subchapters 70I and 70J to document compliance and to support issuance of a license.
- (b) The residential child-care facility shall submit to the Division of Social Services an annual statistical report of program activities as required in Subchapters 70I and 70J.
- (c) The residential child-care facility shall provide written notification to the Division of Social Services of a change in the director.
- (d) The office of a residential child-care facility shall be maintained in North Carolina. The licensee shall carry out activities under the North Carolina license from this office.
- (e) The current license of a residential child-care facility shall be posted at all times in a conspicuous place within the facility.
- (f) When there is a report alleging abuse or neglect in a residential child-care facility, the director or his designee shall immediately notify the Division of Social Services.
- (g) The residential child-care facility shall submit to the Division of Social Services a report on the circumstances of the allegation and results of the investigation of the allegation of abuse or neglect. This report, along with other information, shall be reviewed and evaluated by the Division of Social Services and used in consultation and technical assistance to the residential child-care facility to improve services to protect children in placement in the residential child-care facility.
- (h) The residential child-care facility shall have and follow policies and procedures for handling any suspected incidents of child abuse or neglect involving staff. The policies and procedures must include:
 - (1) A provision for reporting any allegations of abuse or neglect to the appropriate county department of social services for investigation in accordance with G.S. 7B-301.
 - (2) A provision for recording any suspected incident of abuse or neglect and for promptly reporting it to the executive director or to the governing body or advisory board.
 - (3) A provision for promptly notifying the Division of Social Services of any allegations of abuse or neglect of any child in care.
 - (4) A provision for preventing a recurrence of the alleged incident pending investigation.
 - (5) A provision for written notification to the Division of Social Services of any findings of such an investigation of child abuse or neglect, specifying only whether there was substantiation or unsubstantiation of the case.
- (i) When there is a death of a child who is a resident of a residential child-care facility, the director or his designee shall immediately notify the licensing authority.
- (j) The agency shall provide to the licensing authority at the time of license application the legal name and social security number of each individual who is an owner.
- (k) The agency shall provide to the licensing authority written notification of a change in the legal name of any owner and

individuals holding an interest of at least five percent within 30 days following the changes.

(k)(l) The residential child care facility shall notify the mental health area program or county program responsible for the catchment area where services are being provided within 24 hours of placement that a child may require MH/SAS/DD services.

(m) If the residential child care facility is monitored by a mental health area program or county program, the residential child care facility shall provide data to the mental health area program or county program as required by Department of Health and Human Services for monitoring and reporting to the General Assembly.

History Note: Authority G.S. 131D-10.3; 131D-10.5; 143B-153;

Eff. July 1, 1999 (See S.L. 1999, c. 237, s. 11.30);

Amended Eff. July 18, 2002;

Temporary Amendment Eff. July 1, 2003;

Amended Eff. August 1, 2004.

TITLE 11 - DEPARTMENT OF INSURANCE

11 NCAC 08 .0702 NATURE OF STANDARD CERTIFICATE

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

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

(b) The holder of a standard certificate may 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.

(c) A code enforcement official holding a certificate indicating a specified level of proficiency in a particular type of position may 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.

History Note: Authority G.S. 143-151.13; 143-151.16;

Eff. January 15, 1980;

Amended Eff. August 1, 2004; August 1, 1990; July 1, 1983.

11 NCAC 08 .0706 REQUIRED QUALIFICATIONS: TYPES AND LEVELS

(a) Qualification Levels

- (1) With respect to all types of code enforcement officials, those with Level I, Level II, or Level III certificates shall be qualified to inspect and approve only those types and sizes of buildings specified in the following tables.

APPROVED RULES

(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, or III:	
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 (See Note)	1 story/20,000 sf Multi-story: 2 stories max/20,000 sf per floor	Unlimited
Factory Industrial	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
Utility and Miscellaneous	Unlimited	Unlimited	Unlimited

See 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:	Excluding Highrise *
	CERTIFICATION LEVELS FOR FIRE INSPECTORS LEVEL I: - OCCUPANCY: Business Assembly - 1 story, 20,000 sf Mercantile Residential Storage S-2 Factory Industrial F-2 Utility and Miscellaneous	Note: A Level I fire inspector shall not conduct any plan review on any building, highrise or other. LEVEL II: - OCCUPANCY: Everything in Level I Assembly - unlimited Educational Factory Industrial F-1 Storage S-1

Excluding Highrise
*

Note: A level II fire inspector is authorized to conduct Plan Review of all occupancies in Level I and II.

LEVEL III: -
OCCUPANCY: Everything in Levels I and II
Hazardous Institutional Highrise (Unlimited Occupancies)

Note: A Level III fire inspector is authorized to conduct Plan Review of all occupancies in Levels I, II and III.

* The term "excluding highrise" is listed because some of the acceptable occupancies for the levels could be located in a highrise 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 by the North Carolina State Board of Examiners for Engineers and Surveyors pursuant to G.S. 89C. References in the rules in this Section to registered architect means architects licensed by the Board of Architecture pursuant to Chapter 83A of the North Carolina General Statutes. References to licensed building, residential, electrical, heating, plumbing, and fire sprinkler contractors means contractors licensed by the State Licensing Board for General Contractors, the N.C. State Board of Examiners of Electrical Contractors, or the N.C. State Board of Examiners of Plumbing, Heating and Fire Sprinkler Contractors pursuant to Chapter 87 of the North Carolina General Statutes. References to licensed "building" contractors do not include licensed "residential" contractors. Specialty licenses issued by these occupational licensing boards are not acceptable. Applicants with licenses from other states or countries must provide a copy of their license and documentation that the requirements of the other state are at least equivalent to the statewide licensing requirements of North Carolina occupational licensing boards.

(d) Whenever a provision of the rules in this Section requires the possession of an occupational license other than those certificates that are issued by the Board, if that license is inactive, the applicant must provide documentation from the appropriate occupational licensing board that the applicant previously held the license and that the license is currently 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 will be 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 will be 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.

(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 Level I building inspection 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 Level I building inspection certificate inspecting building construction on a minimum of two Level I buildings;
- (8) at least two years of experience as an owner, manager or supervisor of a residential construction company and who has a license as a residential contractor and who has construction experience on a minimum of two Level I buildings (this does not include a business partner providing monetary backing for the company); 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, 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 inspection 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 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 inspection 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 Level I electrical inspection 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;
 - (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 Level I 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 inspection 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 Level I mechanical inspection 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 Level I 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

- (4) 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 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 inspection 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 one 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 Level I plumbing inspection 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 Level I 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:
- (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 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 inspection 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.
- (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;
- (3) at least six months of fire inspection experience with a probationary Level I fire inspection 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 Level I fire inspection certificate conducting fire inspections on 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:

- (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, 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 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 inspection 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 on 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

- (3) 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 on a minimum of two Level III buildings.

History Note: Authority G.S. 143-151.12(1); 143-151.13; Eff. January 15, 1980; Amended Eff. August 1, 2004; July 18, 2002; February 1, 1991; August 1, 1990; July 1, 1983.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 09G .0101 SCOPE AND APPLICABILITY OF SUBCHAPTER

This Subchapter governs the implementation of minimum standards for employment, training, and certification of three classes of corrections officers: correctional officers, probation/parole officers, and probation/parole officers-intermediate as well as the standards for corrections schools and the state corrections certificate program. Definitions and procedures contained within 12 NCAC 09A through 09F do not apply to these classes of corrections officers, unless specifically

referenced; only rules specifically included in Subchapter 09G apply to these employees of the North Carolina Department of Correction.

History Note: Authority G.S. 17C-1; 17C-6; S.L. 2000-67, s. 17.3(c); Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. November 1, 2003.

TITLE 15A - DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

15A NCAC 02I .0601 ISSUANCE OF DECLARATORY RULING

At the request of any person aggrieved, as defined in G.S. 150B-2(6), the Environmental Management Commission shall issue a declaratory ruling as provided in G.S. 150B-4.

History Note: Authority G.S. 150B-4; Eff. August 1, 2004.

15A NCAC 07H .1402 APPROVAL PROCEDURES

(a) The applicant must contact the Division of Coastal Management and complete an application form requesting approval for development. The applicant shall provide information on site location, dimensions of the project area, and his name and address. Such notice shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal Management within ten days of receipt of the notice. The notice shall also indicate that no response shall be interpreted as no objection.

(b) The applicant must provide:

- (1) confirmation that a written statement has been obtained signed by the adjacent riparian property owners indicating that they have no objections to the proposed work; or
- (2) confirmation that the adjacent riparian property owners have been notified by certified mail of the proposed work. Such notice shall instruct adjacent property owners to provide written comments on the proposed development to the Division of Coastal Management within ten days of receipt of the notice. The notice shall also indicate that no response shall be interpreted as no objection. DCM staff shall review all comments and determine, based on their relevance to the potential impacts of the proposed project, if the proposed project can be approved by a General Permit.

(c) Approval of individual projects shall be acknowledged in writing by the Division of Coastal Management and the applicant shall be provided a copy of this Section.

(d) Construction must be completed within 90 days of the approval of the permit or the permit expires.

History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124; Eff. March 1, 1984;

*Amended Eff. May 1, 1990; January 1, 1990;
Temporary Amendment Eff. December 1, 2002;
Amended Eff. August 1, 2004.*

15A NCAC 07H .1404 GENERAL CONDITIONS

- (a) Structures authorized by a general permit in this Section shall be wooden or riprap groins conforming to the standards in this Rule.
- (b) Individuals shall allow authorized representatives of the Department of Environment and Natural Resources to make periodic inspections at any time deemed necessary in order to be sure that the activity being performed under authority of this general permit is in accordance with the terms and conditions prescribed herein.
- (c) The placement of wooden or riprap groins authorized in this Rule shall not interfere with the established or traditional rights of navigation of the waters by the public.
- (d) This permit shall not be applicable to proposed construction where the Department has determined, based on an initial review of the application, that notice and review pursuant to G.S. 113A-119 is necessary because there are unresolved questions concerning the proposed activity's impact on adjoining properties or on water quality; air quality; coastal wetlands; cultural or historic sites; wildlife; fisheries resources; or public trust rights.
- (e) This permit does not eliminate the need to obtain any other required state, local, or federal authorization.
- (f) Development carried out under this permit must be consistent with all local requirements, AEC rules, and local land use plans current at the time of authorization.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Amended Eff. May 1, 1990;
RRC Objection due to ambiguity Eff. May 16, 1994;
Amended Eff. August 1, 1998; July 1, 1994;
Temporary Amendment Eff. December 1, 2002;
Amended Eff. August 1, 2004.*

15A NCAC 07H .1405 SPECIFIC CONDITIONS

- (a) Groins shall be perpendicular to the shoreline and shall not extend more than 25 feet waterward of the normal high water or normal water level.
- (b) Riprap groins shall not exceed a base width of 10 feet.
- (c) Groins shall be set back at least 15 feet from the adjoining property lines. This setback may be waived by written agreement of the adjacent riparian owner(s) or when two adjoining riparian owners are co-applicants. Should the adjacent property be sold before construction of the groin commences, the applicant shall obtain a written agreement with the new owner waiving the minimum setback and submit it to the permitting agency prior to initiating any development of the groin.
- (d) The height of wooden groins shall not exceed 1 foot above normal high water or the normal water level and the height of riprap groins shall not exceed 2 feet above normal high water or the normal water level.
- (e) Riprap groins shall be constructed of materials free from loose dirt or any other pollutant. It must be of sufficient size to prevent its movement from the site by wave or current action.

- (f) The riprap material must consist of clean rock or masonry materials such as, but not limited to, granite or broken concrete.
- (g) No more than two structures shall be allowed per 100 feet of shoreline unless the applicant can provide evidence that more structures are needed for shoreline stabilization.
- (h) "L" and "T" sections shall not be allowed at the end of groins.

*History Note: Authority G.S. 113A-107(a); 113A-107(b); 113A-113(b); 113A-118.1; 113A-124;
Eff. March 1, 1984;
Temporary Amendment Eff. December 1, 2002;
Amended Eff. August 1, 2004.*

15A NCAC 07J .0701 VARIANCE PETITIONS

- (a) Any person who has received a final decision of an application for a CAMA major or minor development permit may petition for a variance from the CRC by means of the procedure described in this Section. In the case of a minor development permit, a decision shall not be considered final until all available local appeals have been exhausted.
- (b) The procedure in this Section shall apply only to petitions for variances, and shall not apply to appeals of major or minor permit decisions. This procedure shall be used for all variance petitions except when:

- (1) a petition is combined with an appeal of a major or minor permit decision concerning the same application, in which case the applicant may consolidate both matters for a single hearing as described in Section .0300 of this Subchapter;
- (2) the Commission determines that more facts are necessary, in which case the petition may be heard by means of a hearing; or
- (3) there are controverted facts that are necessary for a decision on the variance petition.

- (c) Variance petitions shall be submitted on forms provided by the Department of Environment and Natural Resources or CAMA local permit officers or, if not on such forms shall provide the following information:

- (1) the case name and location of the development as identified on the denied permit application;
- (2) an explanation of why the applicant believes that the Commission should make the following findings, all of which are necessary for a variance to be granted:
 - (A) that unnecessary hardships would result from strict application of the development rules, standards, or orders issued by the Commission;
 - (B) that such hardships result from conditions peculiar to the petitioner's property such as the location, size, or topography of the property;
 - (C) that such hardships did not result from actions taken by the petitioner; and
 - (D) that the requested variance is consistent with the spirit, purpose and intent of the Commission's rules, standards or orders; will secure the

- (3) public safety and welfare; and will preserve substantial justice;
- (4) a copy of the permit application and denial for the development in question;
- (5) the date of the petition, and the name, address, and phone number of the petitioner; and
- (6) a complete description of the proposed development, including a site drawing with topographical and survey information.

(d) In order to have a petition for a variance considered under the procedures set forth in this rule, a petitioner who has given notice of appeal of the permit decision concerning the development that is the subject of the variance appeal shall agree that the time required to consider the petition shall not be counted in calculating the 180 day time period allowed for disposition of the appeal. The time required to consider the petition shall be calculated from the date on which the petitioner requests to have the petition heard under these procedures until the date on which the petitioner resumes prosecution of the appeal.

(e) Petitions shall be mailed directly to the Director of the Division of Coastal Management, Department of Environment and Natural Resources, 1638 Mail Service Center, Raleigh, NC 27699-1638.

(f) A variance petition shall be considered by the Commission at a regularly scheduled meeting. Petitions will be scheduled no later than the second regularly scheduled meeting following the date of receipt of the petition by the Division of Coastal Management, except when a later meeting is agreed upon by the petitioner and the Division of Coastal Management. A complete variance petition, as described in Paragraph (c) of this Rule, must be received by the Division of Coastal Management at least four weeks in advance of a regularly scheduled commission meeting to be considered by the Commission at that meeting.

(g) Written notice of variance hearings or commission consideration of variance petition shall be provided to the petitioner and the permit officer making the initial permit decision.

History Note: Authority G.S. 113A-120.1; 113A-124; Eff. December 12, 1979; Amended Eff. December 1, 1991; May 1, 1990; March 1, 1988, February 1, 1983; Temporary Amendment Eff. December 1, 2002; Amended Eff. August 1, 2004.

15A NCAC 07J .0702 STAFF REVIEW OF VARIANCE PETITIONS

(a) The Division of Coastal Management, as staff to the commission, shall review petitions to determine whether they are complete according to the requirements set forth in Rule .0701. Incomplete applications and a description of the deficiencies shall be returned to the petitioner. Complete requests shall be scheduled for the appropriate commission meeting.

(b) The staff shall prepare a written description of the variance petition which shall be presented to the Commission before the petition is considered. The written description shall include:

- (1) a description of the property in question;
- (2) a description of how the use of the property is restricted or otherwise affected by the applicable rules;

(3) a discussion of whether the petition meets or does not meet each of the requirements for a variance including both the petitioner and the staff positions;

(4) and any other undisputed facts relevant to the findings set forth in G.S. 113A-120.1 which the Commission must make in order to grant a variance.

(c) The petitioner shall be provided an opportunity to review the written description prepared by the staff and to agree or disagree with the facts and statements therein. The written description presented to the Commission shall include only those facts and statements that have been agreed upon and stipulated to by both the petitioner and the staff. If the staff does not reach agreement with the petitioner and receive the petitioner's approval of the written description at least two weeks prior to a regularly scheduled Coastal Resources Commission meeting, the variance petition shall be considered at the next regularly scheduled commission meeting. If the staff determines that agreement cannot be reached on sufficient facts on which to base a meaningful variance decision, then the petition shall be considered by means of an administrative hearing. Copies of the agreed upon description shall be provided to the permit officer making the initial permit decision prior to commission consideration of the variance.

History Note: Authority G.S. 113A-120.1; 113A-124; Eff. December 12, 1979; Amended Eff. December 1, 1991; May 1, 1990; October 1, 1988; March 1, 1988; Temporary Amendment Eff. December 1, 2002; Amended Eff. August 1, 2004.

TITLE 18 - DEPARTMENT OF SECRETARY OF STATE

18 NCAC 06 .1401 APPLICATION FOR REGISTRATION OF DEALERS

(a) The application for registration as a dealer shall contain the following:

- (1) an executed Uniform Application for Registration as a Dealer (Form BD) and the appropriate schedules thereto or the appropriate successor form;
- (2) a fee as required by G.S. 78A-37(b);
- (3) evidence of current registration as a dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934;
- (4) evidence of compliance with Rule .1410 of this Section; and
- (5) any other information necessary for the Administrator to determine whether the Administrator may take action pursuant to G.S. 78A-39.

(b) The application for registration as a dealer shall be filed as follows:

- (1) NASD member dealers shall file applications for initial registration in the State of North Carolina with the NASAA/NASD Central Registration Depository, P.O. Box 37441,

Washington, D.C. 20013 and shall file a manually executed Form BD directly with the Securities Division. Applications for renewal of registration shall be filed only with the Central Registration Depository (see Rule .1406 of this Section);

- (2) Non-NASD member dealers shall file all applications for registration in the State of North Carolina directly with the Securities Division.

(c) The dealer shall file with the administrator, as soon as practicable but in no event later than 30 days following such event, notice of any disciplinary action taken against the dealer by any exchange of which the dealer is a member; the Securities and Exchange Commission; the Commodity Futures Trading Commission; any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934 or any state securities commission and of any civil suit filed against the dealer alleging violation of any federal or state securities laws. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the dealer shall file a correcting amendment as soon as practicable but in no event later than 30 days following the date on which such information becomes inaccurate or incomplete.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon issuance of a license or written notice of effective registration, unless proceedings are instituted pursuant to G.S. 78A-39. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) Every dealer shall notify the administrator of any change of address, the opening or closing of any office (including the office of any salesman operating apart from the dealer's premises) or any material change thereto, in writing as soon as practicable or by filing concurrently upon filing with NASD an appropriate amendment or schedule to Form BD or any successor form.

History Note: Authority G.S. 78A-36(a); 78A-37(a); 78A-37(b); 78A-37(d); 78A-38(c); 78A-49(a); Eff. April 1, 1981; Amended Eff. September 1, 1990; October 1, 1988; January 1, 1984; November 1, 1982; Temporary Amendment Eff. October 1, 1997; Amended Eff. August 1, 1998; Temporary Amendment Eff. November 1, 2002; Amended Eff. August 1, 2004.

18 NCAC 06 .1402 APPLICATION FOR REGISTRATION OF SALESMEN

(a) The application for registration as a salesman shall contain the following:

- (1) an executed Uniform Application for Securities and Commodities Industry Representative and/or Agent (Form U-4) or the appropriate successor form;
- (2) a fee as required by G.S. 78A-37(b); and

evidence of a passing grade of seventy percent on either:

- (A) the Uniform Securities Agent State Law Examination (USASLE - Series 63); or
- (B) both the Uniform Combined State Law Examination (Series 66 Exam) and the General Securities Representative Examination (Series 7 Exam) as well as the appropriate NASD examination as required by Rule .1413 of this Section.

(b) The application for registration as a salesman shall be filed as follows:

- (1) NASD member dealers shall file all salesman applications for registration in the State of North Carolina with the NASAA/NASD Central Registration Depository, P.O. Box 9401, Gaithersburg, MD 28898-9401.
- (2) Non-NASD member dealers shall file all salesman applications for registration in the State of North Carolina directly with the Securities Division.

(c) The salesman or the dealer for which the salesman is registered shall file with the administrator, as soon as practicable but in no event later than 30 days, notice of any disciplinary action taken against a salesman by any exchange of which the dealer is a member; the Securities and Exchange Commission; the Commodity Futures Trading Commission; any national securities association registered with the Securities and Exchange Commission pursuant to Section 15A of the Securities Exchange Act of 1934 or any state securities commission and of any civil suit, warrant, criminal warrant, or criminal indictment filed against the salesman alleging violation of any federal or state securities laws. If the information contained in any document filed with the administrator is or becomes inaccurate or incomplete in any material respect, the salesman or the dealer for which the salesman is registered shall file a correcting amendment as soon as practicable but in no event later than thirty days. Such filing shall be made by NASD member dealers and their salesmen to the NASAA/NASD Central Registration Depository and non-NASD member dealers and their salesmen shall make such filing directly with the Securities Division.

(d) Registration becomes effective at noon of the 30th day after a completed application is filed or such earlier time upon approval of the application by the administrator, unless proceedings are instituted pursuant to G.S. 78A-39. The administrator may by order defer the effective date after the filing of any amendment but no later than noon of the 30th day after the filing of the amendment.

(e) A salesman shall only be registered in this State with one dealer.

History Note: Authority G.S. 78A-37(a); 78A-37(b); 78A-38(c); 78A-39(b)(4); 78A-49(a); Eff. April 1, 1981; Amended Eff. April 1, 2001; September 1, 1995; October 1, 1988; January 1, 1984; November 1, 1982; Temporary Amendment Eff. November 1, 2002; Amended Eff. August 1, 2004.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

19A NCAC 02E .1101 TOURIST-ORIENTED DIRECTIONAL SIGN (TODS) PROGRAM

(a) The Tourist-Oriented Directional Sign Program, hereinafter "Program," offered by the North Carolina Department of Transportation, hereinafter "Department," provides directional signing for eligible tourist attractions located on the state non-freeway system which is located within the right-of-way at intersections as specified in the Manual on Uniform Traffic Control Devices (MUTCD).

(b) Requests for information may be directed to the State Traffic Engineer, Division of Highways, Department of Transportation, 1592 Mail Service Center, Raleigh, North Carolina 27699-1592.

(c) Applications for participation in the program shall be accepted by the Division Engineer who is responsible for the county where the attraction is located.

History Note: Authority G.S. 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);

Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004.

19A NCAC 02E .1102 DEFINITIONS

(a) For purposes of the rules in this Section, the following definitions shall apply:

- (1) Panel - A TODS for the purpose of displaying the business identification of and directional information for eligible attractions.
- (2) Trailblazer - A TODS for the purpose of guiding tourists from the mainline intersection to the attraction.
- (3) Attraction - Classes of businesses or facilities as described in G.S. 136-140.15(b)(2) and (3).

(b) In applying the definitions of "tourist-oriented business" in G.S. 136-140.15, the following additional definition of terms shall be used:

- (1) "Substantial Portion" - as used to describe the part of a business's products or services which are of interest to tourists, shall mean at least 30 percent of the products and services are unique to tourists' interests; and
- (2) "Significant Interest" - as used to describe the actual interest that the business may have to tourists and is defined as of such unique interest to tourists, above and beyond the interest that the business's products and services may generate among residents of the immediate area, that tourists account for at least 40 percent of the total revenue of the business.

(c) In applying the definitions of "tourist-oriented facility" in G.S. 136-140.15, the following additional definition of terms shall be used:

- (1) "Major Portion" - 51 percent;
- (2) "Immediate Area" - located within a 20 mile radius of the business or facility; and
- (3) "Residing" - living in a particular place for at least four months of a given calendar year.

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f);
Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004.

19A NCAC 02E .1103 LOCATION OF TODS

The Department shall control the erection and maintenance of official signs giving specific information of interest to the traveling public in accordance with following criteria:

- (1) The Department shall limit the placement of TODS panels to highways other than fully controlled access highways that are either in rural unincorporated areas or in towns or cities with a population of less than 40,000.
- (2) The Department shall only erect panels at intersections (at-grade). An at-grade intersection is an intersection which is controlled by stop signs or traffic signals. Trailblazers shall be installed when an attraction is not located on a state highway and further direction is needed to guide the tourist from the intersection to the attraction.
- (3) Panels shall be located in a manner to take advantage of natural terrain and to have the least impact on the scenic environment.
- (4) A separate sign panel shall be provided on the intersection approach for each eligible attraction. Panels shall be allowed in each direction only when lateral spacing is available. The number of TODS panels shall not exceed a total of six per approach with only one attraction name on each TODS panel.
- (5) The center of the mainline TODS intersection shall not be more than five driving miles from the eligible attraction and shall not be placed where prohibited by local ordinance.
- (6) If an attraction is not directly on a State highway, it is eligible for TODS panels only if both of the following requirements are met:
 - (a) It is located on a street that directly connects with a state maintained road.
 - (b) It is located so that only one TODS Trailblazer, placed on a state maintained road, will lead the tourist to the attraction.
- (7) Sign panels shall not be placed immediately in advance of the attraction if its on-premise advertising signs are readily visible from the highway.
- (8) TODS panels shall be located at least 200 feet in advance of the main intersection. Signs shall be spaced at least 200 feet apart and at least 200 feet from other traffic control devices. TODS panels shall not be located more than one-half (0.5) mile from the center of the main intersection and shall not be placed in the signing sequence for any other prior intersections.

- (9) Existing warning, regulatory, guide or other official highway signs shall take precedence over TODS.

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004.

19A NCAC 02E .1104 ELIGIBILITY FOR PROGRAM

- (a) An attraction is eligible to participate in the Program if it meets the criteria in G.S. 136-140-16.
- (b) The maximum distance that an attraction shall be located from the intersection containing TODS panels is five miles. Said distance shall be measured from the center of the intersection coincident with the centerline of a non-controlled access highway route or its median, along the roadways to the respective attraction. The point to be measured to for each attraction is a point on the roadway that leads to the main entrance to the attraction that is perpendicular to the corner of the nearest wall of the attraction to the intersection. The wall to be measured to shall be that of the main building or office. Walls of sheds (concession stands, storage buildings, separate restrooms,) whether or not attached to the main building shall not be used for the purposes of measuring. If the office (main building) of an attraction is located more than two-tenths (0.2) mile from a public road on a private road or drive, the distance to the office along the said drive or road shall be included in the overall distance measured to determine whether or not the attraction qualifies for TODS signing. The office shall be presumed to be at the place where the services are provided.
- (c) Interested parties may show that they meet the definition of "tourist-oriented business" or tourist oriented facility" in either of two ways:

- (1) An applicant shall certify, through the use of scientific independent surveys, business records, bank records, tax returns, or any other documents which would be admissible in a court proceeding that the applicant or facility meets each aspect of the definition of "tourist oriented business" or the definition of "tourist oriented facility." The applicant has an affirmative burden to provide documentation in support of its showing; or
- (2) An applicant may show that it is one of the following, which are presumed to be "tourist oriented businesses" or "tourist oriented facilities:"
- (A) Amusement Park: a permanent area open to the general public including at least three of the following activities: roller coasters, entertainment rides, games, swimming, concerts, and exhibitions;
- (B) Cultural Center: a facility for cultural events including museums, outdoor theaters, or facilities that exhibit antiques or items painted or crafted by local artists;

- (C) Facility Tour Location: a facility such as a factory, institution or a plant which conducts tours at least four times daily on a regularly scheduled year-round basis;
- (D) Historic Site or District: a structure or area listed on the national or state historic register. An historic site must be open to the public at least three months out of each year. Historic districts shall provide the public with a single, central location, such as a self-serve kiosk, welcome center or history museum where motorists can obtain information regarding the district;
- (E) Recreation area: an attraction which provides tourists with opportunities such as golfing (excluding miniature golf, driving ranges, chip and putt areas, and indoor golf) horseback riding, surfing, bicycling, boating, fishing, picnicking, hiking or rafting and where, either at the attraction or within 10 miles, all necessary equipment can be rented;
- (F) Natural Phenomenon: a naturally occurring area which is of interest to the general public, such as a waterfall or cavern;
- (G) Zoological/Botanical Parks and Farms: a facility in which living animals or plants are kept and exhibited to the public; and
- (H) Agricultural Facility: a facility that provides tours, on-site samples of agricultural products, or produce stands.

(d) "Tourist oriented businesses" or "tourist oriented facilities" shall be businesses or facilities that are a destination for tourists and must provide products or services that meet tourists' primary needs or interests. Shopping malls, furniture stores, drug stores, movie theaters, community business districts, appliance stores, automobile or truck dealerships or garages, houses of worship, real estate offices, livestock sales facilities, sand and gravel facilities, grocery stores, gas or vehicle service stations, bars, lounges, adult establishments, adult video, book, or novelty stores, medical facilities, and restaurants are not considered either "tourist oriented businesses" or "tourist oriented facilities."

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004.

19A NCAC 02E .1106 FEES

- (a) The annual fee for each TODS panel or Trailblazer shall be two hundred dollars (\$200.00).
- (b) All participating businesses shall pay the annual fee prior to installation of the TODS panel(s).

(c) The annual fee shall be paid by check or money order and is due in advance of the period of service covered by said fee. Failure to pay a fee when due is grounds for removal of the TODS panel and termination of the contract.

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004.

19A NCAC 02E .1107 CONTRACTS WITH THE DEPARTMENT

- (a) The Department shall perform all installation, maintenance, removal and replacement of TODS panel(s).
- (b) Applications shall be submitted to the Division Engineer for the Division in which the attraction is located, and must include a layout of the proposed TODS.
- (c) Upon approval of the application for participation in the TODS program, the applicant must agree to submit the required annual fee within 30 days of notification.
- (d) No TODS panel shall be displayed which, in the opinion of the Department, is unsightly, badly faded, or in a state of dilapidation. The Department shall remove, replace, or mask any such TODS panel. Ordinary maintenance services shall be performed by the Department.
- (e) The Department shall remove the TODS panel upon failure to pay the annual fee or for violation of any provision of the rules in this Section and the TODS panel shall be removed.
- (f) When a TODS panel is removed, it shall be taken to the Division Traffic Services Shop of the Division in which the attraction is located. The participant shall be notified in writing of such removal and given 30 days in which to retrieve his sign. After 30 days, the TODS panel shall become the property of the Department and shall be disposed of as the Department shall see fit.
- (g) Should the Department determine that trailblazing to an attraction is desirable as described in 19A NCAC 02E .1103(6), it shall be done in conformance with the standards for a TODS trailblazer as defined in 19A NCAC 02E .1102(2). The participant shall furnish trailblazing signs required by the Department. In such trailblazer installations, only one TODS trailblazer shall be used per each TODS intersection signed.
- (h) Should an attraction qualify for TODS signage at two intersections, the TODS panel shall be erected at the nearest intersection. If the participant desires signing at the second intersection also, it may be so signed provided it does not prevent another attraction from being signed.
- (i) An attraction under construction shall not be allowed to apply for participation in the program if its participation would prevent an existing open attraction applicant from participating, unless the open attraction has turned down a previous opportunity offered by the Department to participate in the program as provided in the program. After approval of an application, an attraction under construction shall be allowed priority participation over another eligible attraction that opens for business prior to the time specified for opening in the application by the attraction under construction.
- (j) The closest interested eligible attractions at an intersection up to a total of six TODS panels per approach to submit signed contracts shall be allowed TODS panels at that approach.

Should the number of attractions at an approach increase to more than the maximum number of TODS panels allowed at that approach and a closer interested eligible participant requests installation of its TODS panels, the farthest qualifying participant shall be removed at the renewal date. Program participants may renew their respective contracts annually provided the attraction maintains program eligibility. An attraction with more than one sign displayed on any intersection approach leg shall have the additional sign(s) removed at the end of a contract period when other eligible attractions apply for space on that approach.

- (k) An attraction which has been closed for remodeling or repair shall be granted one year to complete the construction, renovation, or restoration, provided the annual fee is paid and the same type of qualifying service is provided after reopening, even if under a different business name.
- (l) Should a participating attraction cease to be in compliance with G.S. 136-140.16 and the rules in this Section, the Division Engineer shall notify the participant that it shall be given 30 days to bring the attraction into compliance or its TODS panel(s) shall be removed. If the attraction is removed and later applies for reinstatement, this request shall be handled in the same manner as a request from a new applicant. When a participating attraction is determined not to be in compliance with G.S. 136-140.16 and the rules in this Section for a second time within two years of the first determination of non-compliance, its TODS panel(s) shall be permanently removed. If an attraction under construction is not open on the specified date in the agreement, the participant shall be given 30 days notification to request the TODS panel installation or forfeit its panel. Future applications shall be treated in the same manner as a new applicant.
- (m) The transfer of ownership of an attraction for which an agreement has been lawfully executed shall not affect the validity of the agreement for the TODS agreement provided that the appropriate Division Engineer is given notice in writing of the transfer of ownership within 30 days of the actual transfer and the application is updated.
- (n) The Department shall not maintain waiting lists for the program.

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004.

19A NCAC 02E .1108 APPEAL OF DECISION

- (a) Any applicant who is refused, or any participating attraction which has its contract terminated and signs removed, that believes the program is not being administered in accord with the rules in this Section, may appeal the decision of the Division Engineer to the Secretary of the Department of Transportation. The decision of the Secretary is final.
- (b) The applicant or participant shall notify the Division Engineer of his decision to appeal by certified mail, return receipt requested, within 10 days of the receipt of the decision.
- (c) Within 20 days from the time of submitting his notice of appeal, the applicant or participant shall submit to the Secretary a written appeal setting forth with particularity the facts upon which its appeal is based.

(d) Within 30 days from the receipt of the written appeal or within such additional time as may be agreed to between the Secretary and the appealing party, the Secretary shall make an investigation of the appeal. The Secretary shall then make findings of fact and conclusions pertaining to the appeal on behalf of the Department and the findings and conclusions shall be served upon the appealing party by certified mail, return receipt requested.

History Note: Authority G.S. 136-89.56; 136-130; 136-140.15; 136-140.16; 136-140.17; 136-140.18; 136-140.19; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004.

19A NCAC 02E .1204 RESPONSIBILITIES OF PARTICIPANTS AND DEPARTMENT

(a) The Department shall provide a copy of the official design of the signs that shall state "Public Vehicular Area G.S. 20-219.4."

- (b) Any participant shall:
- (1) Locate signs in a manner that does not inhibit sight distance or create a safety hazard;
 - (2) Fabricate, install, and maintain signs in accordance with the Manual on Uniform Traffic Control Devices;
 - (3) Erect signs so as to provide reasonable notice to the motorist. Signs indicating Public Vehicular Area shall be placed at the driveway entrances to the area and within the limits of the Public Vehicular Area. The signs shall not be placed in the public right of way.

History Note: Authority G.S. 20-4.01(32); 20-219.4; 143B-346; 143B-348; 143B-350(f); Temporary Adoption Eff. January 1, 2003; Eff. August 1, 2004.

19A NCAC 03D .0232 CIVIL PENALTY SCHEDULE FOR NON-LICENSED MOTOR VEHICLE DEALERS

The civil penalty schedule established in this Rule shall apply to a person acting as a dealer who has not obtained a license pursuant to Article 12 of the Motor Vehicle dealers and Manufacturers Licensing Law. The Division of Motor Vehicles shall apply the penalty schedule in the following manner:

- (1) For a first offense of selling motor vehicles without a license against any person who is required to obtain a license under G.S. 20-287 and has not obtained the license, the DMV shall levy and collect a civil penalty of one thousand dollars (\$1000) in addition to any other punishment required under the law.
- (2) For a second offense of selling motor vehicles without a license against any person who is required to obtain a license under G.S. 20-287 and has not obtained the license, the DMV shall levy and collect a civil penalty of three thousand dollars (\$3,000) in addition to any other punishment under the law.
- (3) For a third or subsequent offense of selling motor vehicles without a license against any

person who is required to obtain a license under G.S. 287 and has not obtained the license, the Division shall levy and collect a civil penalty of five thousand dollars (\$5,000) in addition to any other punishment under the law.

History Note: Authority G.S. 20-39; 20-287; Eff. August 1, 2004.

19A NCAC 03D .0233 CIVIL PENALTY SCHEDULE FOR LICENSED MOTOR VEHICLE DEALERS

The civil penalty schedule established in this Rule applies to motor vehicle dealers, motor vehicle sales representatives, manufacturers, factory branches, factory representatives, distributors, representatives, distributor branches, distributor representatives, and wholesalers. The schedule categorizes violations as Type I (serious) Violations, Type II (moderate/less serious) Violations, and Type III (minor) Violations. The DMV shall apply the Civil Penalty Schedule as follows:

- (1) Type I Violation: For a first Type I violation within three years by a licensee, the Division shall assess a civil penalty of two hundred fifty dollars (\$250.00) in addition to any other punishment or remedy under the law. For a second Type I violation within three years by a licensee, the Division shall assess a civil penalty of five hundred dollars (\$500.00) in addition to any other punishment or remedy under the law. For a third or subsequent Type I violation within three years by a licensee, the Division shall assess a civil penalty of one thousand dollars (\$1,000) in addition to any other punishment or remedy under the law.
- (2) Type II Violation: For a first Type II violation within three years by a licensee, the Division shall assess a civil penalty of one hundred dollars (\$100.00) in addition to any other punishment or remedy under the law. For a second Type II violation within three years by a licensee, the Division shall assess a civil penalty of two hundred fifty dollars (\$250.00) in addition to any other punishment or remedy under the law. For a third or subsequent Type II violation within three years by a licensee, the Division shall assess a civil penalty of five hundred dollars (\$500.00) in addition to any other punishment or remedy under the law.
- (3) Type III Violation: For any Type III violation by a licensee, the Division shall assess a civil penalty of fifty dollars (\$50.00) in addition to any other punishment or remedy under the law.
- (4) Multiple Violations: If a licensee commits two or more violations in the course of a single transaction or occurrence, the division shall assess a civil penalty specified for the most serious violation only, based upon the schedule set out in this Rule.

History Note: Authority G.S. 20-39; 20-287;

Eff. August 1, 2004.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 16 - BOARD OF DENTAL EXAMINERS

21 NCAC 16Q .0101 GENERAL ANESTHESIA AND SEDATION DEFINITIONS

For the purposes of these Rules relative to the administration of general anesthesia, parenteral conscious sedation, and enteral conscious sedation by or under the direction of a dentist, the following definitions shall apply:

- (1) "Analgesia" - the diminution or elimination of pain.
- (2) "Anti-anxiety sedative" - a sedative agent administered in a dosage intended to reduce anxiety without diminishing consciousness or protective reflexes.
- (3) "Anxiolysis" - pharmacological reduction of anxiety through the administration of a minor psychosedative, which allows for uninterrupted interactive ability in a totally awake patient with no compromise in the ability to maintain a patent airway continuously and without assistance.
- (4) "Behavioral management" - the use of pharmacological or psychological techniques, singly or in combination, to modify behavior to a level that dental treatment can be performed effectively and efficiently.
- (5) "Competent" - displaying special skill or knowledge derived from training and experience.
- (6) "Conscious sedation" - an induced state of a depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, and that is produced by pharmacologic or non-pharmacologic agents, or a combination thereof. In accordance with this particular definition, the drugs or techniques used shall carry a margin of safety wide enough to render unintended loss of consciousness unlikely.
- (7) "Deep sedation" - an induced state of a depressed level of consciousness accompanied by partial loss of protective reflexes, including the ability to continually maintain an airway independently or respond purposefully to verbal command, and is produced by pharmacological agents.
- (8) "Direct supervision" - the dentist responsible for the sedation/anesthesia procedure shall be physically present in the facility and shall be continuously aware of the patient's physical status and well being.
- (9) "Enteral conscious sedation" is conscious sedation that is achieved by administration of pharmacological agents through the alimentary

- (10) "Facility" - the location where a permit holder practices dentistry and provides anesthesia/sedation services.
- (11) "Facility inspection" - an on-site inspection to determine if a facility where the applicant proposes to provide anesthesia/sedation is supplied, equipped, staffed and maintained in a condition to support provision of anesthesia/sedation services that meet the minimum standard of care.
- (12) "General anesthesia" is the intended controlled state of depressed consciousness produced by pharmacologic agents and accompanied by a partial or complete loss of protective reflexes, including the ability to maintain an airway and respond purposefully to physical stimulation or verbal commands.
- (13) "Immediately available" - on-site in the facility and available for immediate use.
- (14) "Local anesthesia" - the elimination of sensations, especially pain, in one part of the body by the regional application or injection of a drug.
- (15) "May" - indicates freedom or liberty to follow a reasonable alternative.
- (16) "Minor psychosedative/Minor tranquilizer" - pharmacological agents which allow for uninterrupted interactive ability in a patient with no compromise in the ability to maintain a patent airway continuously and without assistance and carry a margin of safety wide enough to render unintended loss of consciousness unlikely.
- (17) "Must" or "shall" - indicates an imperative need or duty or both; an essential or indispensable item; mandatory.
- (18) "Parenteral conscious sedation" is conscious sedation achieved by the administration of pharmacological agents intravenously, intramuscularly, subcutaneously, submucosally, intranasally, or transdermally. Parenteral conscious sedation is administered primarily for behavioral management.
- (19) "Protective reflexes" - includes the ability to swallow and cough.
- (20) "Vested adult" - a responsible adult who is the legal parent or guardian, or designee of a legal parent or guardian, entrusted with the care of a minor following the administration of general anesthesia or conscious sedation.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Temporary Amendment Eff. December 11, 2002; Amended Eff. August 1, 2004.

21 NCAC 16Q .0201 CREDENTIALS AND PERMIT FOR GENERAL ANESTHESIA IA

(a) Before a dentist licensed to practice in North Carolina may administer, or supervise a certified registered nurse anesthetist to administer, general anesthesia on an outpatient basis for dental patients, he or she shall obtain a general anesthesia permit issued by the Board. A dentist holding a permit shall administer general anesthesia only at a facility located in the State of North Carolina in accordance with 21 NCAC 16Q .0202. Such permit shall be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) Any dentist who wishes to administer general anesthesia to patients must apply to the Board for the required permit on an application form provided by the Board, submit an application fee of fifty dollars (\$50.00), and produce evidence showing that he:

- (1) Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level; or
- (2) Has graduated from a program certified by the American Dental Association in Oral and Maxillofacial Surgery; or
- (3) Is a Diplomate of or eligible for examination by the American Board of Oral and Maxillofacial Surgery; or
- (4) Is a Fellow of the American Dental Society of Anesthesiology; or
- (5) Is a dentist who has been administering general anesthetics in a competent manner for the five years preceding the effective date of this Rule.

(c) A dentist who is qualified to administer general anesthesia in accordance with this Section and holds a general anesthesia permit is also authorized to administer parenteral or enteral conscious sedation without obtaining a separate sedation permit.

(d) The dentist involved with the administration of general anesthesia shall document current, successful completion of advanced cardiac life support (ACLS) training, or its age-specific equivalent or other Board-approved equivalent course and auxiliary personnel shall document annual, successful completion of basic life support (BLS) training.

(e) Prior to issuance of a general anesthesia permit the applicant shall undergo an evaluation which includes a facility inspection. The Board shall direct an evaluator to perform this evaluation. The applicant shall be notified in writing that an evaluation and facility inspection is required and provided with the name of the evaluator who shall perform the evaluation and facility inspection. The applicant shall be responsible for successful completion of the evaluation and inspection of his or her facility within three months of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. April 1, 2001; August 1, 2000; Temporary Amendment Eff. December 11, 2002; Amended Eff. August 1, 2004.

21 NCAC 16Q .0301 PARENTERAL CONSCIOUS

SEDATION CREDENTIALS AND PERMIT

(a) Before a dentist licensed to practice in North Carolina may administer, or supervise a certified registered nurse anesthetist to administer parenteral conscious sedation to dental patients on an outpatient basis, the dentist shall obtain a permit from the Board by submitting the required information on an application form provided by the Board and paying a fee of fifty dollars (\$50.00). Such permit shall be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the facility of the permit holder.

(b) A dentist applying for a permit to administer parenteral conscious sedation must meet at least one of the following criteria:

- (1) Satisfactory completion of a minimum of 60 hours of didactic training and instruction in intravenous conscious sedation and satisfactory management of a minimum of 10 patients, under supervision, using intravenous sedation; or
- (2) Satisfactory completion of an undergraduate or postgraduate program which included intravenous conscious sedation training equivalent to that defined in Subparagraph (b)(1) of this Rule; or
- (3) Satisfactory completion of an internship or residency which included intravenous conscious sedation training equivalent to that defined in Subparagraph (b)(1) of this Rule; or
- (4) Utilization of a certified registered nurse anesthetist under his supervision to administer intravenous sedation to dental patients, provided that the parenteral conscious sedation is administered only by the certified registered nurse anesthetist under the permit holder's supervision.

(c) To be eligible for a parenteral conscious sedation permit, a dentist must operate within a facility which includes the capability of delivering positive pressure oxygen, staffed with sufficient supervised auxiliary personnel for each procedure performed who shall document annual, successful completion of basic life support (BLS) training and be capable of assisting with procedures, problems and emergencies incident thereto.

(d) The Board may authorize the use of parenteral conscious sedation and grant a permit authorizing the use of parenteral conscious sedation to a dentist who has been utilizing parenteral conscious sedation in a competent and effective manner for the past five years preceding the effective date of this Rule, but who has not had the benefit of training as outlined in Paragraph (b) of this Rule, provided that said dentist meets all other requirements of this Rule.

(e) Prior to issuance of a parenteral conscious sedation permit the applicant shall undergo an evaluation which includes a facility inspection. The Board shall direct an evaluator to perform this evaluation. The applicant shall be notified in writing that an evaluation and facility inspection is required and provided with the name of the evaluator who shall perform the evaluation and facility inspection. The applicant shall be responsible for successful completion of the evaluation and inspection of his or her facility within three months of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one.

(f) A dentist who holds a parenteral conscious sedation permit shall not intentionally administer deep sedation although deep sedation may occur briefly and unintentionally.

(g) A dentist who is qualified to administer parenteral conscious sedation and holds a parenteral conscious sedation permit may administer enteral conscious sedation without obtaining a separate enteral conscious sedation permit. A dentist who holds a general anesthesia permit may administer enteral and parenteral conscious sedation without obtaining separate enteral and parenteral conscious sedation permits.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. April 1, 2001; August 1, 2000; January 1, 1994; Temporary Amendment Eff. December 11, 2002; Amended Eff. August 1, 2004.

21 NCAC 16Q .0302 CLINICAL REQUIREMENTS AND EQUIPMENT

(a) A dentist administering parenteral conscious sedation or supervising the administration of parenteral conscious sedation by a certified registered nurse anesthetist shall ensure that the facility in which the parenteral conscious sedation is to be administered meets the following requirements:

- (1) The facility is equipped with:
 - (A) An operatory of size and design to permit access of emergency equipment and personnel and to permit effective emergency management;
 - (B) A chair or table for emergency treatment, including chair suitable for CPR or CPR Board;
 - (C) Lighting as necessary for specific procedures; and
 - (D) Suction equipment as necessary for specific procedures, including non-electrical back-up suction;
- (2) The following equipment is maintained:
 - (A) Positive pressure oxygen delivery system, including full face mask for adults and pediatric patients;
 - (B) Oral and nasal airways of various sizes;
 - (C) Blood pressure monitoring device; and
 - (D) Pulse oximeter.
- (3) The following emergency equipment is maintained:
 - (A) I.V. set-up as necessary for specific procedures, including hardware and fluids, if anesthesia is intravenous;
 - (B) Syringes as necessary for specific procedures; and
 - (C) Tourniquet & tape.
- (4) The following drugs are maintained with a current shelf life and within easy accessibility from the operatory and recovery area:
 - (A) Epinephrine;
 - (B) Atropine;
 - (C) Antiarrhythmic;

- (D) Narcotic antagonist;
 - (E) Antihistamine;
 - (F) Corticosteroid;
 - (G) Nitroglycerine;
 - (H) Bronchial dilator;
 - (I) Antiemetic;
 - (J) Benzodiazepine antagonist;
 - (K) Muscle relaxant for intubation; and
 - (L) 50% Dextrose.
- (5) Written emergency and patient discharge protocols are maintained and training to familiarize office personnel in the treatment of clinical emergencies is provided; and
- (6) The following records are maintained:
- (A) Patient's current written medical history, including known allergies and previous surgery;
 - (B) Drugs administered during the procedure, including route of administration, dosage, time and sequence of administration;
 - (C) A sedation record which shall include:
 - (i) blood pressure;
 - (ii) pulse rate;
 - (iii) respiration;
 - (iv) duration of procedure;
 - (v) documentation of complications or morbidity; and
 - (vi) status of patient upon discharge.

(b) During an evaluation, the applicant or permit holder shall demonstrate the administration of conscious sedation on a patient or supervise the administration of conscious sedation on a patient by a certified registered nurse anesthetist while the evaluator observes. During the demonstration, the applicant or permit holder shall demonstrate competency in the following areas:

- (1) Monitoring blood pressure, pulse, and respiration;
- (2) Drug dosage and administration;
- (3) Treatment of untoward reactions including respiratory or cardiac depression, if applicable;
- (4) Sterile technique;
- (5) Use of CPR certified personnel;
- (6) Monitoring of patient during recovery; and
- (7) Sufficiency of patient recovery time.

(c) During an inspection or evaluation, the applicant or permit holder shall verbally demonstrate competency to the evaluator in the treatment of the following clinical emergencies:

- (1) Laryngospasm;
- (2) Bronchospasm;
- (3) Emesis and aspiration;
- (4) Respiratory depression and arrest;
- (5) Angina pectoris;
- (6) Myocardial infarction;
- (7) Hypertension/Hypotension;
- (8) Allergic reactions;
- (9) Convulsions;
- (10) Syncope;

- (11) Bradycardia;
- (12) Insulin shock; and
- (13) Cardiac arrest.

(d) A dentist administering parenteral conscious sedation shall ensure that the facility is staffed with sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the sedation or secondary to an unexpected medical complication.

(e) Upon request, the holder of an anesthesia or parenteral conscious sedation permit may travel to the office of a licensed dentist who does not hold such a permit and provide parenteral and enteral conscious sedation services for the patients of that dentist who are undergoing dental procedures. The permit holder is solely responsible for providing that the facility in which the parenteral or enteral conscious sedation is administered meets the requirements established by the Board, that the required drugs and equipment are present, and that the permit holder utilizes sufficient auxiliary personnel for each procedure performed who shall document annual successful completion of basic life support training and be capable of assisting with procedures, problems, and emergency incidents that may occur as a result of the parenteral conscious sedation or secondary to an unexpected medical complication.

History Note: Authority G.S. 90-28; 90-30.1; 90-48; Eff. February 1, 1990; Amended Eff. August 1, 2002; August 1, 2000; Temporary Amendment Eff. December 11, 2002; Amended Eff. August 1, 2004.

21 NCAC 16Q .0303 TEMPORARY APPROVAL PRIOR TO EVALUATION AND SITE INSPECTION

(a) If a dentist meets the requirements of Paragraphs (a), (b), (c), (d), and (f) of Rule .0301 of this Section, he shall be granted temporary approval to administer parenteral conscious sedation until a permit can be issued. Temporary approval may be granted based solely on credentials until all processing and evaluation has been completed. Temporary approval may not exceed three months. An on-site evaluation of the facilities, equipment, procedures, and personnel shall be required. The evaluation shall be conducted in accordance with Rules .0204 - .0205 of this Subchapter, except that evaluations of dentists applying for parenteral conscious sedation permits may be conducted by dentists who have been issued parenteral conscious sedation permits by the Board and who have administered parenteral conscious sedation for at least three years. Fees required by Rule .0204 of this Subchapter shall apply.

(b) An inspection may be made upon renewal of the permit or for cause.

(c) Temporary approval shall not be granted to a provisional licensee.

History Note: Authority G.S. 90-28; 90-30.1; Eff. February 1, 1990; Amended Eff. August 1, 2002; January 1, 1994; Temporary Amendment Eff. December 11, 2002; Amended Eff. August 1, 2004.

21 NCAC 16Q .0401 ENTERAL CONSCIOUS SEDATION CREDENTIALS AND PERMIT

(a) Before a dentist licensed to practice in North Carolina may administer or supervise a certified registered nurse anesthetist to administer enteral conscious sedation, he or she shall obtain either a parenteral conscious sedation permit issued by the Board, a general anesthesia permit issued by the Board, or an enteral conscious sedation permit issued by the Board. A permit is not required for prescription administration of DEA controlled drugs prescribed for postoperative pain control intended for home use. A dentist may obtain an enteral conscious sedation permit from the Board by submitting the appropriate information on an application form provided by the Board and paying a fee of fifty dollars (\$50.00). Such permit must be renewed annually and shall be displayed with the current renewal at all times in a conspicuous place in the office of the permit holder.

(b) A dentist who holds only an enteral conscious sedation permit shall not administer deep sedation or general anesthesia.

(c) Application:

- (1) An enteral conscious sedation permit may be obtained by completing an application form provided by the Board, a copy of which may be obtained from the Board office, and meeting the requirements of Section .0400 of this Subchapter.
- (2) The application form must be filled out completely and appropriate fees paid.
- (3) Prior to issuance of an enteral conscious sedation permit the applicant shall undergo a facility inspection. The Board shall direct an evaluator to perform this inspection. The applicant shall be notified in writing that an inspection is required and provided with the name of the evaluator who shall perform the inspection. The applicant shall be responsible for successful completion of inspection of his or her facility within three months of notification. An extension of no more than 90 days shall be granted if the designated evaluator or applicant requests one.
- (4) An applicant for an enteral conscious sedation permit shall be licensed and in good standing with the Board in order to be approved. For purposes of these rules "good standing" means that a licensee is not suspended, whether or not the suspended licensee is on probation. Applications from licensees who are not in good standing shall not be approved.

(d) Educational/Professional Requirements:

- (1) The dentist applying for an enteral conscious sedation permit shall meet one of the following criteria:
 - (A) successful completion of training consistent with that described in Part I or Part III of the American Dental Association (ADA) Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry, and have documented administration of enteral conscious sedation in a minimum of five cases;

- (B) successful completion of an ADA accredited post-doctoral training program which affords comprehensive training necessary to administer and manage enteral conscious sedation;
 - (C) successful completion of an eighteen hour enteral conscious sedation course which must be approved by the Board based on whether it affords comprehensive training necessary to administer and manage enteral conscious sedation;
 - (D) successful completion of an ADA accredited postgraduate program in pediatric dentistry; or
 - (E) is a North Carolina licensed dentist in good standing who has been utilizing enteral conscious sedation in a competent manner for the five years preceding January 1, 2002, and his or her office facility has passed an on-site inspection by a Board evaluator as required in Paragraph (b)(3) of this Rule. Competency shall be determined by presentation of successful administration of enteral conscious sedation in a minimum of five clinical cases.
- (2) Prior to administering enteral conscious sedation to children under the age of 13, a dentist who qualifies only for an enteral conscious sedation permit shall also successfully complete a six hour course in pediatric enteral conscious sedation developed by the Pediatric Dentistry Department at the University of North Carolina or an equivalent course and submit documentation showing successful completion of such course to the Board. The requirements of this paragraph shall not apply to Pediatric Dentists who meet the requirements of Paragraph (c)(1)(D) of this Rule nor to those dentists who otherwise meet the requirements of Paragraph (c)(1)(E) of this Rule and in addition have administered enteral conscious sedation to children under the age of 13 in a competent manner for the five years preceding January 1, 2002. Competency shall be determined by presentation of successful administration of enteral conscious sedation in a minimum of five clinical cases.

All applications for licensure shall be submitted on the form prescribed by the Board for this purpose and shall be accompanied by the following supporting documents:

- (1) two frontal photos of the applicant's face, taken within the preceding three months, size one inch by one inch;
- (2) a complete set of the applicant's fingerprints, collected by local law enforcement and accompanied by the applicant's social security number;
- (3) a completed examination registration form, unless the applicant is exempted by Statute;
- (4) a criminal history report, certified by the law enforcement agency or clerk of court in the applicant's county of residence;
- (5) a criminal history report, certified by the law enforcement agency or clerk of court in the applicant's county of employment, if different from the county of residence;
- (6) complete and truthful explanations of affirmative responses to questions on the application regarding employment history, criminal history and military service, if applicable;
- (7) payment in full of all applicable fees, by check or money order;
- (8) a copy of the applicant's legal resident documents, if the applicant is not a U.S. citizen;
- (9) a copy of a Locksmith License or other relevant license from another state, if applicable;
- (10) a copy of the applicant's military discharge document (DD-214 or equivalent), if the applicant has served in any branch of the armed forces;
- (11) a notarized Authorization for Records Release form;
- (12) a copy of any relevant industry certifications, if applicable.

History Note: Authority G.S. 74F-6; Temporary Adoption Eff. August 13, 2002; Eff. August 1, 2004.

21 NCAC 29 .0402 ESTABLISHMENT OF MORAL AND ETHICAL CHARACTER

(a) Information supplied on the application and in supporting documents must be truthful. Falsification or concealment of facts relating to employment, military service, criminal conviction or court-martial, age or other matters that reflect on the applicant's suitability for licensure shall be grounds for license denial, revocation, or suspension.

(b) Applicants with criminal histories from any jurisdiction shall be categorized according to the seriousness of the offense. The category shall be determined by the most serious offense.

(c) These categories are as follows:

- (1) Category I. This Category consists of all Class A and B felonies.
- (2) Category II. This Category consists of all felonies of classes C-F.

History Note: Authority G.S. 90-28; 90-30.1; Temporary Adoption Eff. March 13, 2003; December 11, 2002; Eff. August 1, 2004.

CHAPTER 29 - LOCKSMITH LICENSING BOARD

21 NCAC 29 .0401 APPLICATION FORM

- (3) Category III. This Category consists of all felonies of classes G or lesser, and all misdemeanors of classes A1 and 1. Three or more Category III convictions (committed as separate incidents) shall be reclassified as a Category II offense.
 - (4) Category IV. This Category consists of misdemeanors of classes 2 and 3. Three or more Category IV convictions (committed as separate incidents) shall be reclassified as a Category III offense.
- (d) The Board shall determine if the conviction is directly related to the duties and responsibilities of a locksmith. The Board may consider the following factors:
- (1) The nature and seriousness of the crime;
 - (2) The relationship of the crime to the purposes for requiring a license as a locksmith;
 - (3) The extent to which a license might offer an opportunity to engage in further criminal activity of the same type; and
 - (4) The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a licensed locksmith.
- (e) If the Board determines that the conviction does not relate to the duties and responsibilities of a locksmith, the Board shall process the application according to standard procedures.
- (f) If the Board determines that the conviction does relate to the duties and responsibilities of a locksmith, the Board shall evaluate the present fitness of the individual to provide locksmith services.
- (g) The Board shall use the following guidelines in evaluating an individual's present fitness:
- (1) An applicant with a Category I conviction is ineligible for licensure. A licensed locksmith with a Category I conviction shall be subject to immediate revocation of license.
 - (2) An applicant with a Category II conviction shall have at least 12 years since the applicant has completed all aspects of his or her sentence received as a result of the last Category II conviction to be eligible for licensure. A licensed locksmith convicted of a Category II offense shall be subject to immediate license revocation.
 - (3) An applicant with a Category III conviction shall have at least 7 years since the applicant has completed all aspects of his or her sentence received as a result of the last Category III conviction to be eligible for licensure. A licensed locksmith convicted of a Category III offense may be subject to immediate license revocation.
 - (4) An applicant with a Category IV conviction shall have at least three years since the applicant has completed all aspects of his or her sentence received as a result of the last Category IV conviction to be eligible for licensure. A licensed locksmith convicted of a Category IV offense may be subject to immediate license revocation.

(h) The Board may also consider the following factors in determining the present fitness of a person who has been convicted of a crime which relates to the duties and responsibilities of a locksmith:

- (1) The age at the time each crime was committed;
- (2) The conduct and work history of the person before and after the criminal conviction;
- (3) Evidence of the person's rehabilitation efforts and outcome;
- (4) The extent and nature of the past criminal history;
- (5) Two letters of recommendation from licensed locksmiths; and
- (6) Other evidence of fitness that may be relevant to the Board's assessment, such as a psychological test, mental health status report or substance abuse assessment.

(i) If the person's criminal activity is related to a history of chemical dependency, the Board shall also consider the person's efforts and success in achieving and maintaining recovery. Applicants with a history of chemical dependency shall demonstrate evidence of treatment or rehabilitation and at least two years of continuous recovery.

(j) An individual whose application is denied or whose license is suspended or revoked may request a hearing under the procedures established in of G.S. 150B, Article 3A.

History Note: Authority G.S. 74F-6; 74F-7; Temporary Adoption Eff. August 13, 2002; Eff. August 1, 2004.

21 NCAC 29 .0502 FAIR BUSINESS PRACTICES

- (a) Locksmiths shall conduct all business in compliance with all applicable laws.
- (b) Locksmiths shall impartially analyze security problems receiving their attention and advance the best possible solution for the protection of the client.
- (c) Locksmiths shall refrain from associating themselves with or allowing the use of their name (personal or professional) by any enterprise which in any way countenances misrepresentation.
- (d) Locksmiths shall not misrepresent the features afforded by any product nor make unwarranted claims about the merits of any product or service they offer. Examples include, but are not limited to the following:
 - (1) Representing to a client that non-restricted or widely available keys (whether stamped "Do Not Duplicate" or not) provide any measure of assurance against unauthorized duplication.
 - (2) Selling a used product as new.
- (e) Locksmiths shall avoid using any improper or questionable means of soliciting business. Prohibited practices include:
 - (1) Affixing stickers to permanent fixtures such as doors or door frames or in any way defacing the property of any person without his express written consent.
 - (2) Installing stickers or any other promotions in such fashion that they falsely represent that the locksmith or company has previously serviced the hardware in that location.

- (3) Installing or supplying hardware which curtails the customer's ability to choose a different company or technician for product support or service, unless the locksmith obtains the customer's express written consent.
- (4) Modifying the customer's hardware in any fashion that will curtail the customer's ability to choose a different company or technician for later product support or service or cause him to incur additional expense by doing so, unless the locksmith obtains the customer's express written consent.
- (5) Direct solicitation in violation of a non-compete agreement, such as an employee offering competing bids to customers of his employer.
- (6) Using a name in advertising which is similar enough to a competitor's name to cause confusion among consumers.

History Note: Authority G.S. 74F-6; Temporary Adoption Eff. August 13, 2002; Eff. August 1, 2004.

21 NCAC 29 .0503 PROTECTION OF THE PUBLIC INTEREST

- (a) Locksmiths shall refrain from allowing their specialized skills, knowledge, or access to tools and information to be used in any manner that puts the safety and security of the public at risk.
- (b) In the event that the locksmith suspects wrongful intent or misrepresentation by a potential client, the locksmith shall refuse service and shall immediately notify the law enforcement agency with jurisdiction.
- (c) Locksmiths shall not knowingly infringe a restricted key system.
- (d) Locksmiths shall record the identity of the customer for all service calls in which the locksmith opens a vehicle, building, room or secured container, or originates a key or in any other fashion provides the customer with access to any such property.
- (e) Locksmiths shall not supply an existing key or combination for an architectural lock without verifying the identity and authority of the client to have it. This Paragraph applies to off-site (shop) service as well as on-site service. Unless the locksmith can verify the origin of the lock and the authority of the client to obtain the requested key or combination, the locksmith shall refuse to supply an original key or combination to the lock.
- (f) Locksmiths shall endeavor to install all locking devices in compliance with all relevant codes, such as Uniform Building Code, National Fire Protection Association, and Americans with Disabilities Act and any local codes or ordinances which regulate architectural hardware. Locksmiths shall in all cases refuse to install a locking device which produces a threat to life safety. If such a (pre-existing) condition is encountered, the locksmith shall immediately inform the client and recommend appropriate remedial action.
- (g) Locksmiths shall not become a party to disputes of ownership or authority. When an authorization dispute is deemed likely to arise, the locksmith shall advise the law enforcement agency having jurisdiction and request the presence

of a uniformed officer. The locksmith shall refuse to provide service when there is an unresolved dispute of ownership or authority. Only Instructions from a uniformed law enforcement officer or a court order shall be accepted as resolution of any such dispute.

(h) Locksmiths shall not knowingly interfere with the maintenance of a master key system. When master keyed cylinders are encountered, the key presented without its corresponding master key shall be presumed to be a subordinate key until otherwise determined. An attempt must be made to determine the holder of the master key and seek authorization for cylinder changes or key origination before such service is performed.

(i) Locksmiths shall keep key biting arrays, file keys and all client information confidential. Locksmiths shall not release any information or security device, such as a master key or safe combination, to any person without verifying that the recipient is entitled to receive it.

History Note: Authority G.S. 74F-6; Temporary adoption Eff. August 13, 2002; Eff. August 1, 2004.

CHAPTER 32 – NORTH CAROLINA MEDICAL BOARD

21 NCAC 32B .0104 CRIMINAL BACKGROUND CHECK

(a) All applicants for a license to practice medicine or to perform medical acts, tasks, and functions as a physician assistant contained in Subchapters 32B and 32S, shall be fingerprinted using a Fingerprint Record Card, Form FD-258, and consent to a search of local, state, and national files to disclose any criminal record.

(b) All applicants shall submit a signed consent form, one completed Fingerprint Record Card, Form FD-258, and such other form(s) that may be required at that time by the agency performing the criminal history check to the Board at the time of their application.

(c) An applicant for license to practice medicine in North Carolina may be licensed to practice medicine in North Carolina prior to the date on which the Board receives the report of the results of the fingerprint record check, if all the following requirements are met:

- (1) The completed Fingerprint Record Card and signed consent form have been received by the Board;
- (2) The applicant meets all other licensing requirements.

History Note: Authority G.S. 90-6; 90-9; 90-11; Temporary Adoption Eff. December 1, 2002; Eff. August 1, 2004.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .1204 OFFICE OF THE BOARD

The office of the Board is located at 6015 Farrington Road, Suite 201, Chapel Hill, North Carolina. Its mailing address is Post Office Box 4560, Chapel Hill, North Carolina 27515-4560.

History Note: Authority G.S. 90-85.6;

Eff. April 1, 1983;

Amended Eff. November 1, 2003; July 1, 1996; May 1, 1989.

TITLE 25 - STATE PERSONNEL

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 shall originate from management in consultation with the agency or university Human Resources Office.

History Note: Authority G.S. 126-4(10);

Eff. August 1, 2004.

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at the following address: <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

Chief Administrative Law Judge

JULIAN MANN, III

Senior Administrative Law Judge

FRED G. MORRISON JR.

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beecher R. Gray

Melissa Owens Lassiter

James L. Conner, II

Beryl E. Wade

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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Larry Pendry on behalf of Charles Elledge v Teachers' & St. Emp. Comp. Major Medical Plan	03 INS 0280	Chess	09/11/03		
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Lula F Bowman, Laura A Bowman v. Teachers' & St. Emp. Comp. Maj. Med. Plan	03 INS 0975	Wade	10/22/03		
<u>OFFICE OF STATE PERSONNEL</u>					
Dorris D Wright v. Cabarrus Co. Dept. of Social Services	00 OSP 1506	Gray	04/22/03		
Robert Banks Hinceman v. DHHS/Broughton Hospital	01 OSP 0827	Elkins	05/01/03	18:01 NCR	45
Robin Ritzheimer Austin v. Jim Jones, Hlth Dir, Judie DeMuth, Admn Asst & the County of Stanly	01 OSP 0888 ⁴	Lassiter	09/08/03		
Edward Allen Hughes, Jr v. Department of Correction	01 OSP 1011	Gray	08/01/03		
Wanda Gore v. Department of Correction	01 OSP 1286	Gray	05/16/03		
James F Pridgen Jr v. A&T State University	01 OSP 2182	Gray	08/08/03		
Alan Foster v. Comm of Ag Meg Scott Phipps & DOA	02 OSP 0173	Lewis	09/26/03		
Jerry Thomas Ferrell v. Department of Correction	02 OSP 0375	Conner	09/15/03		
Carolyn Davis v. Durham MH/DD/SA Area Authority d/b/a The Durham Ctr	02 OSP 1001	Lassiter	08/06/03	18:05 NCR	410
Carolyn Davis v. Durham MH/DD/SA Area Authority d/b/a The Durham Ctr	02 OSP 1001	Lassiter	08/06/03	18:07 NCR	494
Terence G Westry v. A&T State University	02 OSP 1019	Conner	06/30/03		
Robert L. Swinney v. Department of Transportation	02 OSP 1109	Gray	05/07/03		
Robin Ritzheimer Austin v. Jim Jones Hlth Dir Stanly County	02 OSP 1166 ⁴	Lassiter	09/08/03		
Cynthia Michelle Guess-Godwin v. Winston Salem State Univ	02 OSP 1255	Gray	09/04/03		
James Thomas Kinlaw v. ESC of NC	03 OSP 1343	Wade	10/23/03		
Norman Burton v. Chatham County	02 OSP 1483 ²	Gray	05/12/03		
Jonah Uduagbomen v. Department of Transportation	02 OSP 1597	Gray	06/19/03		
Charles M Alexander v. ESC of NC	02 OSP 1613	Chess	07/01/03		
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1624 ³	Gray	07/23/03		
Norman Burton v. Chatham County	02 OSP 1625 ²	Gray	05/12/03		
Edward K Royal v. Dept. of Crime Control & Public Safety, Div. of State Highway Patrol	02 OSP 1631	Lassiter	06/25/03		
Gregory M Lewis v. DMV, Enforcement Section	02 OSP 1695 ³	Gray	07/23/03		

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Patricia A Mabry v. Department of Corrections	02 OSP 1774	Chess	06/27/03
Chester Michael Martin v. Cumberland Co. Dept. of Social Services	02 OSP 1797	Conner	05/09/03
Linda H Boyle v. Wayne Co. Mental Health Area Board	02 OSP 1951	Wade	08/13/03
Patricia Doggett v. Trend Mental Health	02 OSP 2128	Conner	07/08/03
Sharon F Greene v. Weldon Freeman, Crime Control & Public Safety	02 OSP 2144	Chess	08/29/03
William Michael McDuffie v. Wake Co Juvenile Detention Center	03 OSP 0013	Wade	08/11/03
Steven Wayne McCartney v. Lumberton Correctional Institution	03 OSP 0026	Conner	05/29/03
Walter D Giese v. George O'Daniel Onslow Co Health Dept.	03 OSP 1017	Morrison	09/08/03
Eric M Petree v. Department of Corrections	03 OSP 0116	Lassiter	06/24/03
Monica Lynn Johnson v. NC School of the Arts	03 OSP 0180	Conner	07/29/03
Jeffrey W Byrd v. Fayetteville State University	03 OSP 0204	Chess	06/04/03
Tamara V McNeill v DPI	03 OSP 0212	Conner	10/29/03
Tina Marie Walker v. Buncombe Co Dept of Social Services	03 OSP 0429	Chess	08/18/03
Lisa C Banks v. Craven Co Child Support Enforcement Office	03 OSP 0268	Conner	07/31/03
Beverly M Jennings v. Juv Justice, Swannanoa Valley Youth Dev Center	03 OSP 0408	Chess	08/11/03
Maranda Sharpe v. Department of Transportation	03 OSP 0412	Chess	06/03/03
James E. Sharpe v. Department of Transportation, Div. 14 (Graham Co.)	03 OSP 0413	Chess	06/03/03
Larry S Height v. NC Utilities Commission	03 OSP 0507	Conner	07/17/03
Gary Melvin Moore v. Western Piedmont Community College	03 OSP 0548	Wade	07/29/03
Joan Milligan, Patricia Flanigan, Pauletta Highsmith, Edna Cummings v. Fayetteville State University	03 OSP 0562	Conner	06/06/03
Ty Atkinson v M S C Center	03 OSP 0577	Conner	10/28/03
Lisa D Barrett v. East Carolina University	03 OSP 0597	Mann	08/05/03
Wrenete Oladoye v Whitaker School	03 OSP 0620	Conner	08/15/03
Melinda O Wiggins v. Moore Co Health Department	03 OSP 0632	Morrison	09/17/03
William Harold Maready Jr v. DOC, Pasquotank Correctional Inst.	03 OSP 0644	Conner	08/01/03
Henry Earl Stewart v. Department of Transportation	03 OSP 0645	Lassiter	08/26/03
Derwin D Johnson v. Department of Correction	03 OSP 0660	Lassiter	06/24/03
Wanda Steward-Medley v. Department of Corrections, Div. of Prisons	03 OSP 0656	Conner	06/20/03
Priscilla Sledge v. Department of Correction	03 OSP 0675	Conner	08/13/03
Jerry B Davis v. Dorothea Dix Hospital/DHHS	03 OSP 0678	Gray	07/14/03
Leslie AllenWhittington v. Swannanoa Youth Dev. Center	03 OSP 0696	Lassiter	09/24/03
Cathy S Carson v. NC School for the Deaf	03 OSP 0715	Wade	07/22/03
Edwin E Kirton III v. DOC, Warren Correctional	03 OSP 0769	Conner	07/17/03
David L McMurray Jr. v. Highway Patrol	03 OSP 0801	Lassiter	06/19/03
Harold Lorenzo Person v. E. Reg. Off. DOC, Div. of Prisons	03 OSP 0805	Conner	08/21/03
LaWanda J Abeguunrin v. Franklin Correctional Center	03 OSP 0825	Gray	06/18/03
Lazona Gale Spears v. Employment Security Commission	03 OSP 0859	Lassiter	06/26/03
Martin Hernandez v. Dobbs Youth Dev Ctr, DOJJ&DP	03 OSP 0862 ⁵	Morrison	09/29/03
Gail Hernandez v. Dobbs Youth Dev Ctr, DOJJ&DP	03 OSP 0863 ⁵	Morrison	09/29/03
Wanda Steward-Medley v. Dept of Corrections, Div of Prisons	03 OSP 0873	Morrison	08/12/03
Jeffrey J Medley v. Department of Correction	03 OSP 0879	Gray	06/30/03
Comatha B Johnson v. DHHS, Cherry Hospital	03 OSP 0942	Chess	08/19/03
Monica Dockery v. DOC, Div. of Prisons	03 OSP 1016	Mann	07/18/03
Theresa R Rogers v. Off of the Secretary of State of NC	03 OSP 1044	Morrison	09/25/03
David Upchurch v. DOC	03 OSP 1076	Conner	09/23/03
Roberta Lane v. DOC	03 OSP 1077	Conner	10/29/03
Mable Lynn Kelly v. NC SEAA	03 OSP 1129	Chess	10/20/03
Leon C Rogers v. John Umstead Hospital	03 OSP 1152	Morrison	09/11/03
Mable Lynn Kelly v. NC SEAA	03 OSP 1184	Chess	10/20/03
Sharon D Wallace v. Department of Corrections	03 OSP 1231	Wade	09/17/03
Sergeant Tracy Millington v. Department of Correction	03 OSP 1262	Conner	10/21/03
David Dotson v. NC State University Zoology Department	03 OSP 1317	Wade	10/27/03
Walter Eugene Agers v. Winston-Salem State University	03 OSP 1321	Lassiter	09/24/03
Dennis D Foster v. Durham Co Sheriff's Department	03 OSP 1353	Morrison	09/12/03
Kimberly Ann Summers v. Bobby White Co Mgr, Caldwell	03 OSP 1393	Conner	11/04/03
Charles G Horne Jr v. DOC	03 OSP 1479	Lassiter	10/28/03
Charles G Horne Jr v. DOC	02 OSP 1480	Lassiter	10/29/03
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UNIVERSITY OF NORTH CAROLINA HOSPITALS

Donald R. Smith v. UNC Hospitals	02 UNC 1361	Conner	06/05/03
Martin B Strickland v. UNC Hospitals, Patient Accounts Services	02 UNC 1620	Wade	08/29/03
Mary Dieudone Frantz v. UNC Hospitals	03 UNC 0409	Mann	08/07/03
Susan Kay Fryar v. UNC Hospitals	03 UNC 0410	Mann	08/07/03
Kendall Adams v. UNC Hospitals	03 UNC 0536	Gray	08/11/03
Janice Block v. UNC Hospitals	03 UNC 0720	Gray	09/04/03
Alfred Tilden Ward, Jr. v. UNC Hospitals & UNC Physicians & Assoc.	03 UNC 0723	Gray	06/23/03
Ieshia Marlina Baskett v. UNC Hospitals, Patient Account Services	03 UNC 0894	Gray	09/04/03
Steven R. Wilkerson v. UNC Hospitals	03 UNC 1177	Chess	09/18/03
Yvonne Schreiner v. UNC Hospitals	03 UNC 1512	Morrison	10/31/03

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