

NORTH CAROLINA



REGISTER

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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	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
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)	
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		52 Podiatry Examiners	
		53 Professional Counselors	
		54 Psychology	
		56 Professional Engineers & Land Surveyors	
		57 Real Estate Appraisal	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care	
		62 Sanitarian Examiners	
		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

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 January 2004 – December 2004

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
18:13	01/02/04	12/08/03	01/17/04	03/02/04	03/22/04	05/01/04	05/10/04	09/28/04
18:14	01/15/04	12/19/03	01/30/04	03/15/04	03/22/04	05/01/04	05/10/04	10/11/04
18:15	02/02/04	01/09/04	02/17/04	04/02/04	04/20/04	06/01/04	01/26/05	10/29/04
18:16	02/16/04	01/26/04	03/02/04	04/16/04	04/20/04	06/01/04	01/26/05	11/12/04
18:17	03/01/04	02/09/04	03/16/04	04/30/04	05/20/04	07/01/04	01/26/05	11/26/04
18:18	03/15/04	02/23/04	03/30/04	05/14/04	05/20/04	07/01/04	01/26/05	12/10/04
18:19	04/01/04	03/11/04	04/16/04	06/01/04	06/21/04	08/01/04	01/26/05	12/27/04
18:20	04/15/04	03/24/04	04/30/04	06/14/04	06/21/04	08/01/04	01/26/05	01/10/05
18:21	05/03/04	04/12/04	05/18/04	07/02/04	07/20/04	09/01/04	01/26/05	01/28/05
18:22	05/17/04	04/26/04	06/01/04	07/16/04	07/20/04	09/01/04	01/26/05	02/11/05
18:23	06/01/04	05/10/04	06/16/04	08/02/04	08/20/04	10/01/04	01/26/05	02/26/05
18:24	06/15/04	05/24/04	06/30/04	08/16/04	08/20/04	10/01/04	01/26/05	03/12/05
19:01	07/01/04	06/10/04	07/16/04	08/30/04	09/20/04	11/01/04	01/26/05	03/28/05
19:02	07/15/04	06/23/04	07/30/04	09/13/04	09/20/04	11/01/04	01/26/05	04/11/05
19:03	08/02/04	07/12/04	08/17/04	10/01/04	10/20/04	12/01/04	01/26/05	04/29/05
19:04	08/16/04	07/26/04	08/31/04	10/15/04	10/20/04	12/01/04	01/26/05	05/13/05
19:05	09/01/04	08/11/04	09/16/04	11/01/04	11/22/04	01/01/05	01/26/05	05/29/05
19:06	09/15/04	08/24/04	09/30/04	11/15/04	11/22/04	01/01/05	01/26/05	06/12/05
19:07	10/01/04	09/10/04	10/16/04	11/30/04	12/20/04	02/01/05	05/00/06	06/28/05
19:08	10/15/04	09/24/04	10/30/04	12/14/04	12/20/04	02/01/05	05/00/06	07/12/05
19:09	11/01/04	10/11/04	11/16/04	12/31/04	01/20/05	03/01/05	05/00/06	07/29/05
19:10	11/15/04	10/22/04	11/30/04	01/14/05	01/20/05	03/01/05	05/00/06	08/12/05
19:11	12/01/04	11/05/04	12/16/04	01/31/05	02/21/05	04/01/05	05/00/06	08/28/05
19:12	12/15/04	11/22/04	12/30/04	02/14/05	02/21/05	04/01/05	05/00/06	09/11/05

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
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.

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

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

**EXECUTIVE ORDER NO. 55
EXTENDING THE NORTH CAROLINA STATE
HEALTH COORDINATING COUNCIL**

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

Executive Order No. 16 is hereby extended for an additional two years from this date. This order is effective immediately.

Done in Raleigh, North Carolina, this the 12th day January, 2004.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

**EXECUTIVE ORDER NO. 56
NORTH CAROLINA INTERAGENCY COUNCIL
FOR COORDINATING HOMELESS PROGRAMS**

WHEREAS, the problem of homelessness denies a segment of our population their basic need for adequate shelter; and,

WHEREAS, several State agencies offer programs and services for homeless persons; and,

WHEREAS, to combat the problem of homelessness most effectively, it is critical that these agencies coordinate program development and delivery of essential services.

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

Section 1. Establishment

The North Carolina Interagency Council for Coordinating Homeless Programs is hereby established.

Section 2. Membership

The Interagency Council shall consist of a chairperson appointed by the Governor and 28 additional members who shall be appointed by the Governor from the following public and private agencies and categories of qualifications:

- (a) One member from the Department of Administration.
- (b) One member from the North Carolina Housing Finance Agency.
- (c) One member from the Office of State Planning.
- (d) One member from the North Carolina Community College System.
- (e) One member from the Department of Correction.
- (f) One member from the Department of Juvenile Justice and Delinquency Prevention
- (g) One member from the Department of Commerce.
- (h) Three members from the Department of Health and Human Services, one representing the Division of Mental Health, Developmental Disabilities and Substance Abuse Services and one representing the AIDS Care Unit, and one representing the Office of Economic Opportunity.
- (i) One member from the State Board of Education or a member from the Department of Public Instruction.
- (j) One county government official.
- (k) One city government official.
- (l) Six members from non-profit agencies concerned with housing issues and service provision to the homeless.
- (m) One homeless or formerly homeless person.
- (n) One members from the private sector.
- (o) One member representing Public Housing Authorities.
- (p) Three members of the North Carolina Senate.
- (q) Three members of the North Carolina House of Representatives.

Section 3. Chair and Terms of Membership

Each appointment shall be for a term of 3 years. (Initial terms of membership for the other members of the Interagency Council shall be staggered with those members from state departments or agencies and the North Carolina General Assembly serving three year terms and other members serving two year terms. Each appointment thereafter shall be for a term of two years.)

Section 4. Meetings

The Interagency Council shall meet quarterly and at other times at the call of the Chairperson or upon written request of at least five (5) of its members.

Section 5. Functions

- (a) The Interagency Council shall advise the Governor and Secretary of the Department

of Health and Human Services on issues related to the problems of persons who are homeless or at risk of becoming homeless, identify and secure available resources throughout the State and nation and provide recommendations for joint and cooperative efforts and policy initiatives in carrying out programs to meet the needs of the homeless.

- (b) The Interagency Council shall set short-term and long-term goals and determine yearly priorities.
- (c) The Interagency Council shall submit an annual report to the Governor, by November 1, on its accomplishments and the status of homelessness in North Carolina.

Section 6. Expenses

Council administrative costs, special function expenses and the cost of member per diem, travel and subsistence expenses shall be paid from state funds

appropriated to the Department of Health and Human Services.

Section 7. Staff Assistance

The Department of Health and Human Services shall provide administrative and staff support services required by the Interagency Council.

Done in the Capital City of Raleigh, North Carolina, this the 20th day of January, 2004.

Michael F. Easley
Governor

ATTEST:

Elaine F. Marshall
Secretary of State

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

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

Pursuant to N.C.G.S. § 130A-310.34, Torrence Street Partners, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property consists of 0.39 acres and is located at 1607 and 1611 East Fourth Street. Environmental contamination exists on the Property in groundwater. Torrence Street Partners, LLC has committed itself to redevelopment of the Property for multiple uses that may include commercial, residential and recreational uses, as well as common open space. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Torrence Street Partners, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Charlotte-Mecklenburg Public Library, 310 North Tryon Street, Charlotte, North Carolina 28202, by contacting Rita Rouse at that address or at (704) 336-2725; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-4996, ext. 336. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

Mr. Bruce Nicholson
Head, Brownfields Program
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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 04 – DEPARTMENT OF COMMERCE

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Banking Commission, Commissioner of Banks intends to amend the rule cited as 04 NCAC 03C .1601.

Proposed Effective Date: June 1, 2004

Public Hearing:

Date: March 2, 2004

Time: 9:00 a.m.

Location: 316 W. Edenton St., Raleigh, NC

Reason for Proposed Action: *To update the list of fees imposed in connection with various applications, petitions, and other proceedings which must be filed with the Commissioner of Banks in order to more accurately reflect the current actual burden of such proceedings upon the Commissioner's operating budget.*

Procedure by which a person can object to the agency on a proposed rule: *Objections may be submitted in writing or via email to William H. Finlay, Agency Legal Specialist, 4309 Mail Service Center, Raleigh, NC 27699-4309, email wfinlay@nccob.org. Oral objections may also be made at the public hearing.*

Written comments may be submitted to: *William H. Finlay, Agency Legal Specialist, 316 W. Edenton St., 4309 Mail Service Center, Raleigh, NC 27699-4309, email wfinlay@nccob.org.*

Comment period ends: April 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

CHAPTER 03 - BANKING COMMISSION

SUBCHAPTER 03C – BANKS

SECTION .1600 – FEES

04 NCAC 03C .1601 FEES, COPIES AND PUBLICATION COSTS

(a) For applications, petitions, and other proceedings which must be filed with the Commissioner of Banks the following fees shall be paid to the Commissioner at the time of filing:

- (1) Application for the Formation of a New Bank or State Trust Institution \$8,000.00
- (2) Application to Merge or Consolidate Banks or State Trust Institutions \$3,000.00
(fee is per institution)
- (3) Application for Reorganization Into a Bank Holding Company Through an Interim Bank \$3,000.00
(fee is per bank)
- (4) Application for Reorganization \$3,000.00
- (5) Application for Conversion of a National Bank to State Charter ~~\$5,000~~ 2,500.00
- (6) Application for Voluntary Liquidation \$3,000.00
- (7) Application for Authority to Create and Invest in a Subsidiary \$750.00
- ~~(8) Application for Approval of Change in Bank Control or Management \$1,000.00~~
- ~~(9) Application for Authority to Establish a Branch Bank \$500.00~~
- ~~(10) Application for Authority to Relocate a Main Office or Branch \$500.00~~
- ~~(11) Application for Authority to Create a Limited Service Facility \$500.00~~
- ~~(12) Application for Authority to Convert a Branch to a Limited Service Facility \$500.00~~
- ~~(13)~~(8) Application for Conversion of a Savings and Loan Association or a Savings Bank to a State Bank \$2,500.00

(b) The fees set forth in Paragraph (a) of this Rule are for standard applications, petitions, and other proceedings filed and considered in the ordinary course of business. Any application, petition or other proceeding which in the opinion of the Commissioner of Banks requires extraordinary review, investigation or special examination shall be subject to the actual costs of additional expenses and the hourly rate for the staff's time to be determined annually by the Banking Commission. The Commissioner of Banks shall advise an applicant or

petitioner in advance of any additional work required and the hourly rate for the same. The hourly rate shall be:

- (1) For Senior Administrative staff \$75.00
- (2) For an Examiner II \$50.00
- (3) For an Examiner I \$35.00
- (4) For an Examiner Trainee \$25.00

~~(e) Publications available through the Banking Commission consist of:~~

- ~~(1) Banking Commission Regulations and Policies:

 - ~~(A) Bank Policy Statements,~~
 - ~~(B) Consumer Finance Policy Statements,~~
 - ~~(C) North Carolina Administrative Code-Title IV, Chapter III,~~
 - ~~(D) Monthly Official Notice Maximum Rate of Interest Allowed on Certain Loans (Annual Subscription).~~~~
- ~~(2) Directories:

 - ~~(A) Consumer Finance Licensees,~~
 - ~~(B) Money Transmitter Licensees,~~
 - ~~(C) Mortgage Banker/Broker Registrants~~
 - ~~(D) North Carolina Bank Directors,~~
 - ~~(E) Refund Anticipation Lenders,~~
 - ~~(F) State Chartered Banks,~~
 - ~~(G) State Chartered Bank Branches.~~~~
- ~~(3) Publications:

 - ~~(A) 1991 History of the North Carolina Banking Commission,~~
 - ~~(B) North Carolina Banking Commission Annual Report,~~
 - ~~(C) Quarterly List of Bank Rankings by Assets/by Deposits:

 - ~~(i) National and State,~~
 - ~~(ii) State,~~~~
 - ~~(D) State Chartered Banks Total Assets History (3/87).~~~~

~~(d)(c)~~ Unless otherwise stated, publications externally printed may be obtained at a cost equal to the actual cost of printing plus shipping and handling. All other publications or public record copies may be purchased at a price of two dollars (\$2.00) for the first page and ~~ten cents (\$0.10)~~ twenty-five cents (\$0.25) for each additional page.

Authority G.S. 53-92; 53-122(3).

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Health and Human Services, Division of Medical Assistance intends to amend the rules cited as 10A NCAC 22G .0101, .0307.

Proposed Effective Date: June 1, 2004

Public Hearing:
Date: March 4, 2004
Time: 10:15 a.m.

Location: Kirby Building, Room 132, 1985 Umstead Dr., Raleigh, NC

Reason for Proposed Action: *This change is necessary to maximize receipt of federal funds. The change will allow the State of North Carolina to potentially receive an additional \$125 million per year in federal dollars without any additional cost to the State or counties. Given North Carolina's revenue forecast for the biennium, obtaining these federal funds will better enable the state to meet its needs. This change was previously adopted in temporary rules effective June 26, 2003. The rules were published in NC Register Vol, 18, Issue 3.*

Procedure by which a person can object to the agency on a proposed rule: *Should you desire to object to a proposed rule(s) please respond to DMA with the objection, reasons for the objection, and the clearly identified portion of the rule to which the objection pertains. This must be submitted in writing to Kris M. Horton, Division of Medical Assistance, 2501 Mail Service Center, Raleigh, NC 27699-2501, or fax (919) 733-6608.*

Written comments may be submitted to: *Kris M. Horton, Division of Medical Assistance, 2501 Mail Service Center, Raleigh, NC 27699-2501, or fax (919) 733-6608.*

Comment period ends: April 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

CHAPTER 22 – MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22G – REIMBURSEMENT PLANS

SECTION .0100 – REIMBURSEMENT FOR NURSING FACILITY SERVICES

10A NCAC 22G .0101 REIMBURSEMENT PRINCIPLES

(a) All certified nursing facilities participating in the North Carolina Medicaid Program are reimbursed on a prospective basis as set forth hereunder, except that state-operated facilities will be reimbursed their reasonable and allowable costs in accordance with the Medicare principles of reimbursement and with the provisions of Rules .0103 and .0104 of this plan. Subchapter. This plan is developed in accordance with the requirements of 42 CFR 447 Subpart C - Payment for Inpatient Hospital and Long-Term Care Facility Services. Providers must comply with all federal regulations and with the provisions of this plan.

(b) Local government-owned or operated nursing facilities which enter into an intergovernmental transfer agreement with the Department shall be eligible to participate in a supplemental funding program to the extent that federal funds are available to implement the program and subject to the terms and conditions specified by the federal government for the program.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

SECTION .0300 - ICF-MR PROSPECTIVE RATE PLAN

10A NCAC 22G .0307 REIMBURSEMENT METHODS FOR STATE-OPERATED FACILITIES

(a) A certified State-operated ICF-MR facility is reimbursed for the reasonable costs that are necessary to efficiently meet the needs of its clients and to comply with federal and state laws and regulations. Payments shall be suspended if annual reports are not filed. The Division of Medical Assistance may extend the deadline for filing the report if in its view good cause exists for the delay. The reasonableness and allowability of costs incurred by state-operated facilities shall be determined by the Division of Medical Assistance.

(b) A per diem rate based on the provider's estimated annual cost divided by patient days shall be used to make interim payments. A tentative settlement shall be issued based on the desk audit performed on each annual cost report to determine the amount of Medicaid reasonable cost and the amount of interim payments received by the provider.

(c) Any payments in excess of costs shall be refunded to the Division of Medical Assistance. Any reasonable costs in excess of payments shall be paid to the provider. An annual field audit may be performed by a qualified independent auditor to determine the final settlement amounts. Final settlement is subject to the terms and conditions specified in Paragraph (d) of this Rule.

(d) State government-owned or operated ICF-MR facilities which enter into an intergovernmental transfer agreement with the Department of Health and Human Services shall be eligible to participate in a supplemental funding program to the extent that federal funds are available to implement the program and subject to the terms and conditions specified by the federal government for the program.

Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Wildlife Resources Commission intends to amend the rule cited as 15A NCAC 10D .0103.

Proposed Effective Date: July 1, 2004

Public Hearing:

Date: March 5, 2004

Time: 9:00 am. to 11:00 a.m.

Location: Wildlife Resources Commission hearing room, Suite 332, Archdale Building, 512 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: To regulate hunting on gamelands to include new gameland areas.

Procedure by which a person can object to the agency on a proposed rule: Notification to Rulemaking coordinator, Joan Troy, by email or by letter prior to close of comment period on April 22, 2004.

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

Comment period ends: April 22, 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 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - GAME LANDS REGULATIONS

SECTION .0100 - GAME LANDS REGULATIONS

NOTE: The text in bold indicates language that was proposed in the NC Register Volume 18, Issue 10.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

(a) Safety Requirements. No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) Traffic Requirements. No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) Tree Stands. It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) Time and Manner of Taking. Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.

(e) Definitions:

- (1) For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).

- (2) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.

- (3) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which

any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. These "open days" also apply to either-sex hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.

- (4) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons, except that:

- (A) Bears shall not be taken on lands designated and posted as bear sanctuaries;

- (B) Wild boar shall not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on ~~male~~ deer on bear sanctuaries;

- (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:

- (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.

- (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.

- (iii) Additionally, raccoon and opossum may be hunted when in season on Uwharrie Game ~~Lands-Lands~~;

- (D) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest ~~October 15; October 15~~.

(f) ~~Game Lands Seasons and Other Restrictions apply as follows: The listed seasons and restrictions apply in the following game lands:~~

- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties

- (A) Six Days per Week Area

- (B) Deer of either sex may be taken the first six open days and the last six

open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.

(2) Alligator River Game Land in Tyrrell County

- (A) Six Day per Week Area**
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.**

- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.**

(2)(3) Angola Bay Game Land in Duplin and Pender counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(3)(4) Bachelor Bay Game Land in Bertie and Washington counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.

(4)(5) Bertie County Game Land in Bertie County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(5)(6) Bladen Lakes State Forest Game Land in Bladen County

- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program.
- (C) Handguns shall not be carried and, except for muzzle-loaders, rifles larger than .22 caliber rimfire shall not be used or possessed.
- (D) On ~~the Breece Tract and~~ the Singletary Lake Tract deer and bear may be taken only by still hunting.

- (E) Wild turkey hunting on the Singletary Lake Tract is by permit only.

- (F) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.

(7) Broad River Game Land in Cleveland County.

- (A) Three Days per Week Area**
- (B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.**
- (C) Use of centerfire rifles is prohibited.**

(6)(8) Brunswick County Game Land in Brunswick County: Permit Only Area

(7)(9) Buckridge Game Land in Tyrrell County.

- (A) ~~Six~~ **Three** Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season.

(8)(10) Bullard and Branch Hunting Preserve Game Lands in Robeson County

- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.

(9)(11) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 p.m. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
- (D) Horseback riding, including all equine species, is prohibited.
- (E) Target shooting is prohibited
- (F) Wild turkey hunting is by permit only.

(10)(12) Cape Fear Game Land in Pender County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

- (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
- ~~(11)~~(13) Caswell Game Land in Caswell County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.
- (C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.
- (D) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.**
- (E) The area encompassed by the following roads is closed to all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.**
- ~~(12)~~(14) Caswell Farm Game Land in Lenoir County- Dove-Only Area
- (A) Dove hunting is by permit only from opening day through either the first Saturday or Labor Day which ever comes last of the first segment of dove season.
- ~~(13)~~(15) Catawba Game Land in Catawba County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
- ~~(14)~~(16) Chatham Game Land in Chatham and Harnett counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (D) Horseback riding, including all equine species, is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons.**
- ~~(15)~~(17) Cherokee Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(16)~~(18) Chowan Game Land in Chowan County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- ~~(17)~~(19) Chowan Swamp Game Land in Gates County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(18)~~(20) Cold Mountain Game Land in Haywood County
- (A) Six Days per Week Area
- (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- ~~(19)~~(21) Columbus County Game Land in Columbus County.
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(20)~~(22) Croatan Game Land in Carteret, Craven and Jones counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- ~~(21)~~(23) Currituck Banks Game Land in Currituck County
- (A) Six Days per Week Area
- (B) Permanent waterfowl blinds in Currituck Sound ~~adjacent to~~ **on** these

- game lands shall be hunted by permit only after November 1.
- (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not possess or use a firearm.
 - (D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
 - (E) Dogs shall be allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
 - (F) No screws, nails, or other objects penetrating the bark ~~will~~shall be used to attach a tree stand or blind to a tree.
- ~~(22)~~(24) Dare Game Land in Dare County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last ~~six open days~~day of the ~~applicable~~ Deer With Visible Antlers Season.
 - (C) No hunting on posted parts of bombing range.
 - (D) The use and training of dogs is prohibited from March 1 through June 30.
- ~~(23)~~(25) Dupont State Forest Game Lands in Henderson and Transylvania counties
- (A) Hunting is by Permit only.
 - (B) The training and use of dogs for hunting except during scheduled small game permit hunts for squirrel, grouse, rabbit, or quail is prohibited.
 - (C) Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- ~~(24)~~(26) Dysartsville Game Land in McDowell and Rutherford counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(25)~~(27) Elk Knob Game Land in Ashe and Watauga counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(26)~~ ~~Gardner-Webb Game Land in Cleveland County~~
- ~~(A) Six Days per Week Area~~
 - ~~(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.~~
- ~~(27)~~(28) Goose Creek Game Land in Beaufort and Pamlico counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) On posted waterfowl impoundments waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the duck hunting seasons. After November 1, on the Pamlico Point, Campbell Creek, Hunting Creek and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's ~~day~~Day.
 - (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- ~~(28)~~(29) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through-August 31 and all horseback riding is prohibited from September 1 through May 15. This rule includes all equine species.
- ~~(29)~~(30) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(30)~~(31) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) On the posted waterfowl impoundments of Gull Rock Game Land hunting of any species of wildlife is limited to Mondays, Wednesdays, Saturdays; Thanksgiving, Christmas, and New Year's Days; and the opening and closing days of the applicable waterfowl seasons.
 - (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both

- designated and posted as camping areas.
- (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season on the Long Shoal River Tract of Gull Rock Game Land.
- ~~(31) Hickorynut Mountain Game Land in McDowell County~~
~~(A) Six Days per Week Area~~
~~(B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.~~
- ~~(32) Hofmann Forest Game Land in Jones and Onslow counties~~
~~(A) Six Days per Week Area~~
~~(B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.~~
- ~~(33)~~(32) Holly Shelter Game Land in Pender County
 (A) Three Days per Week Area
 (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program
 (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur.
 (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- ~~(34)~~(33) Hyco Game land in Person County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(35)~~(34) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- ~~(36)~~(35) Jordan Game Land in Chatham, Durham, Orange and Wake counties
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (D) Horseback riding, including all equine species, is prohibited except on those areas posted as American Tobacco Trail and other areas specifically posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July and August, and on Sundays the remainder of the year except during open turkey and deer seasons.
- (E) Target shooting is prohibited.
 (F) Wild turkey hunting is by permit only.
- ~~(37)~~(36) Lantern Acres Game Land in Tyrrell and Washington counties
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 (C) Wild turkey hunting is by permit only.
- ~~(38)~~(37) Lee Game Land in Lee County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(39)~~(38) Linwood Game Land in Davidson County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- ~~(40)~~(39) Mayo Game Land in Person County
 (A) Six Days per Week Area
 (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 (C) Waterfowl may be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
- (40) Mitchell River Game Land in Surry County.
(A) Three Days per Week Area
(B) Deer of either sex may be taken in the last six open days of the applicable Deer With Visible Antlers Season.
(C) Horseback riding is prohibited except on designated trails May 16 through

- August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (41) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
- (C) Raccoon and opossum may be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in the same part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15.
- (42) Neuse River Game Land in Craven County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (43) New Lake Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (44) North River Game Land in Currituck and Camden counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season except in that part in Camden County south of US 158 where the season is the last six open days of the applicable Deer With Visible Antlers Season.
- (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (D) Wild turkey hunting is by permit only on that portion in Camden County.
- (45) Northwest River Marsh Game Land in Currituck County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (46) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.
- ~~(D) On that part of Pee Dee River Game Lands between Blewett Falls Dam and the South Carolina state line, waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 PM in this area.~~
- (47) Perkins Game Land in Davie County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (48) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season except on that portion in Avery and Yancey counties and that portion in Haywood County encompassed by US 276 on the north, US 74 on the west, and the Blue Ridge Parkway on the south and east.
- (C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.
- (49) Pungo River Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.

- (50) Roanoke River Wetlands in Bertie, Halifax and Martin counties
- (A) Hunting is by Permit only.
 - (B) Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.
 - (C) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (51) Roanoke Sound Marshes Game Land in Dare County-Hunting is by permit only.
- (52) Robeson Game Land in Robeson County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (53) Sampson Game Land in Sampson County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (54) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
- (A) Three Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting days during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on open days beginning the third Saturday before Thanksgiving through the following Wednesday, and during the Deer With Visible Antlers season.
 - (C) Gun either-sex deer hunting is by permit only. For participants in the Disabled Sportsman Program, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer, opossum, rabbit, and raccoon seasons specifically indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
- (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons
 - (E) Wild turkey hunting is by permit only.
 - (F) Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.
 - (G) Opossum, ~~rabbit~~, and raccoon hunting on the field trial grounds will be allowed on open days from the second Monday before Thanksgiving through the Saturday following ~~Thanksgiving~~ **Thanksgiving and rabbit season on the field trial grounds will be from the Saturday preceding Thanksgiving through the Saturday following Thanksgiving.**
 - ~~(H)~~ **The following areas are closed to all quail and woodcock hunting and dog training on birds: In Richmond County: that part east of US 1; In Scotland County: that part east of east of SR 1001 and west of US 15/501.**
 - ~~(I)~~ **Horseback riding on field trial grounds from October 22 through March 31 shall be prohibited except by participants in authorized field trials.**
- ~~(54)~~ **Sauratown Plantation Game Land in Stokes County**
- ~~(A)~~ **Three Days per Week Area**
 - ~~(B)~~ **Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.**
- ~~(54)~~**(55)** Scuppernong Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- ~~(55)~~**(56)** Shearon Harris Game Land in Chatham and Wake counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.

- (D) The use or construction of permanent hunting blinds is prohibited.
- (E) Wild turkey hunting is by permit only.
- ~~(56)~~(57) Shocco Creek Game Land in Franklin and Warren Counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(57)~~(58) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving.**
 - ~~(B)~~(C) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - ~~(C)~~(D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
 - (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.**
- (59) Stones Creek Game Land in Onslow County.
 - (A) Six Days per Week Area
 - (B) Swimming in lakes is prohibited
- ~~(58)~~(60) Suggs Mill Pond Game Land in Bladen County;
 - (A) Hunting is by Permit only.
 - (B) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- ~~(59)~~(61) Sutton Lake Game Land in New Hanover County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- ~~(60)~~(62) Three Top Mountain Game Land in Ashe County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- ~~(61)~~(63) Thurmond Chatham Game Land in Wilkes County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow on the Saturday prior to Northwestern bow and arrow season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species. Participants must obtain a game lands license prior to horseback riding on this area.
- ~~(62)~~(64) Toxaway Game Land in Transylvania County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
 - (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- ~~(63)~~(65) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- ~~(65)~~(66) Vance Game Land in Vance County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- ~~(66)~~(67) Van Swamp Game Land in Beaufort and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.

(67)(68) White Oak River Impoundment Game Land in Onslow County

- (A) Three Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the statewide waterfowl hunting seasons. After October 1, a special permit is required for hunting waterfowl on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's day.

(g) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and shall be nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperater agent or by phone.

(h) The following game lands and refuges shall be closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:

- Bertie, Halifax and Martin counties--Roanoke River Wetlands
- Bertie County--Roanoke River National Wildlife Refuge
- Bladen County—Suggs Mill Pond Game Lands
- Burke County—John's River Waterfowl Refuge
- Dare County--Dare Game Lands (Those parts of bombing range posted against hunting)
- Dare County--Roanoke Sound Marshes Game Lands
- Davie--Hunting Creek Swamp Waterfowl Refuge
- Gaston, Lincoln and Mecklenburg counties--Cowan's Ford Waterfowl Refuge
- Henderson and Transylvania counties--Dupont State Forest Game Lands

Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305.

TITLE 19A – DEPARTMENT OF TRANSPORTATION

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Transportation – Division of Motor Vehicles intends to amend the rules cited as 19A NCAC 03G .0207, .0209.

Proposed Effective Date: June 1, 2004

Public Hearing:
Date: March 9, 2004
Time: 2:00 p.m.

Location: Commissioner's Conf. Room, DMV Building, 1100 New Bern Ave., Raleigh, NC

Reason for Proposed Action: These Rules are proposed for amendment to reflect changes in North Carolina General Statutes. Senate Bill 61, Session Law 2003-397 was ratified August 7, 2003. Amendments in SB 61 brought state law into compliance with federal regulations. The amended statute strengthens requirements for commercial drivers licenses. The legislation also amends the definition of and parameters for serious violations for persons who are issued commercial drivers licenses.

Procedure by which a person can object to the agency on a proposed rule: A person may object to the proposed rule in writing by sending the comments to Susan Coward, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501 or by email to SCoward@dot.state.nc.us.

Written comments may be submitted to: Susan Coward, NC DOT, 1501 Mail Service Center, Raleigh, NC 27699-1501, phone (919) 733-2520, fax (919) 733-9150, and email SCoward@dot.state.nc.us.

Comment period ends: April 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

CHAPTER 03 - DIVISION OF MOTOR VEHICLES

SUBCHAPTER 03G - SCHOOL BUS AND TRAFFIC SAFETY SECTION

SECTION .0200 - SCHOOL BUS DRIVER TRAINING

19A NCAC 03G .0207 RENEWAL OF CERTIFICATION

Every driver must be re-certified at the time of the expiration of his Commercial Driver License upon passing the three four

written tests (general knowledge, passenger transport, school bus, and air brakes), a pre-trip inspection observation, a driving observation, and an eye screening. ~~test~~. A driver may be exempted from the written tests, provided he has accumulated no more than three points on his driving record since his last certification and has had at least one hour of in-service training for each year since his last certification. A driver whose certification expires may be re-certified within 30 days in the same manner as though his certification had not expired. Any driver whose certification expires for more than 30 days may be re-certified within the next year following the expiration upon passing the ~~three~~ four written tests (general knowledge, passenger transport, school bus, and air brakes), the three skills tests (pre-trip inspection, basic skills, and road), and an eye screening. ~~test~~. If more than one year has elapsed since the expiration of the most recent certification, the applicant must complete the full training course required of a beginning driver.

Authority G.S. 20-39(b); 20-218.

19A NCAC 03G .0209 CANCELLATION OF CERTIFICATION

The Division of Motor Vehicles shall cancel the school bus driver certificate of any driver for the following reasons:

- (1) Any determination that the certificate was issued on the basis of misinformation, false statements, or fraud.
- (2) A suspension, revocation, or cancellation of the driver license.
- (3) Conviction of any of the following motor vehicle moving offenses:
 - (a) Driving while impaired;
 - (b) Passing a stopped school bus;
 - (c) Hit and run;
 - (d) Careless and reckless ~~Reckless~~ driving;
 - (e) Excessive speeding involving a single charge of Speeding ~~speeding~~ more than 15 mph above the posted speed limit;
 - (f) Two convictions within a period of 12 months;
 - (g) A violation committed while operating a school ~~bus~~ bus;
 - (h) A violation of any State or local law relating to motor vehicle traffic control, other than a parking violation arising in connection with a fatal accident;
 - (i) Improper or erratic lane changes;
 - (j) Following the vehicle ahead too closely;
 - (k) Driving a commercial motor vehicle without obtaining a commercial drivers license;
 - (l) Driving a commercial motor vehicle without a commercial drivers license in the driver's possession. However, a person shall not be convicted of failing to carry a commercial drivers

license if by the date the person is required to appear in court for the violation if he or she produces to the court a commercial drivers license that was valid on the date of the offense;

(m) Driving a commercial motor vehicle without the proper class of commercial drivers license or endorsements for the specific vehicle group being operated or for the passenger or type of cargo being transported.

- (4) A determination of physical or mental inadequacy under the provisions of the physical requirements noted in Rule .0205 of this Section.
- (5) A local cancellation of certification, in the discretion of the local administrative unit, for violation of local regulations, submitted formally to the Driver Education Specialist for cancellation at the state level. If there is not an offense or conviction that would require a mandatory cancellation by the Section, the Driver Education Specialist shall handle the cancellation locally by canceling the certificate at the garage and retain the pocket card in his files.
- (6) Upon recommendation of the Driver Education Specialist or local school officials, the Division of Motor Vehicles may require re-examination of any certified driver whose qualifications become questionable or who exhibits evidence of improper or unsafe driving practices and driving procedures. If such a re-examination reveals a significant problem, the Driver Education Specialist shall have the authority to suspend the certified driver from driving any school bus pending re-training of the driver. If the problem cannot be corrected, the Driver Education Specialist shall have the authority to cancel the certification of the school bus driver.
- (7) A driving record which in its overall character arouses serious question about the reliability, judgment, or emotional stability of the driver.
- (8) Conviction of a violation of G.S. 20-142.1 through G.S. 20-142.5 when the driver is operating a commercial motor vehicle. The driver shall be disqualified from driving a commercial motor vehicle as follows:
 - (a) For a period of 60 days if convicted of a first violation of a railroad grade crossing offense listed in these statutes;
 - (b) For a period of 120 days if convicted during any three-year period of a second violation of any combination of railroad grade crossing offenses listed in these statutes;

(c) For a period of one year if convicted during any three-year period of a third or subsequent violation of any combination of railroad grade crossing offenses listed in these statutes.

Authority G.S. 20-39(b); 20-218.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Chiropractic Examiners intends to adopt the rule cited as 21 NCAC 10 .0210 and amend the rules cited as 21 NCAC 10 .0202-.0203.

Proposed Effective Date: July 1, 2004

Public Hearing:

Date: March 19, 2004

Time: 10:00 a.m.

Location: 14 Church Street North, Concord, NC

Reason for Proposed Action:

21 NCAC 10 .0202 – The dates of the State chiropractic licensure examination are being changed. The proposed amendment would change the deadlines for submitting licensure applications to agree with the new examinations dates.

21 NCAC 10 .0203 – In light of a recent legislative change to the statute governing chiropractic licensure, it is necessary and desirable to make several changes to the rule governing the State chiropractic licensure examination. The proposed amendments would change the contents of the examination, the prerequisites for taking the examination, the dates of the examination, and the procedure under which individual examination results are reviewed.

21 NCAC 10 .0210 – Chiropractors are currently required to obtain 24 hours of continuing education each year for license renewal. The proposed new rule would allow 12 hours to be obtained online or through similar forms of Board-approved individual study.

Procedure by which a person can object to the agency on a proposed rule: *Interested persons can object either by filing a written statement with the Secretary of the Board of Chiropractic Examiners during the comment period or by making an oral statement at the public hearing, which would be recorded by Board personnel.*

Written comments may be submitted to: Carol Hall, Executive Secretary of the Board of Chiropractic Examiners, 174 Church Street North, Concord, NC 28025, (704) 793-1342, fax (704) 793-1385, and email www.ncchiroboard.com.

Comment period ends: April 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

SECTION .0200 - PRACTICE OF CHIROPRACTIC

21 NCAC 10 .0202 APPLICATION FOR LICENSURE

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

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

- (1) Application Form: personal background of the applicant; his educational history; a recent photograph; and a statement confirming that he has read, understands and will abide by the General Statutes and administrative rules governing chiropractic.
- (2) Character Reference Form: the statements of three persons not related to the applicant attesting to his good moral character.

(c) Deadlines for Filing Applications. ~~Applications for the June examination must be received at the office of the Board on or before the third Tuesday in April. Applications for the November examination must be received at the office of the Board on or before the third Tuesday in September.~~ Applications for the North Carolina examination must be received at the office of the Board no later than 15 days before the scheduled examination dates as provided in 21 NCAC 10 .0203(b). These deadlines will not be waived except for compelling reasons, and any waiver shall be within the discretion of the Board.

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

Authority G.S. 90-142; 90-143; 90-143.1; 90-145; 90-146; 90-149.

21 NCAC 10 .0203 NORTH CAROLINA EXAMINATION

(a) Eligibility. Only those applicants who meet the requirements of this Rule and G.S. 90-143, or in the case of reciprocity applicants, G.S. 90-143.1, and who have submitted a timely and complete written application pursuant to 21 NCAC 10 Rule .0202 shall be allowed to take the North Carolina examination.

(b) ~~Date-Dates of Examination.~~ The North Carolina examination shall be given ~~twice annually. The spring examination shall commence on the first Saturday after the first Tuesday in June. The fall examination shall commence on the first Saturday after the first Tuesday in November.~~ four times each year, on the fourth Saturday in January, April, July and October. ~~Applicants eligible for examination~~ Eligible applicants shall be notified of the exact date, time and location of the examination as soon as possible after their written applications have been approved by the Board.

(c) National Boards. Except as provided in Paragraph (d) of this Rule, in order to take the North Carolina ~~portion of the examination, or otherwise demonstrate clinical proficiency~~, an applicant who has never been licensed in this state or who is not a reciprocity applicant must first achieve a score of 375 or higher on each of the following examinations given by the National Board of Examiners: Part I, Part II, Part III (WCCE) and the elective examination (termed "Physiotherapy" by the National Board). ~~An~~ In addition, the applicant must then demonstrate clinical proficiency, either by passing the North Carolina portion of the examination as described in Paragraphs (f) and (g) of this Rule or by achieving achieve a score of 475 or higher on Part IV of the National Board examination.

(d) ~~Date of Licensure.~~ An applicant who otherwise meets all the requirements for licensure and who submits proof of a Part IV score of 475 or higher shall be issued a license on the next examination date specified if Paragraph (b) of this Rule.

(e) ~~Report of Scores.~~ The applicant shall arrange for his test results from any National Board Examination to be reported to the North Carolina Board in a timely manner. Failure to comply with this provision shall be a basis for delaying the issuance of a license.

(d) Waiver of National Boards. The Board recognizes that many established chiropractors were licensed prior to the introduction of one or more National Board examinations. Notwithstanding the requirements of Paragraph (c) of this Rule, an applicant who submits National Board examination results in conformity with the following schedule shall not be disqualified from licensure in North Carolina:

- (1) If the applicant was initially licensed in his home state before July 1, 1966, he shall not be required to submit a score from any National Board examination;
- (2) If the applicant was initially licensed in his home state between July 1, 1966 and June 30, 1986, he shall be required to submit scores of 375 or higher on National Board Part I, Part II, and the elective examination termed "Physiotherapy"; but he shall not be required

to submit a score on Part III (WCCE) or Part IV;

- (3) If the applicant was initially licensed in his home state between July 1, 1986 and June 30, 1997, he shall be required to submit scores of 375 or higher on National Board Part I, Part II, the elective examination termed "Physiotherapy" and Part III (WCCE); but he shall not be required to submit a score on Part IV.

In order to receive a license, an applicant who qualifies for a waiver of any National Board score must take and pass the SPEC examination and the North Carolina examination and satisfy all other requirements for licensure.

(e) SPEC Examination. In order to take the North Carolina examination, a reciprocity applicant, a waiver applicant pursuant to Paragraph (d) of this Rule, or an applicant previously licensed in this State whose license has been canceled pursuant to G.S. 90-155 for more than 180 days must first take and pass the Special Purpose Examination for Chiropractic ("SPEC").

(f) Nature of Examination. The North Carolina portion of the examination is intended to test an applicant's proficiency in the practical aspects of chiropractic and to augment the information submitted in his written application. It is administered orally and may include questions on the following subjects: x-ray; general office practice; and chiropractic analysis, procedure, examination, diagnosis and treatment. a written test of an applicant's knowledge of chiropractic jurisprudence. No part of the North Carolina portion of the examination is open-book, and no reference material of any kind shall be allowed in the examination area. The passing grade is 75.

(g) Passing Grade. To pass the examination, an applicant must answer correctly a minimum of 65 percent of the questions on each subject and must also answer an average of 75 percent of all the questions on the examination. An applicant who fails because of a deficiency in only one subject may be re-examined in that subject the next time the examination is given and shall not be required to pay another application fee. An applicant who fails the examination for any other reason must re-take the entire examination and pay another application fee.

(h)(g) Review of Examination Results. An applicant who has been denied licensure because of failing he failed the North Carolina examination grades may request a review of his answers provided his request is made in writing and received by the secretary not later than 20 days after issuance of the examination results. Unless the applicant specifically requests to review his answers in person, The the review shall be limited to a re-tabulation of the applicant's test scores score to make certain no clerical errors were made in grading. If the applicant requests to review his answers in person, he shall be permitted to do so at the office of the Board in the presence of a representative of the Board and for a period of not more than 30 minutes. Applicants shall not discuss their examinations with Board members, graders or test administrators. The applicant shall not be permitted to discuss his examination with any member of the Board, grader, or test administrator.

(h) Date of Licensure. An applicant who meets all the requirements for licensure shall be issued a license within 30 days after taking the North Carolina examination.

Authority G.S. 90-142; 90-143; 90-143.1; 90-144; 90-145; 90-146.

21 NCAC 10 .0210 INDIVIDUAL-STUDY CONTINUING EDUCATION

(a) Hours permitted. A doctor of chiropractic may obtain as many as 12 credit hours of continuing education each year by successfully completing one or more individual-study courses approved by the Board.

(b) Course approval. The criteria for Board approval of an individual-study course is as follows:

- (1) No practice-building or motivational course shall be approved;
- (2) No course shall be approved that requires participants, in order to utilize the information presented, to purchase equipment or clinical supplies available only through the course's instructors, sponsors, or co-sponsors;
- (3) Each subject taught shall fall within the extent and limitation of chiropractic licensure in this State;
- (4) The subject matter shall be presented with academic rigor;
- (5) The sponsor shall have a reliable method for recording and verifying a doctor's participation expressed in credit hours and fractions thereof, and the sponsor shall assume responsibility for submitting a certificate of participation to the Board within 60 days after a doctor completes the course; and
- (6) The course shall include one or more examinations or other means of verifying that a participating doctor has mastered the material presented in the course.

The sponsor shall provide all information the Board deems necessary to evaluate the course according to the foregoing criteria. Failure to provide information required by the Board shall be a basis for withholding approval.

Authority G.S. 90-142; 90-151; 90-155.

TITLE 25 – OFFICE OF STATE PERSONNEL

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to adopt the rules cited as 25 NCAC 01C .0703; 01L .0401, amend the rules cited as 25 NCAC 01C .0202, .0301, .0303-.0304, .0402-.0404, .0509, .0701-.0703, .0801, .0804, .1002, .1007-.1008, and repeal the rules cited as 25 NCAC 01C .0203-.0204, .0209, .0212-.0213, .0302, .0305, .0310, .0503-.0504, .0506, .0803.

Proposed Effective Date: June 1, 2004

Public Hearing:

Date: March 10, 2004

Time: 10:00 a.m.

Location: Administration Building, Third Floor Conference Room, 116 W. Jones St., Raleigh, NC

Reason for Proposed Action:

25 NCAC 01C .0202 – Amendment proposed to add new policy statement about EEO and to move remainder of language to 01L, Equal Opportunity.

25 NCAC 01C .0203 – Repeal is proposed because it is duplicated in 25 NCAC 01H .0605.

25 NCAC 01C .0204 – Repeal is proposed because it is duplicated in 25 NCAC 01H .0609.

25 NCAC 01C .0209 – Repeal is proposed because it is duplicated in 25 NCAC 01H .0607.

25 NCAC 01C .0212-.0213 – Repeal is proposed because it is information only.

25 NCAC 01C .0301 – Amendment proposed for clarification purposes only.

25 NCAC 01C .0302 – Repeal is proposed because the maintenance of records is an agency decision.

25 NCAC 01C .0303 – Amendment proposed to correct statutory citation.

25 NCAC 01C .0304 – Amendment proposed to delete the portion that describes the Public Law, Consumer Credit Protection Act.

25 NCAC 01C .0305 – Repeal is proposed because this is in statute.

25 NCAC 01C .0310 – Repeal is proposed because no reports are required.

25 NCAC 01C .0402-.0403 – Amendment proposed to delete portions that are explanatory or exist elsewhere in the rules.

25 NCAC 01C .0404 – Amendment proposed to change the maximum length of the probationary to 12 months and to delete portions that are explanatory only.

25 NCAC 01C .0506 – Repeal is proposed because this is duplicated in 01E .1005.

25 NCAC 01C .0509 – Amendment is proposed to delete portions that are procedural only.

25 NCAC 01C .0701 – Amendment is proposed to clarify that all employment not covered by the Dual Employment Policy is secondary employment.

25 NCAC 01C .0702 – Amendment is proposed to add provision that any secondary employment that may be a possible conflict of interest must be approved by the State Personnel Director, also add provision that agencies shall use a Secondary Employment that is consistent with the model provided by the Office of State Personnel.

25 NCAC 01C .0703 – New rule to outline the employee's responsibility in cases of secondary employment.

25 NCAC 01C .0801 – Amendment is proposed to delete the portion that is a philosophical statement.

25 NCAC 01C .0803 – Repeal is proposed because the definition included would be more appropriate in policy rather than a rule.

25 NCAC 01C .0804 – Amendment is proposed to state that OSP will "develop policy and provide guidance" rather than "will administer an office to provide guidance."

25 NCAC 01C .1002 – Repeal is proposed to delete a policy statement about a two weeks notice since this is not a requirement.

25 NCAC 01C .1007 – Amendment is proposed to delete explanatory information and to add definitions of "unavailability" and "applicable leave credits."

25 NCAC 01C .1008 – Amendment is proposed to correct wording.

25 NCAC 01L .0401 – New Section, Special Provisions Relative to Handicap, to add rule previously in 01C .0202.

Procedure by which a person can object to the agency on a proposed rule: Persons may object to these rules by contacting Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331.

Written comments may be submitted to: Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919) 733-7108, fax (919) 715-9750, and email peggy.oliver@ncmail.net.

Comment period ends: April 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

CHAPTER 01 - OFFICE OF STATE PERSONNEL

SUBCHAPTER 01C - PERSONNEL ADMINISTRATION

SECTION .0200 - GENERAL EMPLOYMENT POLICIES

25 NCAC 01C .0202 EQUAL EMPLOYMENT OPPORTUNITY

It is the policy of the state of North Carolina that neither race, religion, color, creed, national origin, sex, age, political affiliation, or handicapping condition is to be considered in the recruitment and selection of new employees, selection of employees for promotion, training, career development, transfer, demotion, and/or reduction-in-force; administration of disciplinary policies or termination for cause; and establishment of rates of pay including the awarding of salary adjustments and/or annual salary increases. See 25 NCAC 01L.

(a) Special provisions relative to handicap:

- (1) Equal employment opportunity for persons with disabilities includes the making of a reasonable accommodation to the known

physical limitations of a qualified handicapped applicant or employee who would be able to perform the essential duties of the job if such accommodation is made. This may include:

- (A) making facilities used by employees readily accessible to and usable by such person;
(B) job restructuring (reassigning non-essential duties and/or using part-time or modified work schedules);
(C) acquisition or modification of equipment or devices;
(D) provision of readers or interpreters; and/or other similar actions.

Agencies are required to make such adjustments for the known limitations of otherwise qualified handicapped applicants and employees, unless it can be demonstrated that a particular adjustment or alteration would impose an undue hardship on the operation of the agency.

- (2) Whether an accommodation is reasonable must depend on the facts in each case. Factors to be considered in determining this include:
(A) the nature and cost of the accommodation needed;
(B) the type of the agency's operation, including the composition and structure of its work force; and
(C) the overall size of the agency or particular program involved, with respect to number of employees, number and type of facilities, and size of budget.

(b) Bona Fide Occupational Qualifications:

- (1) Age, sex or physical requirements may be considered if they constitute a bona fide occupational qualification necessary for job performance in the normal operations of the agency. Whether such a requirement is a bona fide occupational qualification will depend on the facts in each case. This exemption will be construed very narrowly and the agency will have the burden of proving the exemption is justified.
(2) Physical fitness requirements based upon preemployment physical examinations relating to minimum standards for employment may be a reasonable employment factor, provided that such standards are reasonably necessary for the specific work to be performed and are uniformly and equally applied to all applicants for the particular job category, regardless of age or sex.
(3) A differentiation based on a physical examination may be recognized as reasonable in certain job situations which necessitate stringent physical requirements due to inherent occupational factors such as the safety of the individual employees or of other persons in their charge, or those occupations which by

nature are particularly hazardous. Job classifications which require rapid reflexes or a high degree of speed, coordination, dexterity and endurance would fall in this category.

- (4) To establish age, sex or physical requirements as a bona fide occupational qualification, it will be necessary to submit a recommendation to the Office of State Personnel setting forth all facts and justification as to why the requirement should be considered as an employment factor in each of the classifications in question.

(c) Effective July 1, 1985, direct appeal to the State Personnel Commission (such appeal involving a contested case hearing pursuant to Ch. 150B) on the basis of political affiliation discrimination is provided only to employees who meet the standards for continuous state service set out in G.S. 126-5(c)(1), or to employees who served or were separated from positions subject to competitive service.

(d) Special Provisions Relative to Communicable and Infectious Diseases:

- (1) Persons with communicable or infectious disease, including Acquired Immune Deficiency Syndrome (AIDS), are handicapped if the disease results in an impairment which substantially limits one or more major life activities. All of the statutory provisions relative to persons with handicaps are applicable to persons with communicable and infectious diseases, including the requirements for a reasonable accommodation to the known limitations of an otherwise qualified applicant or employee.
- (2) It is not discriminatory action to fail to hire, transfer, or promote, or to discharge a handicapped person because the person has a communicable disease which would disqualify a non-handicapped person from similar employment. However, such action may be taken on that basis only when it has been determined necessary to prevent the spread of the communicable or infectious disease. There must be documentation of consultation with private physicians and/or public health officials in arriving at the determination. Concern for other employees who may fear working with the infected co-worker must never be the basis for the action, in the absence of a medically documented health hazard to other persons.
- (3) It must be remembered that AIDS, unlike most communicable diseases, is transmitted only by exchange of body fluids through sexual contact, sharing of needles and syringes, or transfusion of infected blood. According to the U.S. Department of Health and Human Services, Public Health Service, no cases have been found where the AIDS virus has been transmitted by casual contact, and there is no evidence that it can be transmitted by casual

contact. There is no evidence that employing a person with AIDS would present a health hazard to other persons in the usual work-place.

Authority G.S. 126-4; 126-5(c)(1)-(4); 126-16; 126-36; 168A-5(b)(3); P.L. 92-261, March 24, 1972.

25 NCAC 01C .0203 EMPLOYMENT OF RELATIVES

(a) Persons considered for employment or promotion will be selected on the basis of training and experience and other characteristics which best suit the individual to the job to be performed.

(b) Two members of an immediate family shall not be employed within the same agency if such employment will result in one supervising a member of his immediate family, or where one member occupies a position which has influence over the other's employment, promotion, salary administration and other related management or personnel consideration.

(c) As used in this Section, the term "immediate family" shall include wife, husband, mother, father, brother, sister, son, daughter, grandmother, grandfather, grandson, and granddaughter. Also included are the step, half and in-law relationships as appropriate based on the above listing. It also includes others living within the same household or otherwise so closely identified with each other as to suggest difficulty.

Authority G.S. 126-4.

25 NCAC 01C .0204 COMMITMENTS AND POSITION VACANCY

An appointment may be made only if a classified and budgeted position vacancy exists in the position complement as authorized for the agency.

Authority G.S. 126-4.

25 NCAC 01C .0209 QUALIFICATIONS

(a) The employee or applicant must possess at least the minimum education and experience requirements, or their equivalent, as set forth in the class specification of the position to which certification is made. This shall apply in cases of new appointments, promotions, demotions, transfers, and reinstatements. Exceptions:

- (1) If demoted to a position in the same field of work, the employee is automatically qualified for the lower class;
- (2) If reinstated without a break in service to a position of the same class or to a lower class in the same field of work, the employee is automatically qualified.

(b) The education and experience statements serve as indicators of the possession of identified skills, knowledges and abilities and as guides to primary sources of recruitment; reasonable substitutions of formal education and job-related experience, one for the other, will be made. It is recognized that a specific quantity of formal education or number of years of experience does not always guarantee possession of the identified skills, knowledges, and abilities for every position in a class.

~~Qualifications necessary to perform successfully may be attained in a variety of combinations. Management is responsible for determining specific job-related qualifications that are in addition to minimum standards; such qualifications must receive prior approval of the State Personnel Director. Management shall be responsible for any adverse effects resulting from the use of selection standards that have not been established or approved by the State Personnel Director.~~

Authority G.S. 126-4.

25 NCAC 01C .0212 INFORMATION ON GROUP INSURANCE PROGRAMS

~~It is the responsibility of agency personnel management to inform each employee of the availability of group insurance programs offered through the state with premiums paid by each participating employee.~~

Authority G.S. 126-4.

25 NCAC 01C .0213 INFORMATION SOURCES

~~The details of each insurance program and informational literature will be provided by the insurance companies. It will be an agency personnel function in cooperation with insurance representatives to provide information to all current employees when a new program is established. Information will also be provided for new employees and during any open enrollment periods; a brief conference with an insurance company representative may be arranged during the employee's work hours at a time that will not interfere with work schedules.~~

Authority G.S. 126-4.

SECTION .0300 - PERSONNEL RECORDS AND REPORTS

25 NCAC 01C .0301 MAINTENANCE OF RECORDS

~~The Office of State Personnel and the employing department each agency shall maintain such personnel records as are necessary for the proper administration of the personnel system system and shall keep them open for public inspection in accordance with G.S. 126-22 – 126-30.~~

Authority G.S. 126-4.

25 NCAC 01C .0302 MAINTENANCE OF RECORDS OPEN TO PUBLIC INSPECTION

~~Agencies and commissions may designate their departmental personnel offices as the depository of personnel records maintained for public inspection.~~

Authority G.S. 126-4; 126-23; 126-26.

25 NCAC 01C .0303 PUBLIC INSPECTION

~~The information listed in .0302 G.S. 126-23 of this Section shall be made available for inspection and examination and copies thereof made by any person during regular business hours, subject to the following provisions:~~

- (1) All disclosures of records shall be accounted for by keeping a written record of the following information: name of employee, information disclosed, data information requested, name and address of the person to whom the disclosure is made. The information must be retained for a period of two years. This does not apply to the processing of personnel records or routine credit references.
- (2) Upon request, record of disclosure shall be made available to the employee to whom it pertains.
- (3) An individual examining a personnel record may copy the information; any available photocopying facilities may be provided and the cost may be assessed to the individual.

Authority G.S. 126-23; 126-26.

25 NCAC 01C .0304 CONFIDENTIAL INFORMATION IN PERSONNEL FILES

~~All information in an employee's personnel file not specified in .0301 of this Section G.S. 126-23 and which relates to the individual's application, selection or nonselection, promotions, demotions, transfers, leave, salary, suspension, performance evaluation forms, disciplinary actions, and termination of employment is confidential:~~

- (1) Agencies shall maintain in personnel records only information that is relevant to accomplishing personnel administration purposes.
- (2) Information used in making a determination about employment or other personnel actions should, to the extent practical, be obtained directly from the individual. There may be instances where it is necessary to obtain information from other sources. This may be obtained either directly from those sources or by the use of a consumer reporting agency. If the consumer reporting agency is utilized, the requirements of the Fair Credit Reporting Act, Title VI of The Consumer Credit Protection Act (Public Law 91-508) must be followed:
 - (a) ~~When a consumer reporting agency furnishes a report and employment, promotion or reassignment is denied on the basis, in whole or in part, of information in the report, the applicant or employee must be informed and given the name and address of the consumer reporting agency. The appointing authority does not have to reveal the contents of the report.~~
 - (b) ~~When an investigative consumer report is requested from a consumer reporting agency, the individual must be notified within three days and told that he can make a written request for the "nature and scope" of the~~

~~investigation. "Nature and scope" includes a description of the questions asked, disclosure of numbers and types of persons interviewed and the name and address of the investigating agency.~~

(3) All information in an employee's personnel file shall be open for inspection and examination as set forth in G.S. 125-24:

(a) For this purpose, supervisor is any individual in the chain of administrative authority above a given state employee within a pertinent state agency;

(b) An official is a person who has official or authorized duties or responsibilities in behalf of an agency; it does not imply a necessary level of duty or responsibility. This right to access includes the circumstances where one state agency is considering for employment a person who is or has been employed in another state agency; the head of the latter agency may release to an official of another agency information relative to the employee's job performance.

(4) Each individual requesting access to confidential information will be required to submit satisfactory proof of identity.

(5) A record shall be made of each disclosure except to the employee or the supervisor ~~and placed in the employee's file.~~

~~(6) A department head may, under the conditions specified, take the following action with respect to an applicant, employee, or former employee employed by or assigned to that department, or whose personnel file is maintained in the department:~~

~~(a) In his discretion, the department head may allow the personnel file of such person or any portion thereof to be inspected and examined by any person or corporation when such department head shall determine that inspection is essential to maintaining the integrity of such department or maintaining the level or quality of services provided by such department.~~

~~(b) Under the circumstances in (a) of this Subsection, the department head may, in his/her discretion, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment, or non-employment of such applicant, employee, or former employee.~~

~~(c) Provided that prior to releasing such information or making such file or portion thereof available as provided herein, such department head shall prepare a memorandum setting forth the circumstances which the department head deems to require such disclosure and the information to be disclosed with a copy of the memorandum sent to the employee and the memorandum retained as a public record in the files of the department head.~~

Authority G.S. 126-24; 126-26; 126-29.

25 NCAC 01C .0305 RECORDS OF FORMER EMPLOYEES AND APPLICANTS FOR EMPLOYMENT

~~The provisions for access to records apply to former employees and applicants the same as they apply to present employees.~~

Authority G.S. 126-22; 126-24; 126-26.

25 NCAC 01C .0310 REPORTS

~~Periodic reports regarding personnel files will be prepared as necessary to indicate compliance with applicable state policies and federal standards.~~

Authority G.S. 126-24; 126-26.

SECTION .0400 – APPOINTMENT

25 NCAC 01C .0402 PERMANENT APPOINTMENT

(a) Permanent - A permanent appointment is a permanent full-time appointment to a permanent full-time established position. A permanent appointment shall be given when:

- (1) the requirements of the probationary period have been satisfied,
- (2) an employee in a trainee appointment has completed all training and experience requirements, or
- (3) a time-limited appointment extends beyond three years.

(b) Time-limited Permanent - A time-limited permanent appointment is an appointment that has a limited duration to:

- (1) a permanent position that is vacant due to the incumbent's leave of absence and when the replacement employee's services will be needed for a period of one year or less,
- (2) a time-limited permanent position. If an employee is retained in a time-limited permanent position beyond three years, the employee shall be designated as having a permanent appointment.

~~This type of appointment is distinguished from a temporary appointment by the longer length of time, and from a regular permanent appointment by its limited duration.~~

~~(c) Individuals receiving initial appointments in state government must first serve a probationary appointment before being eligible for any permanent appointment.~~

~~(d) Individuals receiving initial appointments in state government must first serve in a probationary time limited appointment before being eligible for a time limited permanent appointment.~~

~~(e) Employees with a permanent appointment earn leave, and receive total state service credit, retirement and health benefits, and when applicable, severance pay and priority reemployment consideration.~~

~~(c)(f) Employees with a time-limited permanent appointment earn leave, and receive total state service credit, retirement and health benefits. They are not eligible for severance pay and priority reemployment.~~

Authority G.S. 126-4.

25 NCAC 01C .0403 TRAINEE APPOINTMENTS

(a) A trainee appointment may be made to a permanent position when:

- (1) the job specification includes special provisions for a trainee progression leading to regular appointment,
- (2) recruitment efforts fail to attract qualified candidates,
- (3) operating need warrants a trainee, or
- (4) the recommended applicant fails to meet minimum State education and experience requirements.

~~(b) The trainee appointment, like the probationary period, is also an extension of the selection process and provides the time for effective adjustment of the new employee or elimination of those whose performance will not meet acceptable standards.~~

~~(b)(e) Employees with a trainee appointment earn leave, and receive total state service credit, retirement and health benefits. When applicable, trainees who have completed six months of service or who had a permanent appointment prior to entering a trainee appointment may receive severance pay and priority reemployment consideration.~~

Authority G.S. 126-4.

25 NCAC 01C .0404 PROBATIONARY APPOINTMENTS

(a) Individuals receiving initial appointments to permanent or time-limited permanent positions must serve a probationary period. ~~The probationary periods is an extension of the selection process and provides the time for effective adjustment of the new employee or elimination of those whose performance will not meet acceptable standards.~~ The maximum length of the probationary period shall be ~~not less than three nor more than nine months~~ 12 months of either full-time or part-time employment from the actual date of employment. ~~Within 90 days of employment, prior to the granting of a permanent or time limited permanent appointment, credentials and application information provided by the employee must be verified. Agencies shall inform applicants in writing that credentials must be verified prior to the granting of a permanent or time limited permanent appointment.~~

(b) Employees with a probationary appointment earn leave, and receive total state service credit, retirement and health benefits. They are not eligible for severance pay or priority reemployment consideration.

Authority G.S. 96-29; 126-4.

SECTION .0500 - WORK SCHEDULE

25 NCAC 01C .0503 IMPLEMENTATION

~~(a) Each new employee shall be given detailed information about the variable work schedule and given the opportunity to select the schedule preferred prior to reporting for work. Work schedules are to be associated with individuals and not with position, with the exception that there may be positions which must be filled on some predetermined schedule. In these exceptional cases, applicants shall be informed of this predetermined schedule prior to any offer and acceptance of employment.~~

~~(b) The employee and his/her supervisor shall agree upon the schedule to be followed, consistent with the needs of the agency. The meal period may be scheduled within the normal work hours to meet the needs of the employee and the working unit but may not be used to shorten the workday. A bona fide meal period is a span of at least 30 consecutive minutes during which an employee is completely relieved of duty. It is not counted as hours worked. Any so called "meal period" of less than 30 consecutive minutes must be considered as hours worked for employees who are non exempt as defined by the Fair Labor Standards Act.~~

~~(c) Each supervisor shall compile a record of the work schedules for all subordinates.~~

~~(d) Agency administrators shall be responsible for providing adequate supervision for each work unit during the hours employees are scheduled to work. This can be accomplished by sharing or by delegation of authority of supervisor.~~

Authority G.S. 126-4.

25 NCAC 01C .0504 LIMITATIONS

~~(a) An employee who arrives later than scheduled, may be permitted to make up deficit by working that much longer at the end of the workday if this is consistent with the work need of the agency. Otherwise, the tardiness shall be charged to the appropriate leave category. Supervisors shall be responsible for taking appropriate action to correct any abuse or misuse of this privilege which may include deductions from employee's pay.~~

~~(b) If an employee reports to work early he/she may, with the supervisor's permission, begin work at that time and leave at a correspondingly early hour; otherwise, the employee shall wait in a designated area away from the work station.~~

~~(c) If an employee leaves work early without permission, the time shall be deducted from the employee's pay or may be charged to the appropriate leave account if justified.~~

~~(d) An employee may not work later than scheduled unless the supervisor has approved it due to workload.~~

Authority G.S. 126-4.

25 NCAC 01C .0506 ADVERSE WEATHER

CONDITIONS

~~In the event of adverse weather conditions, state offices will remain open and the policy for charging leave as outlined in 25 NCAC 1E .1005 will apply where the nature of the operation makes it possible. It is recognized that agencies providing essential services in health and safety will need to modify the policy in order to maintain adequate services to the public.~~

Authority G.S. 126-4.

25 NCAC 01C .0509 WORK OPTIONS PROGRAM

~~(a) Purpose. The Work Options Program is to State agencies may develop and expand the use of variations in work schedules for state employees. This program is intended to increase productivity in state services, benefit employee morale, and expand job opportunities for women, handicapped, senior citizens and other groups in the labor force whose experience is not presently available to the state.~~

~~(b) Agency Responsibility. Each participating agency shall develop and promulgate necessary administrative rules for a Work Options Program, or expand existing programs as needed, to make available to its employees a variety of work options appropriate to the service schedules of its various work units. This program will be developed in cooperation with the technical assistance from the State Work Options coordinator. Each participating agency shall designate an agency coordinator. Training sessions for agency personnel to instruct them in the use of available work options shall be provided as part of the State Personnel Commission's Work Options Program.~~

~~(c)(b) Restrictions. In fulfilling the stated purposes of this program, agencies Agencies shall take into reasonable account operating and service needs. Specifically, this This program shall not be administered in a way that reduces the total number of hours a day a state office normally is open to serve the public.~~

Authority G.S. 126-74 through 126-79.

SECTION .0700 - SECONDARY EMPLOYMENT

25 NCAC 01C .0701 POLICY

The employment responsibilities to the state are primary for any employee working full-time; any other employment in which that person chooses to engage is secondary. An employee shall have approval from the agency head before engaging in any secondary employment. The purpose of this approval procedure is to determine that the secondary employment does not have an adverse effect on the primary employment and does not create a conflict of interest. These provisions for secondary employment apply to non-state sources of income and do not include a second job or assignment paid from state funds; those conditions are covered by the policy on dual employment which is established by the Office of State Budget and Management. all employment not covered by the policy on Dual Employment.

Authority G.S. 126-4.

25 NCAC 01C .0702 AGENCY RESPONSIBILITY

(a) Secondary employment shall not be permitted when it would:

- (1) create either directly or indirectly a conflict of interest with the primary employment;
- (2) impair in any way the employee's ability to perform all expected duties, to make decisions and carry out in an objective fashion the responsibilities of the employee's position.

(b) If the secondary employment has any impact on or may create any possibility of conflict with State operations, the form must be approved by the State Personnel Director in conjunction with the Board of Ethics.

~~(b)(c)~~ Each agency shall establish its own specific criteria for approval of secondary employment based on work situation needs. Established criteria shall not be inconsistent with 25 NCAC 01C .0701 and .0702.

(d) Each agency shall use a Secondary Employment Form that is consistent with the model provided by the Office of State Personnel.

Authority G.S. 126-4.

25 NCAC 01C .0703 EMPLOYEE RESPONSIBILITY

(a) It is the responsibility of the employee to complete a Secondary Employment Form for any employment that is not covered by the Dual Employment Policy.

(b) It is the responsibility of the employee to update the Secondary Employment Form whenever there is any change in status or annually whichever occurs first.

Authority G.S. 126-4.

SECTION .0800 - REQUIREMENTS FOR TELEWORKING PROGRAMS

25 NCAC 01C .0801 PURPOSE

~~Teleworking will permit allows agencies to designate employees to work at alternate work locations for all or part of the workweek in order to promote general work efficiencies. The Office of State Personnel has adopted these rules so that teleworking may be offered by State agencies as a work option to ensure competitive advantages with other employers and to meet the environmental and budgetary challenges of the future as directed by the legislature and governor. Pursuant to the mandate contained in G.S. 126-1 to apply the best methods of personnel administration as evolved in business and industry, the Office of State Personnel has adopted the following rules to provide guidance to agencies in developing teleworking programs.~~

Authority G.S. 126-4; S.L. 1999-328.

25 NCAC 01C .0803 DEFINITIONS OF TERMS

For purposes of this Rule, the terms below mean the following:

- (1) ~~Alternate Work Location: a work site other than a central workplace. It may include employees' homes and satellite offices where official state business is performed. An alternate work location does not include work a place where work is performed for limited periods of time or only an infrequent basis; nor~~

~~an assigned duty station that may be located away from the central workplace.~~

- ~~(2) Central Workplace: An employee's assigned place of work or duty station owned or operated by the State or a site that is the primary workstation for field based employees. Typically a central workplace is a duty station from which an employer along with employees in the same work unit perform the functions of their job. However, an employee's home, in instances in which it is the primary workstation for field based employees, may be considered the central workplace.~~
- ~~(3) Telework/Teleworking: a flexible work arrangement in which supervisors direct or permit employees to perform their job duties away from their central workplace, in accordance with their same performance expectations and other approved or agreed upon terms. It does not include work performed at a temporary worksite for limited duration.~~
- ~~(4) Teleworker: an employee engaged in teleworking.~~
- ~~(5) Teleworking Agreement: a written agreement that details the terms and conditions by which an employee is allowed to engage in teleworking.~~

~~(6) Work Schedule: the employee's hours of work in the central workplace or in alternate work locations.~~

Authority G.S. 126-4; S.L. 1999-328.

25 NCAC 01C .0804 OFFICE OF STATE PERSONNEL RESPONSIBILITIES

~~The Office of State Personnel shall will administer an office to providedevelop policy and provide guidance to State agencies developing teleworking programs, programs and to monitor the savings provided by such programs. Agencies shall report teleworking activities to the Office of State Personnel.~~

Authority G.S. 126-4; S.L. 1999-328.

SECTION .1000 – SEPARATION

25 NCAC 01C .1002 RESIGNATION

An employee may terminate his services with the state by submitting a resignation to the appointing authority. ~~Normally, it is expected that an employee will give a least two weeks notice prior to his last day of work.~~ Employees are paid in a lump sum for accumulated vacation leave.

Authority G.S. 126-4.

25 NCAC 01C .1007 UNAVAILABILITY WHEN LEAVE IS EXHAUSTED

(a) An employee may be separated on the basis of unavailability when the employee becomes or remains unavailable for work after all applicable leave credits have been exhausted and agency

management does not grant a leave without pay for reasons deemed sufficient by the agency. Such reasons include, but are not limited to, lack of suitable temporary assistance, criticality of the position, budgetary constraints, etc. Such a separation is an involuntary separation, and not a disciplinary dismissal as described in G.S. 126-35, and may be grieved or appealed.

(b) Prior to separation, the employing agency shall meet with or at least notify the employee in writing, of the proposed separation, the efforts undertaken to avoid separation and why the efforts were unsuccessful. ~~The employee shall have the opportunity in this meeting or in writing to propose alternative methods of accommodation. If the proposed accommodations are not possible, the agency must notify the employee of that fact and the proposed date of separation. If the proposed accommodations or alternative accommodations are being reviewed, the agency must notify the employee that such accommodations are under review and give the employee a projected date for a decision on this.~~

~~(c) Involuntary separation pursuant to this Rule may be grieved or appealed. The employing agency must also give the employee a letter of separation stating the specific reasons for the separation and setting forth the employee's right of appeal. The burden of proof on the agency in the event of a grievance is not just cause as that term exists in G.S. 126-35. Rather, the agency's burden is to prove that the employee was unavailable and that the agency considered the employee's proposed accommodations for his unavailability and was unable to make the proposed accommodations or other reasonable accommodations.~~

~~(d) Agencies should make efforts to place an employee so separated pursuant to this Rule when the employee becomes available, if the employee desires, consistent with other employment priorities and rights. However, there is no mandatory requirement placed on an agency to secure an employee, separated under this Rule, a position in any agency.~~

(d) Definitions:

(1) Unavailability is defined as the employee's inability to return to all of the position's essential duties and work schedule due to a medical condition or the vagueness of a medical prognosis; or the employee and the agency cannot reach agreement on a return to work arrangement that meets both the operating needs of the agency and the employee's medical/health needs.

(2) Applicable leave credits is defined as the sick and/or vacation/bonus leave the employee chose to exhaust prior to going on leave without pay.

Authority G.S. 126-4(7a); 126-35.

25 NCAC 01C .1008 APPOINTMENT ENDED

An "Appointment Ended" separation occurs when an employee who is exempt pursuant to G. S. 126-5 or policy making/confidential exempt employee's appointment ends or when is separated for reasons other than cause. These separations may occur whenever the Agency Head or the Governor determines that the services of the employee are no longer needed.

Authority G.S. 126-4; 126-5.

SUBCHAPTER 01L - EQUAL OPPORTUNITY

SECTION .0400 – SPECIAL PROVISIONS RELATIVE TO HANDICAP

25 NCAC 01L .0401 SPECIAL PROVISIONS RELATIVE TO HANDICAP

(a) Equal employment opportunity for persons with disabilities includes the making of a reasonable accommodation to the known physical limitations of a qualified handicapped applicant or employee who would be able to perform the essential duties of the job if such accommodation is made. This may include:

- (1) making facilities used by employees readily accessible to and usable by such person;
- (2) job restructuring (reassigning non-essential duties and/or using part-time or modified work schedules);
- (3) acquisition or modification of equipment or devices; and
- (4) provision of readers or interpreters; and/or other similar actions.

Agencies are required to make such adjustments for the known limitations of otherwise qualified handicapped applicants and employees, unless it can be demonstrated that a particular adjustment or alteration would impose an undue hardship on the operation of the agency.

(b) Whether an accommodation is reasonable must depend on the facts in each case. Factors to be considered in determining this include:

- (1) the nature and cost of the accommodation needed;
- (2) the type of the agency's operation, including the composition and structure of its work force; and
- (3) the overall size of the agency or particular program involved, with respect to number of employees, number and type of facilities, and size of budget.

(c) Bona Fide Occupational Qualifications:

- (1) Age, sex or physical requirements may be considered if they constitute a bona fide occupational qualification necessary for job performance in the normal operations of the agency. Whether such a requirement is a bona fide occupational qualification will depend on the facts in each case. This exemption will be construed very narrowly and the agency will have the burden of proving the exemption is justified.
- (2) Physical fitness requirements based upon preemployment physical examinations relating to minimum standards for employment may be a reasonable employment factor, provided that such standards are reasonably necessary for the specific work to be performed and are uniformly and equally applied to all applicants

for the particular job category, regardless of age or sex.

(3) A differentiation based on a physical examination may be recognized as reasonable in certain job situations which necessitate stringent physical requirements due to inherent occupational factors such as the safety of the individual employees or of other persons in their charge, or those occupations which by nature are particularly hazardous. Job classifications which require rapid reflexes or a high degree of speed, coordination, dexterity and endurance would fall in this category.

(4) To establish age, sex or physical requirements as a bona fide occupational qualification, it will be necessary to submit a recommendation to the Office of State Personnel setting forth all facts and justification as to why the requirement should be considered as an employment factor in each of the classifications in question.

(d) Effective July 1, 1985, direct appeal to the State Personnel Commission (such appeal involving a contested case hearing pursuant to G.S. 150B) on the basis of political affiliation discrimination is provided only to employees who meet the standards for continuous state service set out in G.S. 126-5(c)(1), or to employees who served or were separated from positions subject to competitive service.

(e) Special Provisions Relative to Communicable and Infectious Diseases:

(1) Persons with communicable or infectious disease, including Acquired Immune Deficiency Syndrome (AIDS), are handicapped if the disease results in an impairment which substantially limits one or more major life activities. All of the statutory provisions relative to persons with handicaps are applicable to persons with communicable and infectious diseases, including the requirements for a reasonable accommodation to the known limitations of an otherwise qualified applicant or employee.

(2) It is not discriminatory action to fail to hire, transfer, or promote, or to discharge a handicapped person because the person has a communicable disease which would disqualify a non-handicapped person from similar employment. However, such action may be taken on that basis only when it has been determined necessary to prevent the spread of the communicable or infectious disease. There must be documentation of consultation with private physicians and/or public health officials in arriving at the determination. Concern for other employees who may fear working with the infected co-worker must never be the basis for the action, in the absence of a medically documented health hazard to other persons.

(3) It must be remembered that AIDS, unlike most communicable diseases, is transmitted only by exchange of body fluids through sexual contact, sharing of needles and syringes, or transfusion of infected blood. According to the U.S. Department of Health and Human Services, Public Health Service, no cases have been found where the AIDS virus has been transmitted by casual contact, and there is no evidence that it can be transmitted by casual contact. There is no evidence that employing a person with AIDS would present a health hazard to other persons in the usual work place.

Authority G.S. 126-4; 126-5(c)(1)-(4); 126-16; 126-36; 168A-5(b)(3); P.L. 92-261.

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rules cited as 25 NCAC 01E .0102, .0203, .0205-.0208, .0210-.0212, .0301, .0311, .0314-.0315, .0705, .0707, .0709, .0804, .0902, .0909, .1001, .1004, .1101-.1102, .1104-.1105, .1111-.1112, .1301-.1302, .1304, .1306, .1401-.1402, .1404, .1406-.1407, .1601 and repeal the rules cited as 25 NCAC 01E .0201-.0202, .0209, .0216, .0313, .0706, .0708, .0903-.0904, .1007-.1008, .1107-.1108, .1403, .1405, .1408-.1411.

Proposed Effective Date: June 1, 2004

Public Hearing:

Date: March 10, 2004

Time: 10:00 a.m.

Location: Administration Building, Third Floor Conference Room, 116 West Jones Street, Raleigh, NC

Reason for Proposed Action:

- 25 NCAC 01E .0102 – Amendment proposed to update different types of leave.
- 25 NCAC 01E .0203 – Amendment proposed to delete the amounts of leave granted and to allow the State Personnel Commission to establish rates.
- 25 NCAC 01E .0205 – Amendment proposed to delete the maximum accumulation to allow the State Personnel Commission to establish the maximum in accordance with G.S. 126.
- 25 NCAC 01E .0206 – Amendment proposed to add language from .0202 about approval of leave.
- 25 NCAC 01E .0207 – Amendment proposed to add language from .0201 about time for lost reporting.
- 25 NCAC 01E .0208 – Amendment proposed to allow all leave to be paid when an employee transfers from State SPA employment to local SPA employment and vice versa.
- 25 NCAC 01E .0210 – Amendment proposed to delete maximum leave paid upon separation and allow State Personnel Commission to establish maximum. Other changes deleted that are procedural in nature.

- 25 NCAC 01E .0211 – Amendment proposed to delete retention period and replace with "as prescribed in personnel policies or in the records retention schedules."
- 25 NCAC 01E .0212 – Amendment proposed to change name from Employee Suggestion System to State Employee's Incentive Bonus Program; also delete procedures.
- 25 NCAC 01E .0301 – Amendment proposed to delete the amount of leave granted and to allow the State Personnel Commission to establish rates.
- 25 NCAC 01E .0311 – Amendment proposed to delete portions that are procedural only.
- 25 NCAC 01E .0314 – Amendment proposed to clarify that sick leave without pay shall be in accordance with the FMLA and that extensions above this are the responsibility of the agency head. Also, delete explanatory language about short-term and long-term disability.
- 25 NCAC 01E .0315 – Amendment proposed to delete retention period and replace with "as prescribed in personnel policies or records retention schedules."
- 25 NCAC 01E .0705 – Amendment proposed to delete portions that are procedural.
- 25 NCAC 01E .0707 – Amendment proposed to delete portions that are procedural and other rules that are a part of the Worker's Compensation Act.
- 25 NCAC 01E .0709 – Amendment proposed to clarify and to delete portions that are procedural only.
- 25 NCAC 01E .0804 – Amendment proposed to delete "for members not on extended active duty" since this was confusing; also change citations relating to Civil Air Patrol, which moved to .0821.
- 25 NCAC 01E .0902 – Amendment proposed to delete portions that are informational or procedural.
- 25 NCAC 01E 0909 – Amendment proposed to delete reference to pilot projects since this no longer exists.
- 25 NCAC 01E .1001 – Amendment proposed to delete procedures.
- 25 NCAC 01E .1004 – Amendment proposed to incorporate provision for the State Personnel Commission to establish the amount of time to be granted for moving.
- 25 NCAC 01E .1101 – Amendment proposed to delete requirement to receive approval of State Personnel Director for granting
- 25 NCAC 01E .1102 – Amendment proposed to delete requirements to receive approval of State Personnel Director to extend leave without pay beyond a year, also to change paragraph citation for parental leave.
- 25 NCAC 01E .1104-.1105, .1111-.1112 – Amendment proposed to clarify, update rules; also to delete procedures.
- 25 NCAC 01E .1301 – Amendment proposed to delete philosophical statement.
- 25 NCAC 01E .1302, 1304, 1306 – Amendment proposed to delete procedures.
- 25 NCAC 01E 1401-.1402, .1404, .1406-.1407 – Amendment proposed to delete portions that are in the FMLA of 1993; retain all provisions that are applicable to North Carolina State government only.
- 25 NCAC 01E .1601 – Amendment proposed to delete philosophical statement.
- 25 NCAC 01E .0201 – Propose to repeal because this informational only. Should be in policy.

- 25 NCAC 01E .0202 – Propose to repeal and move language to .0206.
- 25 NCAC 01E .0209 – Propose to repeal rule that is informational and procedural.
- 25 NCAC 01E .0216 – Propose to repeal rule that is procedural.
- 25 NCAC 01E .0313 – Propose to repeal since this is a Retirement System rule.
- 25 NCAC 01E .0706 – Propose to repeal rule that is procedural.
- 25 NCAC 01E .0708 – Propose to repeal rule that is repetitious with other rules.
- 25 NCAC 01E .0903 – Propose to repeal rule that is procedural.
- 25 NCAC 01E .0904 – Propose to repeal rule that is procedural.
- 25 NCAC 01E .1007 – Propose to repeal since .1004 gives the State Personnel Commission the authority to establish the amount.
- 25 NCAC 01E .1008 – Propose to repeal since .1004 gives the State Personnel Commission the authority to establish the amount.
- 25 NCAC 01E .1107 – Propose to repeal since this is no longer applicable.
- 25 NCAC 01E .1108 – Propose to repeal since this is a Retirement System rule.
- 25 NCAC 01E .1403, .1405, .1408-.1409, .1410-.1411 – Propose to repeal since these are requirements of the Family and Medical Leave Act.

Procedure by which a person can object to the agency on a proposed rule: Any person who wishes to object to the proposed rules can contact Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, Phone (919)733-7108.

Written comments may be submitted to: Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, Phone (919)733-7108.

Comment period ends: April 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

SUBCHAPTER 1E - EMPLOYEE BENEFITS

SECTION .0100 - LEAVE: GENERAL PROVISIONS

25 NCAC 01E.0102 TYPES OF LEAVE

Various types of leave recognized by the State Personnel Commission are set up in Sections .0200 to ~~1400~~1600 of this Subchapter. They are: vacation leave, sick leave, ~~educational leave,~~ workers' compensation leave, military leave, holidays, miscellaneous leave, voluntary shared leave, family and medical leave, community service leave, administrative, paid time off program and leave without pay, pay.

Authority G.S. 126-4; 126-8.

SECTION .0200 - VACATION LEAVE

25 NCAC 01E.0201 PURPOSE AND USES

The purposes for which vacation leave may be used for are:

- (1) ~~renewal of physical and mental capabilities;~~
- (2) ~~periods of absence for personal reasons;~~
- (3) ~~absences due to adverse weather;~~
- (4) ~~personal illness or illness in the immediate family, in lieu of sick leave.~~

Time lost for late reporting may be charged to the vacation leave account when it is not handled under the variable work schedule policy (reference Section 1 NCAC 1C .0500, Rule .0504). ~~Deductions should be made from the employee's pay where excessive tardiness or absenteeism occur.~~

Authority G.S. 126-4; 126-8.

25 NCAC 01E.0202 SCHEDULING LEAVE

~~Vacation leave shall be taken only upon authorization of the agency head. Employee preferences should be considered and schedules worked out bearing in mind individual and agency needs.~~

Authority G.S. 126-4; 126-8.

25 NCAC 01E.0203 LEAVE CREDITS

(a) ~~Vacation leave credits shall be provided for a full-time or part-time (half-time or over) employee with a permanent, trainee, time-limited or probationary appointment who is in pay status for one-half of the regularly scheduled workdays and holidays in a pay period. The rate is shall be established by the State Personnel Commission based on G.S. 126 length of total state service. service as defined in 25 NCAC 01D .0112, and documented labor market data. The rates shall be published in the State Personnel Manual. The rate granted shall not be less than the rate in effect on December 1, 2003. Leave for part-time employees shall be computed as a percentage of total amount provided to a full-time employee prorated.~~

(b) ~~The following schedule indicates graduated vacation leave granted:~~

Hours	Hours	Days	
Years of Total State Service	Granted	Granted	Granted
	Each Month	Each Year	Each Year
Less than 2 years	7 hrs. 50 mins.	94	11 3/4

2 but less than 5 years	9 hrs. 10 mins.	110	13 3/4
5 but less than 10 years	11 hrs. 10 mins.	134	16 3/4
10 but less than 15 years	13 hrs. 10 mins.	158	19 3/4
15 but less than 20 years	15 hrs. 10 mins.	182	22 3/4
20 years or more	17 hrs. 10 mins.	206	25 3/4

Authority G.S. 126-4; 126-8.

25 NCAC 01E.0205 MAXIMUM ACCUMULATION

Vacation leave ~~may shall~~ be accumulated in accordance with G.S. 126-8 without any applicable maximum until December 31 of each calendar year. However, if the employee separates from service, payment for accumulated leave shall not exceed 240 hours. On December 31 any employee with more than 240 hours of accumulated leave shall have the excess accumulation converted to sick leave so that only 240 hours are carried forward to January 1 of the next calendar year.

Authority G.S. 126-4; 126-8.

25 NCAC 01E.0206 SCHEDULING AND ADVANCEMENT

Vacation leave shall be taken only upon authorization of the agency head or designee. An employee may be advanced the amount of leave needed on an individual basis up to the amount that can be credited during the remainder of the calendar year.

Authority G.S. 126-4.

25 NCAC 01E.0207 LEAVE CHARGES

Vacation leave shall be charged in units of time determined by the agency to be appropriate and consistent with the responsibility of managing absences in keeping with operational needs. ~~Leave to be paid as terminal leave and leave to be exhausted before leave without pay shall be in units nearest to a tenth of an hour, i.e., 1/10 of an hour for each six minutes.~~ Time lost for late reporting may be charged to the vacation leave account when it is not handled under the variable work schedule policy (reference 01 NCAC 01C .0504). Deductions should be made from the employee's pay where excessive tardiness or absenteeism occur.

Authority G.S. 126-4.

25 NCAC 01E.0208 LEAVE TRANSFERABLE

(a) Unused leave shall be transferred when an employee transfers between state agencies.

(b) Unused leave may be transferred to or from a public school, community college, technical institute, or a local Mental Health, Public Health, Social Services or Emergency Management Agency, if the agency is willing to accept the leave; otherwise, it is handled in accordance with 25 NCAC 01E .0210. ~~the employee leaving state service will be paid in a lump sum for accumulated leave not to exceed 240 hours. If the local agency or educational institution accepts a part of the leave, the combination of the amount transferred and paid for shall not exceed 240 hours.~~

(c) ~~When an employee from one of the local government agencies specified in Subsection (b) of this Rule transfers to a state agency, all leave or any portion of unused leave may be~~

~~transferred to the state agency. If any portion of leave is paid for by the local agency or educational institution, the combination that may be transferred and paid for shall not exceed 240 hours. The rate at which leave was granted should not have been greater than the rate at which leave is granted to employees under the State Personnel Act. (reference 25 NCAC 1E, Section .0200, Rules .0203, .0204).~~

Authority G.S. 126-4.

25 NCAC 01E.0209 OPTIONS DURING LEAVE WITHOUT PAY

(a) ~~An employee going on leave without pay may exhaust vacation leave or may retain part or all accumulated leave until the employee returns, the only exceptions being:~~

(1) ~~if an employee has accumulated vacation leave, all leave must be exhausted before going on leave without pay for vacation purposes; or~~

(2) ~~if an employee requests leave for other personal reasons for a period not to exceed 10 workdays, leave must be used if available; however, if the leave is for a period longer than 10 workdays, the employee may choose to use vacation leave or retain it for future use. Options for use of vacation leave for employees receiving Workers' Compensation Benefits are covered under Section .0700 of this Subchapter. Options for use of vacation leave for military purposes are covered under Military Leave, Section .0800 of this Subchapter. Options for use of vacation leave for employees eligible for family and medical leave are covered under Family and Medical Leave, Section .1400 of this Subchapter.~~

(b) ~~If leave without pay extends through December 31, any leave accumulation above 240 hours shall be converted to sick leave.~~

(c) ~~When exhausting leave an employee continues to accumulate leave, is eligible to take sick leave, is entitled to holidays and is eligible for salary increases during that period.~~

Authority G.S. 126-4.

25 NCAC 01E.0210 SEPARATION: PAYMENT OF VACATION LEAVE

(a) ~~Lump sum payment for vacation leave is shall be made only at the time of separation. An employee shall be paid in a lump sum for accumulated leave not to exceed at the maximum of 240 hours established by the State Personnel Commission and published in the State Personnel Manual when separated from state service due to resignation, dismissal, or reduction in force force, or death. In case of death, the employee's estate shall be paid for all unused vacation leave.~~

~~An employee is not entitled to any scheduled holiday occurring after the last day of work. The employee ceases to accumulate leave and ceases to be entitled to take sick leave. The last day of work is the date of separation. Employees separating from state service due to service retirement or early retirement may elect to exhaust vacation leave after the last day of work but prior to the~~

~~effective date of retirement. All benefits accrue while leave is being exhausted. If leave is exhausted, the last day of leave is the date of separation. Any unused leave not exhausted must be paid in a lump sum not to exceed 240 hours. If no leave is exhausted, the last day of work is the date of separation.~~

~~(b) If an employee separates and is overdrawn on leave, deductions shall be made from the final salary check. Deductions shall be in units nearest to a tenth of an hour, i.e., 1/10 of an hour for each six minutes overdrawn.~~

~~(c) Payment for leave may be made on the regular payroll or on a supplemental payroll, reflecting the number of days of leave and the amount of payment. Leave may be paid through the nearest tenth of an hour of unused leave. This leave shall be charged to the budget subhead under which the employee's position was charged. A separate check must be issued for any part of any travel due.~~

~~(d) Retirement deduction shall be made from all leave payments.~~

~~(e) Receipt of lump sum leave payment and retirement benefit shall not be considered as dual compensation.~~

~~(f) In the case of a deceased employee, payment for unpaid salary, leave, and travel must be made, upon establishment of a valid claim, to the deceased employee's administrator or executor. In the absence of an administrator or executor, payment must be made in accordance with the provisions of G.S. 28A-25-6.~~

Authority G.S. 28A-25-6(a),(c); 126-4.

25 NCAC 01E.0211 LEAVE RECORDS

~~(a) It is shall be the responsibility of each agency to maintain leave records for each employee. employee and balance them. It shall be optional with each agency as to when and how often the crediting and balancing of an employee's leave record is to be done. However, it must be done at least once by the end of each calendar year. Agencies should assume responsibility for notifying employees of leave balances at least once each year.~~

~~(b) Agencies ~~must~~ shall retain leave records for all separated employees as prescribed in the State Personnel Manual or records retention schedules. for a period of at least four years from the date of separation.~~

Authority G.S. 126-4.

25 NCAC 01E.0212 SPECIAL LEAVE

~~(a) An employee may be granted up to twenty-four hours of leave as part of an award for a suggestion that is adopted under the Employee Suggestion System State Employee Incentive Bonus Program.~~

~~(b) An employee may be granted up to twenty-four hours of leave as part of an award given under the department or university program which supports the Governor's State Employees' Award for Excellence program. (~~reference 25 NCAC 1J, Section .0800, Rule .0805~~).~~

~~(c) Leave under the programs in this Rule shall be in addition to regular leave earnings and shall not affect maximum accumulation provisions for regular vacation leave. A separate record of this additional leave shall be maintained. The leave must be taken within twelve months following the award or it shall be cancelled. If the employee separates from state service~~

during this time, payment shall be made for any unused portion of this leave (in addition to any unused regular vacation leave). All other pertinent provisions of any policy relative to regular vacation leave shall be applicable.

Authority G.S. 126-4.

25 NCAC 01E.0216 ACCOUNTING FOR CREDITABLE SERVICE

~~The employing agency shall be responsible for informing each employee of the types of prior service which are eligible to be counted as total state service. If the employee fails to produce evidence of prior service at the time of employment and later produces such evidence, credit shall be allowed for the service and the earnings rate shall be adjusted; however, retroactive adjustments shall only be allowed for the previous 12 months. Exceptions shall be made if the agency is at fault or fails to properly detect prior service.~~

Authority G.S. 126-4; 126-8.

SECTION .0300 - SICK LEAVE

25 NCAC 01E.0301 SICK LEAVE CREDITS

~~(a) Sick leave credits at the rate of 8 hours per month or 96 hours per year established by the State Personnel Commission based on G.S. 126 and documented labor market data shall be provided for a full-time or part-time (half-time or over) employee with a permanent, trainee, probationary or time-limited appointment who is in pay status for one-half of the regularly scheduled workdays and holidays in a pay period. The rate shall be published in the State Personnel Manual.~~

~~(b) Leave for part-time employees shall be computed as a percentage of total amount provided to a full time employee prorated.~~

Authority G.S. 126-4; 126-8.

25 NCAC 01E.0311 SEPARATION

~~(a) Sick leave ~~is~~ shall not be allowable allowed in terminal leave payments when an employee separates from state service.~~

~~(b) If an employee separates and is overdrawn on leave, deductions shall be made from the final salary check. Deductions shall be made in units nearest to a tenth of an hour, i.e., 1/10 of an hour for each six minutes overdrawn.~~

Authority G.S. 126-4.

25 NCAC 01E.0313 RETIREMENT CREDIT

~~One month of credit is allowed for each 20 days, or any portion thereof, of sick leave to an employee's credit upon retirement.~~

Authority G.S. 126-4; 126-8.

25 NCAC 01E.0314 SICK LEAVE WITHOUT PAY

~~An employee shall be granted sick leave without pay in accordance with 25 NCAC 1E.1400, Family and Medical Leave, for a period of 12 workweeks and may be granted leave without pay up to one year after leave has been exhausted. Extension of sick leave without pay beyond one year shall be managed by and~~

~~documented by the agency head, under the conditions listed in this Rule. If leave is exhausted, it shall be exhausted to the nearest tenth of an hour. The date separated shall be the last day of work or the last day leave is exhausted, whichever is later. In cases where no leave is available and the disability occurs after the last day of work and before the beginning of the next workday, the date separated shall be the date the disability occurs.~~

- ~~(1) Employee Illness [For employees not covered under Item (2) of this Rule]. The agency may grant sick leave without pay up to one year after leave has been exhausted. Extension of sick leave without pay beyond one year shall be managed by and documented by the agency head. An employee shall exhaust accumulated sick leave before going on leave without pay. The agency may require that the employee use accumulated vacation leave before granting leave without pay.~~
- ~~(2) Disability Income Plan The agency may grant sick leave without pay up to one year after leave has been exhausted.~~
 - ~~(a) Short-term Disability Accumulated sick leave shall be exhausted during the waiting period required prior to short-term disability. Additional sick leave may be exhausted or it may be retained for future use. The employee may also exhaust vacation leave or may retain part or all of accumulated vacation leave. While exhausting leave, all benefits for which the employee is entitled are credited. Exhaustion of sick or vacation leave during the short-term disability period is in lieu of short-term disability benefits that may be otherwise payable.~~
 - ~~(b) Long-term Disability If an employee is approved for long-term disability following the short-term disability, the employee must be separated from leave without pay. The employee shall be reinstated to the payroll for the purpose of exhausting any unused vacation and sick leave they had prior to going on leave without pay. The employee may choose to apply the sick leave credits toward retirement if the employee would be eligible for service retirement within a five-year period. Pursuant to G.S. 135-106, the long-term disability benefit is not payable until the leave has been exhausted.~~
- ~~(3) Family and Medical Leave Eligible employees shall be granted leave in accordance with 25 NCAC 1E .1400, Family~~

~~and Medical Leave for a period of 12 workweeks.~~

Authority G.S. 126-4.

25 NCAC 01E.0315 LEAVE RECORDS

- ~~(a) Each agency shall maintain annual records for sick leave for each employee. employee and balance them. It shall be optional with each agency as to when and how often the crediting and balancing of an employee's leave record is to be done. However, it must be done at least once by the end of each calendar year. Agencies shall notify employees of leave balances at least once each year.~~
- ~~(b) Agencies must shall retain sick leave records for all separated employees for a period of at least five years from the date of separation, when an employee separates as prescribed in the State Personnel Manual or records retention schedules.~~

Authority G.S. 126-4.

SECTION .0700 - WORKER'S COMPENSATION LEAVE

25 NCAC 01E.0705 ADMINISTRATION

- (a) Each State agency shall administer a workers' compensation program, which may include third party administration of claims. The agency shall ensure the employee of the benefits provided by the Workers' Compensation Act and control costs related to on-the-job injuries and illnesses.
- ~~(b) The agency shall designate a Workers' Compensation Administrator to process and monitor workers' compensation claims.~~
- ~~(c) The agency shall fund medical treatment and compensation for loss of wages.~~
- ~~(d) The agency shall communicate Workers' Compensation policy and procedures to all employees.~~
- ~~(e) The agency shall participate in compromise settlement agreements and North Carolina Industrial Commission Hearings or Mediations, where appropriate.~~
- (f) ~~(b)~~ The Office of State Personnel shall measure and evaluate the effectiveness of the workers' compensation program at each agency and recommend changes to achieve optimum results and ensure consistent application of coverage and compensation. It shall maintain contract oversight, monitoring and evaluation of the effectiveness of third party administration of claims, and act as intermediary between the third party administrator and the State. It shall maintain a statistical database summarizing a statewide analysis of total expenditures and injuries, and develop training and educational materials for use in training programs for the agencies.

Authority G.S. 126-4.

25 NCAC 01E.0706 RESPONSIBILITY OF EMPLOYEE AND EMPLOYER

- (a) In accordance with G.S. 97-22 notice of an accident must be given to the employer by the employee or his/her representative as soon as possible.
- ~~(b) The agency, or its designated representative, is required by law to report the injury to the North Carolina Industrial Commission using the Form 19 within five days from~~

knowledge of any claim that results in more than one day's absence from work or if medical expenses exceed the reportable amount which is established by the Industrial Commission.

(c) Responsibility for claiming compensation is on the injured employee. A claim must be filed by the employee through the agency/university with the North Carolina Industrial Commission within two years from the date of injury or knowledge thereof. Otherwise, the claim is barred by law.

Authority G.S. 97-22; 97-24; 126-4; NCIC Rule 104.

25 NCAC 01E.0707 USE OF LEAVE

(a) When an employee is injured, ~~he~~ the employee ~~must~~ shall go on workers' compensation leave and receive the workers' compensation weekly benefit after the required waiting period required by G.S. 97-28. One of the following options may be chosen:

- (1) Option 1: Elect to take sick or vacation leave during the required waiting period and then go on workers' compensation leave and begin drawing workers' compensation weekly benefits.
- (2) Option 2: Elect to go on workers' compensation leave with no pay for the required waiting period and then begin drawing workers' compensation weekly benefits.

If the injury results in disability of more than a specified number of days, as indicated in G.S. 97-28, the workers' compensation weekly benefit shall be allowed from the date of disability. If this occurs in the case of an employee who elected to use leave during the waiting period, no adjustment shall be made in the leave used for these workdays.

(b) Under Subparagraphs (a)(1) and (a)(2) of this Rule, after the employee has gone on workers' compensation leave, the weekly benefit may be supplemented by the use of partial sick or vacation leave, earned prior to the injury, in accordance with a schedule published by the Office of State Personnel each year. Since the employee must receive the weekly benefit, this schedule shall provide an income approximately equal to the past practice of using 100 percent of sick or vacation leave.

(c) Compensatory time may be substituted for sick or vacation leave if applied within the time frames provided under the Hours of Work and Overtime Compensation Policy. (reference: 25-NCAC 01D .1928).

(d) If the employee has earned leave or compensatory time and chooses to use it while drawing the weekly benefit, it shall be paid on a temporary pay roll at the employee's hourly rate of pay. It shall be subject to State and Federal withholding taxes and Social Security, but not subject to retirement, just the same as other temporary pay. Once an election is made under Paragraphs (a) through (c), it may not be rescinded for the duration of the claim. Unused leave may be retained for future use.

(f) Employees injured on the job in a compensable accident who, in order to reach maximum medical improvement, require medical or therapy visits during regularly scheduled working hours shall not be charged leave for time lost from work for required treatment.

(g) ~~Employee Refusal of Coverage: Under certain circumstances involving third party liability an employee may elect to refuse workers' compensation benefits. If an employee refuses workers' compensation benefits for injuries resulting from an on the job injury, a release statement, provided by the agency, must be signed by the employee. Unless there is a signed release statement an employee who loses time from work as a result of an on the job injury must be placed under the workers' compensation policy.~~

Authority G.S. 97-28; 126-4.

25 NCAC 01E.0708 CONTINUATION OF BENEFITS

~~While on workers' compensation leave an employee is eligible for continuation of the following benefits:~~

- (1) ~~Performance Increase: Upon reinstatement, an employee's salary shall be computed based on the last salary plus any legislative increase to which he is entitled. Any performance increase which would have been given had the employee been at work may also be included in the reinstatement salary, or it may be given on any payment date following reinstatement.~~
- (2) ~~Vacation and Sick Leave: While on workers' compensation leave, the employee shall continue to accumulate vacation and sick leave to be credited to his/her account for use upon his/her return. If the employee does not return from workers' compensation leave, vacation and sick leave accumulated only during the first 12 months of workers compensation leave shall be exhausted by a lump sum payment along with other unused vacation leave which was on hand at the time of the injury. Since the employee is on workers' compensation leave and is not able to schedule vacation time off, the accumulation may in some cases exceed the 240 hours and shall be handled as follows:~~

- (a) ~~The 240-hour maximum to be carried forward to the next calendar year may be exceeded by the amount of vacation accumulated during workers' compensation leave. The excess may be used after returning to work or carried on the leave account until the end of the calendar year at which time any excess vacation shall be converted to sick leave.~~

~~Note: This provision also applies to employees covered under salary continuation provisions of G.S. 143-166 and 115C-337,~~

- (b) ~~If the employee separates during the period that excess vacation is allowed, the excess leave to be paid in a lump sum may not exceed the amount accumulated during the first 12 months of workers' compensation leave.~~

- (3) ~~Hospitalization Insurance: While on workers' compensation, an employee is in pay status and shall continue to be covered under the state's health insurance program, in compliance with State Health Plan guidelines. Monthly premiums for the employee shall be paid by the state. Premiums for any dependent coverage must be paid directly by the employee.~~
- (4) ~~Retirement Service Credit: While on workers' compensation leave an employee does not receive retirement credit. As a member of the Retirement System, the employee may purchase credits for the period of time on an approved leave of absence. Upon request by the employee, the Retirement System provides a statement of the cost and a date by which purchase must be made. If purchase is not made by that date, the cost shall have to be recomputed.~~
- (5) ~~Longevity: While on workers' compensation leave an employee is in pay status and shall continue to receive longevity credit. Employees who are eligible for longevity pay shall receive their annual payments.~~

Authority G.S. 126-4.

25 NCAC 01E.0709 RETURN TO WORK

When an employee, who has been injured on the ~~job~~ and placed on workers' compensation leave, has been released to return to work by the treating physician, ~~there are three possible return to work situations~~ the agency shall:

- (1) return the employee to the same position or one of like seniority, status and pay held prior to the injury; or
- (2) attempt to place the employee in a position best suited to the employee's post-injury capacity.
 - (a) ~~When an employee who is on workers' compensation leave, has reached maximum medical improvement and has been released to return to work by the treating physician, the agency shall return the employee to the same position or one of like seniority, status and pay held prior to workers' compensation leave.~~
 - (b) ~~When an employee who has not reached maximum medical improvement is ready to return to limited work duty with approval of the treating physician but retains some disability which prevents successful performance in the original position, the agency shall provide work reassignment suitable to the employee's capacity which is both meaningful and productive and advantageous to the employee and the~~

~~agency. This work reassignment shall be a temporary assignment and shall not exceed 90 days without approval from the agency personnel officer. When the employee reaches maximum medical improvement the agency shall return the employee to the same position or one of like seniority, status and pay held prior to workers' compensation leave.~~

- (c) ~~When an employee has received a disability which prohibits employment in his previous position and has reached maximum medical improvement and been released to return to work by the treating physician the agency shall attempt to place the employee in another position suitable to the employee's capacity which is both meaningful and productive and advantageous to the employee and the agency. This work placement may be a permanent assignment or either a part-time or temporary assignment until a permanent assignment is found.~~
 - (i) ~~If a position is not available for work placement, the agency shall appoint the employee to the first suitable vacancy which occurs. During the interim period in which a suitable vacancy is not available, the employee shall be referred to the Office of State Personnel for reemployment assistance and a possible return to work in another agency.~~
 - (ii) ~~Work placement efforts shall continue for a period not to exceed 12 months, except with the approval of the agency personnel officer.~~

Authority G.S. 126-4.

SECTION .0800 - MILITARY LEAVE

25 NCAC 01E.0804 PERIODS OF ENTITLEMENT FOR ALL RESERVE COMPONENTS

(a) Military leave with pay for training shall be granted to members of the Uniformed Services who are full-time or part-time employees with a permanent, trainee, time-limited or probationary appointment for up to 120 working hours (prorated for part-time employees) during the Federal fiscal year beginning October 1 and ending on September 30, ~~for~~ for any type of active military duty for member not on extended active duty, including:

- (1) active duty for training; and

(2) inactive duty training. If the drill is not scheduled on the employee's off-days, the employee has the option of requesting that the work schedule be rearranged, or the employee may use any unused portion of the 120 hours leave with pay, vacation leave, or leave without pay.

(b) Military leave with pay shall be granted to members of the Civil Air Patrol as defined in Rule .0801 of this Section.

(c) An employee shall be granted necessary time off when the employee must undergo a required physical examination relating to membership in a reserve component without charge to leave.

(d) Military leave with pay shall be granted to members of the State Defense Militia as defined in Rule .0820 of this Section.

(e) Extended active duty means that period of time for which an employee serves in the uniformed services which is not considered as active duty for training (annual training or special schools) or inactive duty training (drills). The total active and inactive duty shall not exceed five years plus any additional service imposed by law. Extended active duty includes:

- (1) Initial active duty for training (initial enlistment);
- (2) Service performed during time of war or national emergency or for other critical missions/contingencies/military requirements; and
- (3) Full-time National Guard duty (usually a three-year contract).

Authority G.S. 126-4(5).

SECTION .0900 - HOLIDAYS

25 NCAC 01E.0902 RELIGIOUS OBSERVANCES

(a) The agency shall make efforts to accommodate an employee's request to be away from work for certain religious holiday observances; however, nothing shall obligate the agency to make accommodation if, in accommodating the request, it would result in undue hardship on the agency or its employees.

(b) ~~The following factors shall be considered in accommodating religious holidays:~~

- ~~(1) the accommodation creates no greater risk to the health and safety of the employee, fellow employees, or the general public;~~
- ~~(2) by accommodating the unscheduled religious holiday, expenses to the State will not increase;~~
- ~~(3) meaningful work can be provided under the circumstances in which the employee will be working;~~
- ~~(4) supervision can be provided if deemed necessary.~~

~~(c) Religious holidays shall be accommodated by adjusting the work schedule of the employee to the extent that it does not significantly impact the rights of other employees, or by allowing the employee to exchange another State government public holiday for the religious holiday. The unscheduled holiday and the State government public holiday shall occur within the same calendar year.~~

~~(b) (d)—If the religious holidays cannot be accommodated by this Rule, the vacation rules in 25 NCAC 1E .0200 shall be used. If an employee has accrued vacation leave, no request for vacation leave shall be denied unless it would create an emergency condition which cannot be prevented in any other manner.~~

Authority G.S. 126-4.

25 NCAC 01E.0903 SCHEDULING HOLIDAYS

~~The schedule is issued on a calendar year basis, and each year a schedule of the holidays for that year will be issued to agency heads by the Office of State Personnel.~~

Authority G.S. 126-4.

25 NCAC 01E.0904 TIME ALLOWED OFF

~~Agency heads shall post or issue written notice of the holiday schedule to all employees. Employees are granted eight hours away from work on each of these days except where operational needs require work on a designated holiday.~~

Authority G.S. 126-4.

25 NCAC 01E.0909 WORKWEEKS OTHER THAN FIVE EIGHT-HOUR DAYS

~~Where a 10 hour four day workweek workday greater than eight hours has been established on a pilot study basis, two all hours above eight must shall be charged to vacation leave to equalize holiday benefits.~~

Authority G.S. 126-4.

SECTION .1000 - MISCELLANEOUS LEAVE

25 NCAC 01E.1001 JURY DUTY

(a) A full-time or part-time employee with a permanent, probationary, trainee or time-limited permanent appointment who serves on a jury ~~is entitled to~~ shall be given civil leave with pay plus fees received for jury duty. ~~The employee should report back to work as soon as jury duty is completed, or no later than the day following completion of duty. If the jury duty occurs on a scheduled day off, the employee is not entitled to additional time off.~~

(b) When serving on jury duty a second shift employee shall not be required to work on the day that jury duty occurs. A third shift employee shall not be required to work the shift that begins on the day prior to the day that jury duty occurs. This applies to all employees, regardless of the length of shift.

Authority G.S. 126-4.

25 NCAC 01E.1004 LEAVE: EMPLOYEE TRANSFER

When the transfer of an employee is made to a new duty station 35 miles or more away from his existing residence, he becomes eligible for consideration for reimbursement of moving expenses if he chooses to change place of residence. Under such circumstances, it is the policy of the state to grant leave with pay to the employee for a reasonable amount of ~~time~~ time, as defined

by State Personnel Commission and published in the State Personnel Manual, required to locate a new residence and to accomplish the relocation to that residence.

Authority G.S. 126-4.

25 NCAC 01E.1007 LEAVE WITH PAY FOR TIME TO LOCATE NEW RESIDENCE

~~It is desirable that an employee make a decision on permanent living arrangements prior to the time of transfer to the new duty station. Leave with pay may be granted up to a maximum of three trips of three days each to locate a new residence. The agency shall consider the employee's effort being exerted, and progress made, in order to determine if three trips are necessary.~~

Authority G.S. 126-4.

25 NCAC 01E.1008 LEAVE WITH PAY WHEN MOVING TO NEW RESIDENCE

~~Leave with pay shall be granted for two days when the employee moves household and personal goods from the old residence to the new one. The agency may grant additional days of leave with pay if the distance between the old and new duty stations warrants this, or if other uncontrollable factors require a longer period of time.~~

Authority G.S. 126-4.

SECTION .1100 - OTHER LEAVES WITHOUT PAY

25 NCAC 01E.1101 POLICY

Leave without pay may be granted to a full-time or part-time permanent, trainee or probationary employee for illness, educational purposes, vacation, or for any other reasons deemed justified by the agency head head, and the State Personnel Director.

Authority G.S. 126-4.

25 NCAC 01E.1102 MAXIMUM AMOUNT

Leave without pay shall not exceed 12 ~~months~~, months unless a longer time is specifically provided under these rules. Any extension of leave without pay longer than 12 months shall be agreed upon by the responsibility of the agency head and the State Personnel Director. contingent upon providing written documentation in the file with justification. Leave Without Pay for military purposes is covered under Military Leave, Section .0800 of this Subchapter. Leave without pay for employees receiving Worker's Compensation Benefits is described in Section .0700 of this Subchapter. Leave without pay for employees eligible for family and medical Leave is covered under Family and Medical Leave, Section .1400 of this Subchapter. Parental leave without pay for employees not eligible for family and medical leave is covered ~~at the end of this Subchapter~~. in 25 NCAC 01E .1110.

Authority G.S. 126-4.

25 NCAC 01E.1104 AGENCY RESPONSIBILITY

~~The decision to grant leave without pay is an administrative one for which the agency head must assume full responsibility. Factors to consider are needs of the employee requesting leave, workload, need for filling employee's job, chances of employee returning to duty, and the obligation of the agency to reinstate employee to a position of like status and pay. It is the responsibility of the agency to administer leave without pay in a manner that is equitable to all of its employees. Reinstatement to the same position or one of like seniority, status and pay must shall be made upon the employee's return to work unless other arrangements are agreed to in writing. If it is necessary to fill a position which is vacant by leave without pay, the position may be filled by a temporary or time-limited permanent appointment, whichever is appropriate.~~

Authority G.S. 126-4.

25 NCAC 01E.1105 RETENTION OF BENEFITS

(a) ~~An employee on leave without pay shall retain all accumulated unused vacation leave, sick leave, leave and retirement status, status, and time earned toward the next annual salary increase. Eligibility to accumulate leave and time toward salary increases ceases on the date leave without pay begins.~~
 (b) ~~While on leave without pay the employee may continue coverage under the state's health insurance program by paying the full premium cost (no contribution by the state).~~

Authority G.S. 126-4.

25 NCAC 01E.1107 SALARY INCREASE ANNIVERSARY DATE

~~An employee's performance salary increase anniversary date will be established upon the completion of 12 months in pay status since the last annual increase that established an anniversary date; this includes time before and after leave without pay. If the employee is on leave without pay for less than one-half the scheduled workdays in any month, service credit toward the next anniversary date will be granted for the whole month.~~

Authority G.S. 126-4.

25 NCAC 01E.1108 RETIREMENT STATUS

~~If an employee is granted leave of absence for purposes which will tend to make the person a more valuable employee, permission may be received from the Board of Trustees of the Teachers' and State Employees' Retirement System to make personal contributions to the retirement account during this period and receive service credit. The request must be made in advance by the head of the employing unit and the employer must agree to pay its share of the cost. Specific policies for this are established by the Board of Trustees; the employee should contact the Retirement System for information regarding all specific requirements.~~

Authority G.S. 126-4.

25 NCAC 01E.1111 EXTENDED LEAVE WITHOUT PAY

~~Extended leave without pay must be administered in accordance with the provisions outlined in this Rule. Extended leave~~

without pay is defined as leave in excess of one-half the workdays in the ~~month or in the~~ pay period (~~whichever is applicable~~), in which case a personnel action must be submitted to place the employee in leave without pay status. Extended leave without pay shall be administered in accordance with the provisions outlined in 25 NCAC 01E .1102-.1110.

Authority G. S. 126-4.

25 NCAC 01E.1112 SHORT LEAVE WITHOUT PAY

(a) Short leave without pay is defined as leave for less than one-half the workdays in the ~~month or in the~~ pay period (~~whichever is applicable~~). This is used to account for time that an employee is absent and has no accumulated or advanced leave credits. The employee must shall have approval from the supervisor. ~~These short periods may be docked from the employee's pay check without submitting a personnel action form.~~ The employee ~~earns shall earn~~ all benefits for which eligible.

(b) ~~Employers~~ Employees who are absent without approved leave may be subject to disciplinary action from their supervisor. ~~If an employee is absent without approved leave, agency~~ Agency management ~~is shall be~~ responsible for determining whether leave without pay is appropriate or whether the time may be charged to the appropriate leave account. ~~Short leave without pay may be used in these situations to cover the status of an employee who has failed to come to work but has not requested and received approval to take sick or vacation leave.~~

Authority G. S. 126-4.

SECTION .1300 - VOLUNTARY SHARED LEAVE PROGRAM

25 NCAC 01E.1301 PURPOSE

~~There are occurrences brought about by prolonged medical conditions that cause employees to exhaust all available leave and therefore be placed on leave without pay. It is recognized that such employees forced to go on leave without pay could be without income at the most critical point in their work life. It is also recognized that fellow employees may wish to donate voluntarily some of their vacation leave so as to provide assistance to a fellow state employee.—This Rule allows an employee to share leave with another employee provides an opportunity for employees to assist another employee on a one-to-one basis, when a medical condition requires absence from duty for a prolonged period of time. time, resulting in a possible loss of income due to a lack of accumulated leave.~~

Authority G.S. 126-4.

25 NCAC 01E.1302 POLICY

(a) ~~In cases of a prolonged medical condition a~~ An employee may apply for or be nominated to become a recipient of leave transferred from the vacation leave account of another employee ~~within their agency or from the sick leave or vacation account of an immediate family member in any agency.~~ For purposes of this Rule, medical condition means medical condition of an employee or the employee's spouse, parents, children, or other dependents (including step and in-law relationships) that is

likely to require an employee's absence from duty for a ~~prolonged period, period of~~, (at at least 20 consecutive workdays) workdays. If an employee has had previous random absences for the same condition that has caused excessive absences, or if the employee has had a previous, but different, prolonged medical condition within the last 12 months, the agency may make an exception to the 20 day period. ~~The intent of this Rule is to allow one employee to assist another in case of a prolonged medical condition, that results in exhaustion of all earned leave.~~

(b) An employee who ~~has a medical condition and who~~ receives benefits from the Disability Income Plan of North Carolina (DIPNC) is not eligible to participate in the shared leave program. Shared leave, however, may be used during the required waiting period and following the waiting period provided DIPNC benefits have not begun.

(c) Participation in this program is limited to 1,040 hours, (prorated for part-time employees), either continuously or, if for the same condition, on a recurring basis. However, management may grant employees continuation in the program, month by month, for a maximum of 2,080 hours, if management would have otherwise granted leave without pay.

(d) An employee on workers' compensation leave who is drawing temporary total disability compensation may be eligible to participate in this program. Use of donated leave under the workers' compensation program shall be limited to use with the supplemental leave schedule published by the Office of State Personnel. ~~The supplemental leave amount is calculated for each employee based on their entitled average weekly wage under workers' compensation to net out take home pay to approximately the same as annual salary net take home pay using a 25% tax rate.~~

(e) ~~Subject to the maximum of 1,040 hours, the number of hours of leave an employee may receive is equal to the projected recovery or treatment period, less the employee's combined vacation and sick leave balance as of the beginning of the recovery or treatment period.—The employee must shall exhaust all available leave before using donated leave.~~

(f) Nonqualifying conditions: This leave does not apply to short-term or sporadic conditions or illnesses that are common, expected or anticipated. This includes such things as sporadic, short-term recurrences of chronic allergies or conditions; short-term absences due to contagious diseases; or short-term, recurring medical or therapeutic treatments. These examples are illustrative, not all inclusive. Each case must be examined and decided based on its conformity to the intent of this Rule and must be applied consistently and equitably.

Authority G.S. 126-4.

25 NCAC 01E.1304 QUALIFYING TO PARTICIPATE IN VOLUNTARY SHARED LEAVE PROGRAM

In order to participate in the Voluntary Shared Leave Program, an employee ~~must shall~~ meet the following conditions:

- (1) Employee ~~must shall~~ be a full-time or part-time (half-time or more) employee with a permanent, probationary, trainee or time-limited appointment. (The limitation and leave balance for permanent part-time

- employees is prorated.) Participation in this program shall be based on the employee's past compliance with leave rules.
- (2) By letter of application to the agency head, a recipient shall apply, or be nominated by a fellow employee to participate in the program. A prospective recipient may make application for voluntary shared leave at such time as medical evidence is available to support the need for leave beyond the employee's available accumulated leave. The agency may establish internal guidelines to facilitate the administration of this process.
- (3) Application for participation shall include name, social security number, classification, parent agency, jurisdiction from which donations of leave is requested, description of the medical condition and estimated length of time needed to participate in the program. A doctor's statement must be attached to the application. The Privacy Act makes medical information confidential. When disclosing information on an approved recipient, only a statement that the recipient has a prolonged medical condition (or the family member) may be made. If the employee wishes to make the medical status public, employees must sign a release to allow the status to be known.
- (4)(3) The parent department or university shall review the merits of the request and approve or disapprove. Agency heads may choose to delegate the responsibility for reviewing the validity of requests to an existing peer group or establish a committee for this purpose. Such a committee may also be used in an advisory capacity to the agency head.
- (5) Establishment of a leave "bank" for use by unnamed employees is expressly prohibited. Leave must be donated on a one-to-one personal basis.
- (4) (6) An agency with fewer than 200 employees may, with concurrence of another agency and with prior notification to the State Personnel Director, establish agreements with another small agency(ies) to be treated as one agency for purposes of this Section.

- record for financial and management audit purposes.
- (3)(2) All leave donated shall be credited to the recipient's sick leave account. Voluntary shared leave available in the recipient's sick leave account will be charged according to 25 NCAC 1E .0300 SICK LEAVE.
- (4) Leave transferred under this program will be available for use on a current basis or may be retroactive for up to 30 calendar days to substitute for leave without pay or advanced vacation or sick leave already granted to the leave recipient.
- (5)(3) At the expiration of the medical condition, as determined by the agency, any unused leave in the recipient's donated leave account shall be treated as follows: returned to the donor.
- (a) The recipient's vacation and sick leave account balance shall not exceed a combined total of 40 hours (prorated for part-time employees).
- (b) Any additional unused donated leave shall be returned to the donor(s) on a pro rata basis and credited to the leave account from which it was donated. Fraction(s) of one hour shall not be returned to an individual donor.
- (c) Each approved medical condition shall stand alone and donated leave not used for each approved incident shall be returned to the donor(s). Returned leave shall be credited to the same account from which it originally came. Employees who donate "excess" vacation leave (any amount above the 240 maximum allowable carryover) at the end of December may not have it returned and converted to sick leave.
- (6) If a recipient separates due to resignation, death, or retirement from state government, participation in the program ends. Donated leave shall be returned to the donor(s) on a pro rata basis.

Authority G.S. 126-4.

Authority G.S. 126-4.

25 NCAC 01E.1306 LEAVE ACCOUNTING PROCEDURES

The following conditions shall control the accounting and usage procedures for leave donations in the Voluntary Shared Leave program:

- (1) To facilitate the administration of the program, the agency may establish a specific time period during which leave can be donated.
- (2) Each agency shall establish a system of leave accountability which will accurately record leave donations and recipients' use. Such accounts shall provide a clear and accurate

SECTION .1400 - FAMILY AND MEDICAL LEAVE

25 NCAC 01E.1401 PURPOSE AND SCOPE

The Family and Medical Leave Act of 1993 was passed by Congress to balance the demands of the workplace with the needs of families; to promote the stability and economic security of families; to promote national interests in preserving family integrity; to minimize the potential for employment discrimination on the basis of sex by ensuring generally that leave is available for eligible medical reasons (including maternity-related disability) and for compelling family reasons; and to promote the goal of equal employment opportunity for

women and men. These Rules provide for the implementation of the Family and Medical Leave Act of 1993 as it pertains to those employees subject to G.S. 126.

The State of North Carolina shall follow all provisions of the Family and Medical Leave Act of 1993. These Rules stipulate the additional provisions applicable to employees subject to G.S. 126.

Authority G.S. 126-4(5); P.L. 103-3.

25 NCAC 01E.1402 ELIGIBLE EMPLOYEES

~~(a) Determining Eligibility — An employee's eligibility for Family and Medical Leave shall be made based on the employee's months of service and hours of work as of the date leave is to commence.~~

~~(b)(a) Permanent, Probationary, Trainee, and Time-Limited - An employee who has been employed with State government for at least 12 months and who has been in pay status at least 1040 hours (half-time) during the previous 12 month period is shall be entitled to a total of 12 workweeks, paid or unpaid, leave during any 12 month period for one or more of the reasons listed in this Paragraph.the Act.~~

- ~~(1) — For the birth of a child and to care for the newborn child after birth, provided the leave is taken within a 12-month period following birth; (An expectant mother may also take Family and Medical Leave pursuant to paragraph (b)(4) of this Rule before the birth of the child for prenatal care or if her condition makes her unable to work.)~~
- ~~(2) — For the placement of or to care for a child placed with the employee for adoption or foster care, provided the leave is taken within a 12-month period following adoption; (Family and Medical Leave must also be granted before the actual placement or adoption of a child if an absence from work is required for the placement for adoption or foster care to proceed.)~~
- ~~(3) — For the employee to care for the employee's child, spouse, or parent, where that child, spouse, or parent has a serious health condition; or~~
- ~~(4) — Because the employee has a serious health condition that makes the employee unable to perform one or more of the functions of the employee's position.~~

~~(e)(b) Additional leave without pay shall be provided for employees to care for the employee's child, spouse or parent who has a serious health condition. See Rule 25 NCAC 1E .1412 Family Illness Leave. Leave without pay beyond the 12-week period for employees not covered under this Section shall be administered under 25 NCAC 1E .1100 Other Leave Without Pay. Under these provisions, employees must pay for health benefits coverage.~~

~~(d)(c) Leave without pay for other reasons beyond the 12-week period for employees not covered under this Section shall be administered under 25 NCAC 1E .1100 Other Leave Without Pay. Under these provisions, employees must pay for health benefits coverage.~~

~~(e)(d) Temporary Employees — This Section does not cover temporary employees since the maximum length of a temporary employees' appointment is one year. The A temporary employee shall be covered if the employee has worked at least 1250 hours during the past 12-month period. Any leave granted to a temporary employee shall be without pay. This also applies to intermittent appointments.~~

Authority G.S. 126-4(5); P.L. 103-3.

25 NCAC 01E.1403 DEFINITIONS

~~(a) Parent — a biological or adoptive parent or an individual who stood in loco parentis (a person who is in the position or place of a parent) to an employee when the employee was a child.~~

~~(b) Child — a son or daughter who is under 18 years of age or is 18 years of age or older and incapable of self-care because of a mental or physical disability who is:~~

- ~~(1) — a biological child;~~
- ~~(2) — an adopted child;~~
- ~~(3) — a foster child — a child for whom the employee performs the duties of a parent as if it were the employee's child;~~
- ~~(4) — a step child — a child of the employee's spouse from a former marriage;~~
- ~~(5) — a legal ward — a minor child placed by the court under the care of a guardian; or~~
- ~~(6) — a child of an employee standing in loco parentis.~~

~~(c) Spouse — a husband or wife recognized by the State of North Carolina.~~

~~(d) Serious health condition — an illness, injury, impairment, or physical or mental condition that involves:~~

- ~~(1) — inpatient care (i.e., an overnight stay) in a hospital, hospice or residential medical facility, including any period of incapacity (defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment for or recovery from), or any subsequent treatment in connection with such impairment; or~~
- ~~(2) — continuing treatment by a health care provider involving one or more of the following:~~
 - ~~(A) — a period of incapacity as defined above of more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition that also involves:~~
 - ~~(i) — treatment two or more times by a health care provider, by a nurse or physician's assistant under the direct supervision of a health care provider, or a provider of health care services (e.g., physical therapist) under orders of, or on referral by a health care provider, or~~
 - ~~(ii) — treatment on at least one occasion resulting in a~~

~~regime of continuing treatment under the supervision of the health care provider (course of prescription medication, i.e., antibiotic, or therapy requiring special equipment to alleviate the health condition, i.e., oxygen).~~

~~(B) any period of incapacity due to pregnancy or for prenatal care, even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three days (prenatal examinations, severe morning sickness).~~

~~(C) any period of incapacity or treatment due to a "chronic serious health condition", even when the employee or family member does not receive treatment from a health care provider during the absence and even if the absence does not last more than three days, which is defined as one:~~

~~(i) requiring periodic visits or treatment by a health care provider, or by a nurse or physician's assistant under the direct supervision of a health care provider;~~

~~(ii) continuing over an extended period of time (including recurring episodes of a single underlying condition); and~~

~~(iii) which may cause episodic rather than continuing period(s) of incapacity (e.g., asthma, diabetes, epilepsy, etc.).~~

~~(D) incapacity for a permanent or long-term condition for which treatment may not be effective (alzheimers, a severe stroke or terminal stages of a disease).~~

~~(E) multiple treatments for restorative surgery or incapacity for serious conditions that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment (chemotherapy, radiation, dialysis, etc.).~~

~~(e) Health Care Provider.~~

~~(1) a Doctor of medicine or osteopathy who is authorized to practice medicine or surgery in the State of North Carolina or;~~

~~(2) any other person determined by statute, credential or licensure to be capable of providing health care services which include:~~

~~(A) Podiatrists~~

~~(B) Dentists~~

~~(C) Clinical Psychologists~~

~~(D) Optometrists~~

~~(E) Chiropractors (limited to manual manipulation of spine to correct subluxation shown on radiographs)~~

~~(F) Nurse Practitioners~~

~~(G) Nurse Midwives~~

~~(H) Clinical Social Workers~~

~~(I) Christian Science Practitioners listed with First Church of Christ, Scientists in Boston, Massachusetts. (An agency may require an employee to obtain a second or third certification from a health care provider who is not a Christian Science practitioner.)~~

~~(J) Health Care Providers from whom state approved group and HMO health plans will accept certification of serious health conditions to substantiate a claim for benefits~~

~~(K) Foreign Health Care Providers in above stated areas who are authorized to practice in that country and who are performing within the scope of the laws~~

~~(f) Workweek — The number of hours an employee is regularly scheduled to work each week.~~

~~(g) Reduced Work Schedule — A work schedule involving less hours than an employee is regularly scheduled to work.~~

~~(h) Intermittent Work Schedule — A work schedule in which an employee works on an irregular basis and is taking leave in separate blocks of time, rather than for one continuous period of time, usually to accommodate some form of regularly scheduled medical treatment.~~

~~(i) 12-month period:~~

~~(1) the calendar year;~~

~~(2) any fixed 12-month "leave year";~~

~~(3) the 12-month period measured forward from the date any employee's first Family and Medical leave begins, or~~

~~(4) a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.~~

~~The agency may choose either alternative provided it is applied consistently and uniformly to all employees. Employees must be given 60 days notice of any change and must not lose any benefits because of a transition.~~

~~Authority G.S. 126-4(5); P.L. 103-3.~~

25 NCAC 01E.1404 LEAVE CHARGES

~~(a) Periods of paid leave and periods of leave without pay (including leave without pay while drawing short-term disability benefits) count towards the 12 workweeks to which the~~

employee is entitled. This includes leave taken under the Voluntary Shared Leave Rules (25 NCAC 1E .1300).

(b) Workers' Compensation Leave - If an employee is ~~out of on~~ workers' compensation leave drawing temporary total disability, the time away from work is not considered as a part of the family and medical leave 12-week entitlement.

(c) Compensatory Leave - The agency cannot require an employee to use compensatory time for unpaid family and medical leave.

(d) Employee Options - The employee has the following options for charging leave:

- (1) For the birth of a child, the employee may choose to exhaust available vacation or sick leave, or any portion, or go on leave without pay; except that sick leave may be used during the period of disability. This applies to both parents.
- (2) For the adoption of a child, the employee may choose to exhaust a maximum of 30 days sick leave, available vacation leave, or any portion, or go on leave without pay.
- (3) For the illness of an employee's child, spouse, or parent, the employee may choose to exhaust available sick or vacation leave, or any portion, or go on leave without pay.
- (4) For the employee's illness, the employee shall exhaust available sick leave and may choose to exhaust available vacation leave, or any portion, before going on leave without pay. If the illness extends beyond the 60-day waiting period required for short-term disability, the employee may choose to exhaust the balance of available leave or begin drawing short-term disability benefits.

Authority G.S. 126-4(5); P.L. 103-3.

25 NCAC 01E.1405 INTERMITTENT LEAVE OR REDUCED WORK SCHEDULE

~~(a) The employee may not take leave intermittently or on a reduced work schedule for child birth and birth related child care or for adoption unless the employee and agency agree otherwise.~~

~~(b) When medically necessary, the employee may take leave intermittently or on a reduced schedule to care for the employee's child, spouse, or parent who has a serious health condition. There is no minimum limitation on the amount of leave taken intermittently; however, the agency may not require leave to be taken in increments of more than one hour. If such leave is foreseeable, based on planned medical treatment, the agency may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and that has equivalent pay and benefits and better accommodates recurring periods of leave.~~

~~(c) Only the time actually taken as leave may be counted toward the 12 weeks of leave to which the employee is entitled when leave is taken intermittently or on a reduced leave schedule. If the employee works a reduced or intermittent work schedule and does not use paid leave to make up the difference between the normal work schedule and the new temporary schedule to bring the number of hours worked up to the regular schedule, the~~

~~agency must submit a Form PD-105 showing a change in the number of hours the employee is scheduled to work. This will result in an employee earning leave at a reduced rate.~~

Authority G.S. 126-4(5); P.L. 103-3.

25 NCAC 01E.1406 AGENCY RESPONSIBILITY

~~(a) Posting and Notification Requirements of Family and Medical Leave Act Provisions - Agencies shall post and keep posted, in a conspicuous place, a notice explaining the Family and Medical Leave Act provisions and providing information concerning the procedures for filing complaints of violations of the Act with the U.S. Department of Labor, Wage and Hour Division. The agency must include the provisions of this Section in all written publications, such as handbooks, etc. In addition, each time an employee provides notice of the need for family and medical leave, the agency shall provide the employee with written notice detailing the specific expectations and obligations of the employee and explaining any consequences of a failure to meet these obligations.~~

~~(b) Notice of Eligibility - The agency shall determine that an employee is eligible for family and medical leave. If an employee notifies the employer of the need for family and medical leave before the employee meets the eligibility criteria, the agency shall:~~

- ~~(1) confirm the employee's eligibility effective on the date leave is to start; or~~
- ~~(2) advise the employee when the requirement will be met.~~

~~This decision may not be reversed. No additional notice for family and medical leave from the employee is required. If the agency does not advise the employee whether the employee is eligible prior to the date the leave is to start, the employee shall be deemed eligible. The agency shall not deny the leave. If the employee does not give notice of the need for leave more than two workdays before beginning leave, the employee shall be deemed to be eligible unless notified of ineligibility within two workdays of the date the notice is received.~~

~~(c) Designation of Leave as Family and Medical Leave. They The agency shall:~~

- ~~(1) determine that leave requested is for a family and medical leave qualifying reason, and~~
- ~~(2) designate leave, whether paid or unpaid, as family and medical leave even when an employee would rather not use any of the employee's family and medical leave entitlement.~~

~~The key in designating family and medical leave is the qualifying reason(s), not the employee's election or reluctance to use family and medical leave or to use all, some or none of the accrued leave. The agency's designation must be based on information obtained from the employee or an employee's representative (e.g., spouse, parent, physician, etc.).~~

~~(d) Designation of Paid Leave as Family and Medical Leave. When an employee gives notice of the need for family and medical leave and the employee is using paid leave, whether required or optional, the agency shall designate whether it qualifies for family and medical leave before the leave starts. If information is not sufficient to make the determination, the~~

~~agency shall require the employee to provide the information. All leave taken may be designated as family and medical leave; however, if sufficient information was available and the designation or notice was not given, the leave may not be designated as family and medical leave retroactively.~~

~~When an employee is on paid leave but has not given notice of the need for family and medical leave, the agency shall, after a period of 10 workdays, request that the employee provide sufficient information to establish whether the leave is for a family and medical leave qualifying reason. This does not preclude the agency from requesting the information sooner, or at any time an extension is requested.~~

~~If an absence which begins as other than family and medical leave later develops into a family and medical leave qualifying absence, the entire portion of the leave period that qualifies under the Family and Medical Leave Act may be counted as family and medical leave.~~

~~Once the agency has knowledge that the leave is being taken for a family and medical leave required reason, the agency must, within two business days absent extenuating circumstances, notify the employee that the leave is designated and will be counted as family and medical leave. The notice may be oral or in writing, but must be confirmed in writing no later than the following payday.~~

~~(e) Designation of Family and Medical Leave After Return to Work — The agency shall not designate leave that has already been taken as family and medical leave until the employee returns to work, except:~~

- ~~(1) if an employee is out for a reason that qualifies for family and medical leave and the agency does not learn of the reason for the leave until the employee returns to work, the agency may designate the leave as family and medical leave within two business days of the employee's return; or~~
- ~~(2) if the agency has provisionally designated the leave under family and medical leave and is awaiting receipt from the employee of documentation.~~

~~Similarly, the employee is not entitled to the protection of the Family and Medical Leave Act if the employee gives notice of the reason for the leave later than two days after returning to work.~~

Authority G.S. 126-4(5); P.L. 103-3.

25 NCAC 01E.1407 EMPLOYEE RESPONSIBILITY

~~(a) The employee shall give notice to the supervisor for leave requested, under this Section. The employee must explain the reasons for the needed leave in order to follow the agency to determine that the leave qualifies under this Section.~~

- ~~(1) Birth or adoption — The employee shall give the agency no less than 30 days notice, in writing, of the intention to take leave, subject to the actual date of the birth or adoption. If the date of the birth or adoption requires leave to begin in less than 30 days, the employee shall provide such notice as is practicable, which means within one or two business days~~

~~of when the need for leave becomes known to the employee.~~

- ~~(2) Planned Medical Treatment — When the necessity for leave is to care for the employee's child, spouse or parent or because the employee has a serious health condition, the employee must give 30 days notice if practicable of the intention to take leave. For planned medical treatment, employee consultation with the supervisor prior to the request for family and medical leave is mandatory.~~
- ~~(3) Medical Emergency — In the case of a medical emergency requiring leave because of an employee's own serious health condition, an agency shall not require written advance notice.~~

~~(b) If the employee will not return to work, the agency shall be notified in writing. Failure to report at the expiration of the leave, unless an extension has been requested, may be considered as a resignation.~~

~~(c) Certification — The employee shall provide certification in accordance with the provisions set out in Rule 25 NCAC 1E.1408 of this Section. If the employee does not provide medical certification, any leave taken is not family and medical leave.~~

Authority G.S. 126-4(5); P.L. 103-3.

25 NCAC 01E.1408 CERTIFICATION

~~(a) Adoption — The agency may require that a claim for leave because of adoption be supported by evidence that is satisfactory to the agency.~~

~~(b) Medical Certification — The agency may require that a claim for leave because of a serious illness of the employee or of the employee's child, spouse, or parent be supported by a certification from the health care provider; however, if the employee is using paid leave, the agency shall not require a more stringent certification than normally required. If the employee is using unpaid family and medical leave, the certification requirements shall be no greater than the following:~~

- ~~(1) When the leave is foreseeable and at least 30 days notice has been provided, the employee shall provide the medical certification before the leave begins.~~
- ~~(2) When it is not possible to provide the medical certification before the leave begins, the employee must provide the requested certification to the agency with the time frame requested by the agency (which must allow at least 15 calendar days after the agency's request), unless it is not practicable under the circumstances.~~
- ~~(3) At the time the agency requests certification, the agency must also advise the employee of the anticipated consequences of an employee's failure to provide adequate certification. The agency shall so provide the employee a reasonable opportunity to correct any incomplete information.~~

~~(c) Medical Certification Form — Form WH 380, is an optional form that was developed by the Department of Labor for use in obtaining medical certification, including second and third opinions. Another form containing the same basic information may be used; however, no information in addition to that requested on Form WH 380 may be required.~~

~~(d) Validity of the Certification.~~

~~(1) If an employee submits a complete certification signed by the health care provider, the agency may not request additional information; however, a health care provider representing the agency may contact the employee's health care provider, with the employee's permission, for purposes of clarification and authenticity of the medical certification.~~

~~(2) An agency who has reason to doubt the validity of a medical certification may require the employee to obtain a second opinion at the agency's expense. Pending receipt of the second (or third) opinion the employee is provisionally entitled to family and medical leave. If the certifications do not ultimately establish the employee's entitlement to family and medical leave, the leave shall not be designated as family and medical leave. The agency may designate the health care provider to furnish the second opinion, but the selected health care provider may not be employed on a regular basis by the agency unless the agency is located in an area where access to health care is extremely limited.~~

~~(3) If the opinions of the employee's and the agency's designated health care providers differ, the agency may require the employee to obtain certification from a third health care provider, again at the agency's expense. This third opinion shall be final and binding. The third health care provider must be designated or approved jointly by the agency and the employee.~~

~~(4) The agency must reimburse an employee or family for reasonable "out of pocket" travel expenses incurred to obtain the second and third medical opinions. The agency may not require the employee or family member to travel outside normal commuting distance except in very unusual circumstances.~~

~~(5) The agency shall provide the employee, within two business days, with a copy of the second and third medical opinions, where applicable, upon request by the employee.~~

~~(e) Recertification of Medical Conditions.~~

~~(1) An agency may request recertification no more often than every 30 days unless:~~

~~(A) an extension is requested,~~

~~(B) circumstances described by the previous certification have changed significantly, or~~

~~(C) the agency receives information that casts doubt upon the employee's stated reason for the absence.~~

~~(2) If the minimum duration specified on a certification is more than 30 days, the agency may not request recertification until that minimum duration has passed unless one of the conditions in Paragraph (e)(1)(A),(B) or (C) of this Rule is met.~~

~~(3) The employee must provide the requested recertification to the agency within the time frame requested by the agency (which must allow at least 15 calendar days after the agency's request), unless it is not practicable under the particular circumstances.~~

~~(4) Any recertification requested by the agency shall be at the employee's expense unless the agency provides otherwise. No second or third opinion on recertification may be required.~~

Authority G.S. 126-4(5); P.L. 103-3.

25 NCAC 01E.1409 EMPLOYMENT AND BENEFITS PROTECTION

~~(a) Reinstatement — The employee shall be reinstated to the same position held when the leave began or one of like pay, pay, benefits, and other conditions of employment. The agency may require the employee to report at reasonable intervals to the agency on the employee's status and intention to return to work. The agency also may require that the employee provide certification that the employee is able to return to work.~~

~~(b) Benefits — The employee shall be reinstated without loss of benefits accrued when the leave began. All benefits accrue during any period of paid leave; however, no benefits will be accrued during any period of leave without pay.~~

~~(c) Health Benefits — The State shall maintain coverage for the employee under the State's group health plan for the duration of leave at the level and under the conditions coverage would have been provided if the employee had continued employment. Any share of health plan premiums which an employee had paid prior to leave must continue to be paid by the employee during the leave period. The agency must give advance written notice to employees of the terms for payment of premiums during family and medical leave. The obligation to maintain health insurance coverage stops if an employee's premium payment is more than 30 days late. The agency must provide 15 days notice that coverage will cease. If the employee's failure to make the premium payments leads to a lapse in coverage, the agency must still restore the employee, upon return to work, to the health coverage equivalent to that the employee would have had if leave had not been taken and the premium payments had not been missed without any waiting period or preexisting conditions. The agency may recover the premiums if the employee fails to return after the period of leave to which the employee is entitled has expired for a reason other than the continuation, recurrence, or onset of a serious health condition or other circumstances beyond the employee's control.~~

Authority G.S. 126-4(5); P.L. 103-3.

25 NCAC 01E.1410 INTERFERENCE WITH RIGHTS

(a) ~~Actions Prohibited~~ It is unlawful to interfere with, restrain, or deny any right provided by this Section or to discharge or in any other manner discriminate against an employee for opposing any practice made unlawful by this Section.

(b) ~~Protected Activity~~ It is unlawful to discharge or in any other manner discriminate against any employee because the employee does any of the following:

- (1) ~~Files any civil action, or institutes or causes to be instituted any civil proceeding under or related to this Section;~~
(2) ~~Gives, or is about to give, any information in connection with any inquiry or proceeding relating to any right provided by this Section; or~~
(3) ~~Testifies, or is about to testify, in any inquiry or proceeding relating to any right provided under this Section.~~

(c) ~~A violation of or denial of leave requested pursuant to the Family and Medical Leave Act of 1993 is not a contested case and creates no right of grievance or appeal pursuant to the State Personnel Act (G.S. 126). Violations may result in any of the following or a combination of any of the following and are enforced by the U.S. Secretary of Labor:~~

- (1) ~~U.S. Department of Labor investigation; or~~
(2) ~~Civil liability with the imposition of court cost and attorney's fees; or~~
(3) ~~Administrative action by the U.S. Department of Labor.~~

Authority G.S.126-4(5); P.L. 103-3.

25 NCAC 01E.1411 RECORDKEEPING REQUIREMENTS

(a) ~~Agencies shall keep records for no less than three years and make them available to the Department of Labor upon request. In addition to the records required by the Fair Labor Standards Act, the agency must keep records of:~~

- (1) ~~dates family and medical leave is taken,~~
(2) ~~hours of leave if less than a full day,~~
(3) ~~copies of employee notices,~~
(4) ~~documents describing employee benefits,~~
(5) ~~premium payments of employee benefits, and~~
(6) ~~records of any disputes.~~

(b) ~~Records and documents relating to medical certifications, recertifications or medical histories of employees or employees' family members, created for purposes of family and medical leave, shall be maintained as confidential medical records in separate files/records from the usual personnel files, and if the American With Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements, except that:~~

- (1) ~~Supervisors and managers may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations;~~
(2) ~~First aid and safety personnel may be informed (when appropriate) if the employee's physical~~

~~or medical condition might require emergency treatments; and~~

- (3) ~~Government officials investigating compliance with the Family and Medical Leave Act (or other pertinent law) shall be provided relevant information upon request.~~

Authority G.S. 126-4(5); P.L. 103-3.

SECTION .1600 - COMMUNITY SERVICES LEAVE

25 NCAC 01E.1601 PURPOSE

~~In recognition of the State's diverse needs for volunteers to support schools, communities, citizens and non-profit organizations, and recognizing the commitment of State employees to engage in volunteer service, Community Service Leave, Leave within the parameters outlined below, may be granted to:~~

- (1) ~~parents for child involvement in the schools;~~
(2) ~~any employee for volunteer activity in the schools or in a Community Service Organization; or~~
(3) ~~any employee for tutoring and mentoring in the schools.~~

Authority G.S. 126-4.

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Office of ADA intends to adopt the rules cited as 25 NCAC 02 .0101, .0201.

Proposed Effective Date: June 1, 2004

Public Hearing:

Date: March 4, 2004

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

Location: OSP Large Conference Room, Administration Building, 3rd Floor, 116 W. Jones St., Raleigh, NC

Reason for Proposed Action: To adopt rules pursuant to the amendments in G.S. 168A.

Procedure by which a person can object to the agency on a proposed rule: Attend public hearings or submit written comments.

Written comments may be submitted to: Larry C. Jones, 111 East North St., Raleigh, NC 27601, phone (919) 733-0054, and email larry.jones@ncmail.net.

Comment period ends: April 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

CHAPTER 02 – OFFICE OF AMERICANS WITH DISABILITIES ACT

SECTION .0100 – PERSONS WITH DISABILITIES PROTECTION

25 NCAC 02 .0101 ACCOMMODATING REQUESTS FOR ACCESS TO PUBLIC SERVICES

- (a) Each public agency or contractor shall designate a Public Service Accessibility Coordinator (PSAC). This person may be the ADA Coordinator, but is not required to be.
- (b) Requests for public service accommodations shall be forwarded by the person receiving the request to the PSAC.
- (c) The PSAC shall determine if the requesting party is a "person with a disability" under the provisions of G.S. 168A. The PSA Coordinator shall consult with the North Carolina Office on the ADA (NCOADA) when technical assistance is needed in making the determination.
- (d) The PSAC shall transmit the request for accommodation to the person designated by agency rules to make decisions on such requests. This may be the PSAC or another designee.
- (e) The request shall be evaluated to determine if granting the request would cause an undue hardship on the available resources.
- (f) The request shall be evaluated to determine if the accommodation requested can be accomplished within the specified time frame.
- (g) When the request can be honored without undue hardship and can be accomplished within the specified time frame, it shall be approved. The approved request shall be provided without surcharge to the requesting party.
- (h) When the request is approved, the PSAC shall contact the requesting party with approval details.
- (i) When the request is rejected, the PSAC shall contact the requesting party and provide details of the rationale for the rejection and provide information on any available internal or external dispute resolution and appeal process.

Authority G.S. 168A-10.1.

SECTION .0200 - DISPUTE RESOLUTION

25 NCAC 02 .0201 DISPUTE RESOLUTION PROCESS

If a public entity or contractor decides to refuse to provide a requested accessibility accommodation, the following procedure shall apply.

- (1) The individual or entity denying an accommodation request shall provide a written rationale to the PSAC for the refusal of the accommodation request.
- (2) The PSAC shall review the decision and consult with the agency ADA Coordinator and the NCOADA for technical assistance.
- (3) The PSAC shall transmit the decision and the rationale for the denial to the requesting party and shall discuss other possible methods of assuring accessibility with the requesting party.
- (4) The PSAC shall inform the requesting party of the availability of the alternative dispute resolution process and shall also inform him of his right to contact the NC Governor's Advocacy Council for Persons with Disabilities, the US Equal Employment Opportunity Commission or the United States Department of Justice to request an investigation of the denial of accommodation.
- (5) When the requesting party chooses informal resolution, he shall be referred to the NCOADA, which shall make efforts to informally resolve the issue of the denial of the accommodation by the use of facilitation and mediation efforts involving the requesting party and the person or agency denying the request.
- (6) When the NCOADA does not achieve informal resolution, which shall be indicated by the withdrawal of the complaint, the NCOADA shall refer the requesting party to mediation sources in the requesting parties locality.
- (7) When the requesting party refuses the referral or resolution is not achieved through formal mediation, the NC Office on the ADA shall, on request, assist the requesting party in contacting the NC Governor's Advocacy Council for Persons with Disabilities, the US Equal Opportunity Commission or the United States Department of Justice to request an investigation of the denial of accommodation.
- (8) The PSAC shall keep records of all requests both approved and denied and shall document on-going efforts to provide equal accessibility in its delivery of services to disabled consumers.

Authority G.S. 168A-10.1.

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.
 This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 10A – HEALTH AND HUMAN SERVICES

Rule-making Agency: *Commission for Health Services*

Rule Citation: *10A NCAC 43H .0111 Medical Services Covered*

Effective Date: *January 27, 2004*

Date Approved by the Rules Review Commission: *January 15, 2004*

Reason for Action: *Effective July 1, 2002 the North Carolina Sickle Cell Syndrome through its Purchase of Medical Care Program (POMC) eliminated coverage for inpatient services due to budget overruns. The result of this change has been that POMC overall program cost is now within budget. Also, this fiscal year's expenditures are less than expected. At the current rate of monthly expenditure, only \$408,000 of the \$677,000 annual budget will be expended by years end. Given these projections, the program is recommending a temporary rule change that will reinstate limited inpatient coverage. Having reviewed historical inpatient data and future cost projections the program is recommending the following rule change: "POMC will provide coverage for one inpatient admission per client per year for a maximum of seven days".*

**SUBCHAPTER 43H - SICKLE CELL SYNDROME:
 GENETIC COUNSELING:
 CHILDREN AND YOUTH SECTION**

**SECTION .0100 - SICKLE CELL SYNDROME
 PROGRAM**

**10A NCAC 43H .0111 MEDICAL SERVICES
 COVERED**

~~Covered medical services, which must be determined to be related to sickle cell disease and approved by the Program, include:~~

The following medical services are covered under the NC Sickle Cell Syndrome Program if the Program determines that these services are related to sickle cell disease:

- (1) hospital outpatient care including emergency room visits. The total number of days per year for emergency room visits shall not exceed triple the Program average for each for the previous two years;
- (2) physicians' office visits;
- (3) drugs on a formulary established by the program based upon the following factors: the medical needs of sickle cell patients, the efficacy and cost effectiveness of the drugs,

the availability of generic or other less costly alternatives, and the need to maximize the benefits to patients utilizing finite program dollars. A copy of this formulary may be obtained free of charge by writing to the N. C. Sickle Cell Syndrome Program, 1330 St. Mary's Street, Raleigh, North Carolina, 27605;

- (4) medical supplies and equipment;
- (5) preventive dentistry including education, examinations, cleaning, and X-rays; remedial dentistry including tooth removal, restoration, and endodontic treatment for pain prevention; and emergency dental care to control bleeding, relieve pain, and treat infection; ~~and~~
- (6) eye care (when the division of services for the blind will not provide ~~coverage~~); ~~coverage~~; and
- (7) inpatient care. The cost of one inpatient admission per client per year for a maximum of seven days per fiscal year.

*History Note: Authority G.S. 130A-129;
 Eff. February 1, 1976;
 Amended Eff. April 22, 1977;
 Readopted Eff. December 5, 1977;
 Amended Eff. July 1, 1982; January 1, 1982;
 Temporary Amendment Eff. November 7, 1983, for a period of 120 days to expire on March 4, 1984;
 Amended Eff. October 1, 1984; March 1, 1984;
 Temporary Amendment Eff. October 14, 1988, for a period of 180 days to expire on April 12, 1989;
 Temporary Amendment Expired April 12, 1989;
 Amended Eff. September 1, 1990;
 Temporary Amendment Eff. June 19, 1996;
 Temporary Amendment Expired March 11, 1997;
 Amended Eff. August 1, 2000;
 Temporary Amendment Eff. December 17, 2001;
 December 1, 2001;
 Amended Eff. April 1, 2003;
 Temporary Amendment Eff. January 27, 2004.*

TITLE 10A – HEALTH AND HUMAN SERVICES

Rule-making Agency: *Social Services Commission*

Rule Citation: *10A NCAC 71V .0301-.0306*

Effective Date: *January 15, 2004*

CHAPTER 71 – ADULT AND FAMILY SUPPORT

SUBCHAPTER 71V - LOW INCOME ENERGY ASSISTANCE PROGRAM

SECTION .0300 – MODIFIED CRISIS INTERVENTION PROGRAM

10A NCAC 71V .0301 GROUPS COVERED

(a) The rules in this Section set forth the regulations for the Modified Crisis Intervention Program that will be administered in counties that were impacted by Hurricane Isabel and declared disaster areas by the Federal Emergency Management Administration. The rules in 10A NCAC 71V .0200 set forth the regulations for the remainder of the counties in the State.

(b) "Residence" means a household residing in the counties designated in Paragraph (a) of this Rule.

History Note: Authority G.S. 108A-25; 143B-153; Emergency Adoption Eff. October 9, 2003; Temporary Adoption Eff. February 17, 2004; Temporary Adoption to Expire February 28, 2004.

10A NCAC 71V .0302 ELIGIBILITY REQUIREMENTS

A household must meet the eligibility requirements for the Crisis Intervention Program as prescribed in 10A NCAC 71V .0201.

History Note: Authority G.S. 108A-25; 143B-153; Emergency Adoption Eff. October 9, 2003; Temporary Adoption Eff. February 17, 2004; Temporary Adoption to Expire February 28, 2004.

10A NCAC 71V .0303 BENEFIT LEVELS

The maximum payment to a household shall not exceed six hundred dollars (\$600.00) in the 2003-2004 state fiscal year. The maximum payment of six hundred dollars (\$600.00) is derived from the benefit level authorized in 10A NCAC 71V .0202 and an additional payment not to exceed three hundred dollars (\$300.00) for services related to a heating or cooling crisis experienced during Hurricane Isabel. Payments may vary based upon the severity of the crisis and the services needed.

History Note: Authority G.S. 108A-25; 143B-153; Emergency Adoption Eff. October 9, 2003; Temporary Adoption Eff. February 17, 2004; Temporary Adoption to Expire February 28, 2004.

10A NCAC 71V .0304 METHOD OF PAYMENT

Methods of payment include direct payments to recipients, fuel payments on behalf of recipients, provision of in-kind services or temporary shelter and minor home repairs.

History Note: Authority G.S. 108A-25; 143B-153; Emergency Adoption Eff. October 9, 2003; Temporary Adoption Eff. February 17, 2004; Temporary Adoption to Expire February 28, 2004.

Date Approved by the Rules Review Commission:
February 17, 2004

Reason for Action: *On September 18, 2003, Northeastern North Carolina was severely damaged by Hurricane Isabel. As a result of the damage left by Hurricane Isabel, the Federal Emergency Management Agency (FEMA) declared the following counties as disaster areas: Beaufort, Bertie, Brunswick, Camden, Carteret, Chowan, Craven, Currituck, Dare, Edgecombe, Gates, Halifax, Hertford, Hyde, Jones, Martin, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Tyrrell and Washington. Additional designations may be made at a later date after further evaluation.*

In order to provide immediate crisis assistance to citizens in the counties impacted by Hurricane Isabel and declared disaster areas by FEMA, the Social Services Commission adopted a new Section .0300 in 10A NCAC 71V, which establishes the Modified Crisis Intervention Program. The regulations under the Modified Crisis Intervention Program will allow county departments of social services to make payments up to \$600 to eligible citizens in the counties declared as disaster areas by FEMA.

During disasters such as Hurricane Isabel, families lost their entire homes and contents, window and door screens, heating and cooling units and their jobs. Many families remain without electricity, water or phones for days or weeks at a time. Families in a number of areas continue to be without the basic necessities of life because of the severe damage cause by the hurricane to their power sources. To that end, health and safety issues abound. For example, a family may be able to stay in their home, but without power they have no air conditioning or fan. Windows must remain open and without screens on the doors or windows, mosquitoes and other insects or animals will infest the home risking the health and safety of all family members. Public health officials have expressed concerns about the spread of West Nile virus because of the enormous amount of water standing.

The administrative rules that govern the regular Crisis Intervention Program (10A NCAC 71. 0200) set the maximum benefit level up to \$300 per state fiscal year. In natural disasters such as this, the cost to alleviate the immediate crisis is normally more than the authorized benefit level. Because current law requires that payment must alleviate the crisis or the payment cannot be made, we need to increase the benefit level to an amount that will alleviate or relieve the crisis. While there is an exception provision in 10A NCAC 71V .0202, that exception is directly tied to the federal government releasing federal Low Income Home Energy Assistance Program contingency funds as a result of severe weather. Because the enormous needs of families we are moving as expeditiously as possible to address some of the families needs by establishing the Modified Crisis Intervention Program. The State has not received an additional allocation for this disaster; therefore, we are working within the existing budget.

**10A NCAC 71V .0305 OVERPAYMENTS AND
SUSPECTED FRAUD**

The rules in 10A NCAC 71W .0604 and .0606 will govern for
overpayments and suspected fraud.

*History Note: Authority G.S. 108A-25; 143B-153;
Emergency Adoption Eff. October 9, 2003;
Temporary Adoption Eff. February 17, 2004;
Temporary Adoption to Expire February 28, 2004.*

10A NCAC 71V .0306 APPEALS

The rules in 10A NCAC 71V .0108 will govern for appeals.

*History Note: Authority G.S. 108A-25; 143B-153;
Emergency Adoption Eff. October 9, 2003;
Temporary Adoption Eff. February 17, 2004;
Temporary Adoption to Expire February 28, 2004.*

APPROVED RULES

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting January 15, 2004, and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are 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 have been entered into the NC Administrative Code.

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
01	NCAC	30A	.0406*	18:05 NCR
01	NCAC	30J	.0201*	18:05 NCR
01	NCAC	30J	.0302*	18:05 NCR
10A	NCAC	13J	.1302*	18:05 NCR
10A	NCAC	13P	.0502*	18:05 NCR
10A	NCAC	13P	.0504*	18:05 NCR
10A	NCAC	13P	.0507-.0510*	18:05 NCR
10A	NCAC	13P	.0603*	18:05 NCR
12	NCAC	09A	.0103*	18:08 NCR
12	NCAC	09B	.0102	18:08 NCR
12	NCAC	09B	.0108	18:08 NCR
12	NCAC	09B	.0116*	18:08 NCR
12	NCAC	09B	.0117	18:08 NCR
12	NCAC	09B	.0207	18:08 NCR
12	NCAC	09B	.0234	18:08 NCR
12	NCAC	09B	.0235-.0236*	18:08 NCR
12	NCAC	09G	.0401*	18:08 NCR
12	NCAC	09G	.0406	18:08 NCR
12	NCAC	09G	.0407*	18:08 NCR
13	NCAC	07A	.0303*	18:07 NCR
13	NCAC	12	.0402*	18:07 NCR
15A	NCAC	02D	.1109*	18:03 NCR
15A	NCAC	02Q	.0526*	18:03 NCR
15A	NCAC	12B	.0501*	18:08 NCR
15A	NCAC	12B	.1206*	18:08 NCR
15A	NCAC	18A	.1210*	18:04 NCR
15A	NCAC	18A	.1301*	18:04 NCR
15A	NCAC	18A	.1304*	18:04 NCR
15A	NCAC	18A	.1308*	18:04 NCR
15A	NCAC	18A	.1312-.1313*	18:04 NCR
15A	NCAC	18A	.1319-.1321*	18:04 NCR
15A	NCAC	18A	.2516-.2518*	18:04 NCR
15A	NCAC	18A	.2522-.2524*	18:04 NCR
15A	NCAC	18A	.2525	18:04 NCR
15A	NCAC	18A	.2526*	18:04 NCR
15A	NCAC	18A	.2528*	18:04 NCR
15A	NCAC	18A	.2530-.2535*	18:04 NCR
15A	NCAC	18A	.2537*	18:04 NCR
15A	NCAC	18A	.2539*	18:04 NCR
15A	NCAC	18A	.2542*	18:04 NCR
15A	NCAC	18A	.2620*	18:04 NCR
15A	NCAC	18A	.3401-.3403*	18:05 NCR
19A	NCAC	02E	.0221*	18:05 NCR
21	NCAC	08N	.0205	18:08 NCR
21	NCAC	10	.0202*	18:06 NCR

21	NCAC	10	.0208*	18:06 NCR
21	NCAC	14A	.0101*	18:08 NCR
21	NCAC	14H	.0113*	18:08 NCR
21	NCAC	14H	.0120*	18:08 NCR
21	NCAC	14I	.0105*	18:08 NCR
21	NCAC	14N	.0113*	18:08 NCR
21	NCAC	14O	.0103*	18:08 NCR
21	NCAC	14P	.0105*	18:08 NCR
21	NCAC	14P	.0107*	18:08 NCR
21	NCAC	14P	.0111	18:08 NCR
21	NCAC	14P	.0115	18:08 NCR
21	NCAC	50	.0413*	18:04 NCR
21	NCAC	50	.1006*	18:04 NCR
25	NCAC	01E	.1702*	18:04 NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

10A	NCAC	13P	.0201*	18:05 NCR
10A	NCAC	21A	.0605*	18:03 NCR
10A	NCAC	21B	.0201-.0204*	18:03 NCR
10A	NCAC	21B	.0206-.0207*	18:03 NCR
10A	NCAC	21B	.0209	18:03 NCR

TITLE 1 - DEPARTMENT OF ADMINISTRATION

**01 NCAC 30A .0406 REVIEW BY STATE
CONSTRUCTION OFFICE FOR FIRE SAFETY
REQUIREMENTS**

In all cases where plans are submitted to the State Construction Office pursuant to G.S. 58-31-40:

- (1) The owner shall submit complete construction documents to the State Construction Office in accordance with the planning procedures in Rule .0208 of this Chapter.
- (2) Pursuant to G.S. 58-31-40 (c), should an owner request review and final approval of the plans by the State Construction Office and the Department of Insurance and if the plans have not been approved by the Commissioner of Insurance within 60 days of submittal, such review and final approval shall be conducted by the State Construction Office within 30 days.
- (3) No type of structural work shall be initiated by the owner without prior approval of the State Construction Office.

*History Note: Authority: G.S. 143-135.26;
S.L. 2001-496, s. 11;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004.*

01 NCAC 30J .0201 PROJECT DESCRIPTION

Each Capital Projects Coordinator shall provide the State Construction Office with a written description of the construction management-at-risk services desired, the program or scope of work, schedule requirements, amount of authorized funds, owner agency responsible for the project, name and

contact information of the owner's project representative, link to owner agency's website where RFP and project detail may be obtained, date RFP to be published, closing date, time and location contractor letters of interest are to be submitted and any special licenses, skills, or experience of the contractor not already listed for each project requiring construction management-at-risk services. This information shall be provided to the State Construction Office for publication on State Construction Office website. The Capital Projects Coordinator shall initiate the Construction Manager-at-Risk selection process and shall make his/her best effort to enable the completion of the selection process within 60 days of the date of the above notification.

*History Note: Authority G.S. 143-135.26;
S.L. 2001-496, s. 11;
Temporary Adoption Eff. February 1, 2003;
Eff. March 1, 2004.*

01 NCAC 30J .0302 PRE-SELECTION COMMITTEE

A pre-selection committee shall be established for all projects requiring construction management-at-risk services. The pre-selection committee shall consist of at least the capital projects coordinator, a representative of the using agency and one representative from the State Construction Office. At least one member of all pre-selection committees shall be a registered architect, licensed engineer or licensed contractor. The pre-selection committee shall review the requirements of a specific project and shall select from that list not more than six nor less than three firms to be interviewed and evaluated. The pre-selection committee shall interview each of the selected firms, evaluate each firm interviewed, and rank in order three firms. The capital projects coordinator shall state in his project description that the rules for public announcement and selection have been followed or shall state full particulars if exceptions have been taken.

History Note: Authority G.S. 143-135.26; S.L. 2001-496, s. 11; Temporary Adoption Eff. February 1, 2003; Eff. March 1, 2004.

TITLE 10A - DEPARTMENT OF HEALTH & HUMAN SERVICES

10A NCAC 13J .1302 ORDERS

- (a) Orders for pharmaceuticals and medical treatments, or orders for in-home aide services when orders for in-home aide services are required, shall be signed by the physician or other person authorized by State law to prescribe such treatments and the original incorporated in the client's service records. Care may commence in the interim with a verbal order.
- (b) Verbal orders for the administration of pharmacological agents and other medical treatment interventions shall be given to a licensed nurse, or other person authorized by state law to receive such orders. The order once recorded shall include the date and signature of the person receiving the order, shall be recorded in the client record, and shall be countersigned by the physician or other person authorized by State law to prescribe.
- (c) Verbal orders for allied health services personnel, other than nursing or other than in-home aide services, shall be given to either a licensed nurse or the appropriate health professional. The order once recorded shall include the date and signature of the person receiving the order, shall be recorded in the client record and shall be countersigned by the physician or other person authorized by State law to prescribe.
- (d) The home care agency shall develop and implement written policies and procedures for obtaining countersignatures on verbal orders within 60 days of the date of the verbal order.

History Note: Authority G.S. 131E-140; Eff. July 1, 1992; Amended Eff. February 1, 2004; February 1, 1996.

10A NCAC 13P .0201 EMS SYSTEM REQUIREMENTS

- (a) County governments shall establish EMS Systems. Each EMS System shall have:
 - (1) a defined geographical service area for the EMS System. The minimum service area for an EMS System shall be one county. There may be multiple EMS provider service areas within the service area of an EMS System. The highest level of care offered within any EMS provider service area must be available to the citizens within that service area 24 hours per day;
 - (2) a defined scope of practice for EMS personnel, functioning in the EMS System, within the parameters set forth by the North Carolina Medical Board pursuant to G.S. 143-514;
 - (3) a written plan describing the dispatch and coordination of all responders that provide EMS care within the system;
 - (4) at least one licensed EMS provider. For those systems with providers operating within the

- (5) EMD, EMT-I, or EMT-P scope of practice, there shall be a plan for medical oversight required by Section .0400 of this Subchapter; an identified number of permitted ambulances to provide coverage to the service area 24 hours per day;
- (6) personnel credentialed to perform within the scope of practice of the system and to staff the ambulance vehicles as required by G.S. 131E-158. There shall be a written plan for the use of credentialed EMS personnel for all practice settings used within the system;
- (7) a mechanism to collect and electronically submit to the OEMS data that uses the EMS data set and data dictionary as specified in "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost. EMS Systems shall comply with this requirement by July 1, 2004;
- (8) a written infection control policy that addresses the cleansing and disinfecting of vehicles and equipment that are used to treat or transport patients;
- (9) a written plan to provide orientation to personnel on EMS operations and related issues for hospitals routinely receiving patients from the EMS System;
- (10) a listing of facilities that will provide online medical direction for systems with providers operating within the EMT, EMT-I, or EMT-P scope of practice. To provide online medical direction, the facility shall have:
 - (A) availability of a physician, MICN, EMS-NP, or EMS-PA to provide online medical direction to EMS personnel during all hours of operation of the facility;
 - (B) a written plan to provide physician backup to the MICN, EMS-NP, or EMS-PA providing online medical direction to EMS personnel;
 - (C) a mechanism for persons providing online medical direction to provide feedback to the EMS Peer Review Committee; and
 - (D) a written plan to provide orientation and education regarding treatment protocols for those individuals providing online medical direction;
- (11) a written plan to ensure that each facility that routinely receives patients and also offers clinical education for EMS personnel provides orientation and education to all preceptors regarding requirements of the EMS System;

- (12) a written plan for providing emergency vehicle operation education for system personnel who operate emergency vehicles;
- (13) an EMS communication system that provides for:
 - (A) public access using the emergency telephone number 9-1-1 within the public dial telephone network as the primary method for the public to request emergency assistance. This number shall be connected to the emergency communications center or Public Safety Answering Point (PSAP) with immediate assistance available such that no caller will be instructed to hang up the telephone and dial another telephone number. A person calling for emergency assistance shall never be required to speak with more than two persons to request emergency medical assistance;
 - (B) an emergency communications system operated by public safety telecommunicators with training in the management of calls for medical assistance available 24 hours per day;
 - (C) dispatch of the most appropriate emergency medical response unit or units to any caller's request for assistance. The dispatch of all response vehicles shall be in accordance with an official written EMS System plan for the management and deployment of response vehicles including requests for mutual aid; and
 - (D) two-way radio voice communications from within the defined service area to the emergency communications center or PSAP and to facilities where patients are routinely transported. The emergency communications system shall maintain all Federal Communications Commission (FCC) radio licenses or authorizations required;
- (14) a written plan addressing the use of Specialty Care Transport Programs within the system;
- (15) a written continuing education plan for credentialed EMS personnel that follows the guidelines of the:
 - (A) "US DOT NHTSA First Responder Refresher: National Standard Curriculum" for MR personnel;
 - (B) "US DOT NHTSA EMT-Basic Refresher: National Standard Curriculum" for EMT personnel;

- (C) "EMT-P and EMT-I Continuing Education National Guidelines" for EMT-I and EMT-P personnel; and
- (D) "US DOT NHTSA Emergency Medical Dispatcher: National Standard Curriculum" for EMD personnel.

These documents are incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. These documents are available from NHTSA, 400 7th Street, SW, Washington, D.C. 20590, at no cost; and

- (16) a written plan addressing the orientation of MICN, EMS-NP, or EMS-PA used in the system. The orientation program shall include the following:
 - (A) a discussion of all EMS System treatment protocols and procedures;
 - (B) an explanation of the specific scope of practice for credentialed EMS personnel, as authorized by the approved EMS System treatment protocols as required by Rule .0405 of this Chapter;
 - (C) a discussion of all practice settings within the EMS System and how scope of practice may vary in each setting;
 - (D) a mechanism to assess the student's ability to effectively use EMS System communications equipment including hospital and prehospital devices, EMS communication protocols, and communications contingency plans as related to on-line medical direction; and
 - (E) the successful completion of a scope of practice evaluation administered under the direction of the medical director.

(b) An application to establish an EMS System shall be submitted by the county to the OEMS for review. When the system is comprised of more than one county, only one application shall be submitted. The proposal shall demonstrate that the system meets the requirements in Paragraph (a) of this Rule. System approval shall be granted for a period of six years. Systems shall apply to OEMS for reapproval.

History Note: Authority G.S. 131E-155(a)(8), (a)(9), (a)(15); 143-508(b); (d)(1), (d)(5), (d)(9); 143-509(1); 143-517; Temporary Adoption Eff. January 1, 2002; Eff. February 1, 2004.

10A NCAC 13P .0502 INITIAL CREDENTIALING REQUIREMENTS FOR MR, EMT, EMT-I, EMT-P, AND EMD

(a) MR, EMT, EMT-I, EMT-P, and EMD applicants shall meet the following criteria within one year of the completion date of the approved educational program for their level of application:

- (1) Be at least 18 years of age.
- (2) Successfully complete a scope of practice performance evaluation based on the educational objectives in Rule .0501(b) of this Section consistent with their level of application and approved by the OEMS. This evaluation shall be conducted under the direction of the educational medical advisor or a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor.
- (3) Successfully complete a written examination administered by the OEMS or equivalent. Applicants who fail the written EMT examination but achieve a minimum score of 70% on the medical responder subset contained within the examination may be credentialed as medical responders. If the educational program was completed over one year prior to application, applicants shall submit evidence of completion of continuing education during the past year. This continuing education shall be based on the educational objectives in Rule .0501(c) of this Section consistent with their level of application and approved by the OEMS.

(b) EMD applicants shall successfully complete, within one year prior to application, an AHA CPR course or equivalent, including infant, child, and adult CPR, in addition to Subparagraph (a)(1), (a)(2), and (a)(3) of this Rule.

History Note: Authority G.S. 131E-159 (a)(b); 143-508(d)(3); Temporary Adoption Eff. January 1, 2002; Eff. February 1, 2004.

10A NCAC 13P .0504 RENEWAL OF CREDENTIALS FOR MR, EMT, EMT-I, EMT-P, AND EMD

MR, EMT, EMT-I, EMT-P, and EMD applicants shall renew credentials by presenting documentation to the OEMS that they have successfully completed:

- (1) an approved educational program as described in Rule .0501(c) of this Section; and
- (2) within one year prior to renewal, a scope of practice performance evaluation based on the educational objectives in Rule .0501(c) of this Section consistent with their level of application and approved by the OEMS. This evaluation shall be conducted under the direction of the educational medical advisor, EMS System medical director, Specialty Care Transport Program medical director, or a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor, EMS System medical director, or Specialty Care Transport Program medical director.

History Note: Authority G.S. 131-159(a); 143-508(d)(3); Temporary Adoption Eff. January 1, 2002;

Eff. February 1, 2004.

10A NCAC 13P .0507 CREDENTIALING REQUIREMENTS FOR LEVEL I EMS INSTRUCTORS

(a) Applicants for credentialing as a Level I EMS Instructor shall:

- (1) be currently credentialed by the OEMS as an EMT, EMT-I, EMT-P, or EMD;
- (2) have three years experience at the scope of practice for the level of application;
- (3) within one year prior to application, successfully complete both a clinical and educational scope of practice performance evaluation based on the educational objectives in Rule .0501(b) of this Section consistent with their level of application and approved by the OEMS:
 - (A) For a credential to teach at the EMT level, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application; and
 - (B) For a credential to teach at the EMT-I or EMT-P levels, this evaluation shall be conducted under the direction of the educational medical advisor, a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor;
 - (C) For a credential to teach at the EMD level, this evaluation shall be conducted under the direction of the educational medical advisor or a Level I EMS Instructor credentialed at the EMD level designated by the educational medical advisor.
- (4) have 100 hours of teaching experience in an approved EMS educational program or equivalent;
- (5) successfully complete an educational program as described in Rule .0501(b)(5) of this Section;
- (6) within one year prior to application, attend a Level I EMS Instructor workshop sponsored by the OEMS; and
- (7) have a high school diploma or General Education Development certificate.

(b) The credential of a Level I EMS Instructor shall be valid for four years, unless any of the following occurs:

- (1) the OEMS imposes an administrative action against the instructor credential; or
- (2) the instructor fails to maintain a current EMT, EMT-I, EMT-P, or EMD credential at the highest level that the instructor is approved to teach.

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

Eff. February 1, 2004.

10A NCAC 13P .0508 CREDENTIALING REQUIREMENTS FOR LEVEL II EMS INSTRUCTORS

(a) Applicants for credentialing as a Level II EMS Instructor shall:

- (1) be currently credentialed by the OEMS as an EMT, EMT-I, EMT-P, or EMD;
- (2) complete post-secondary level education equal to or exceeding an Associate Degree;
- (3) within one year prior to application, successfully complete both a clinical and educational scope of practice performance evaluation based on the educational objectives in Rule .0501(b) of this Section consistent with their level of application and approved by the OEMS:
 - (A) For a credential to teach at the EMT level, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application; and
 - (B) For a credential to teach at the EMT-I or EMT-P level, this evaluation shall be conducted under the direction of the educational medical advisor, a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor;
 - (C) For a credential to teach at the EMD level, this evaluation shall be conducted under the direction of the educational medical advisor or a Level I EMS Instructor credentialed at the EMD level designated by the educational medical advisor.
- (4) have two years teaching experience as a Level I EMS Instructor or equivalent;
- (5) successfully complete the "EMS Education Administration Course" adopted by the North Carolina Community College System, incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and additions. This document is available from the North Carolina Community College System, 200 West Jones Street, Raleigh, North Carolina 27603, at no cost; and
- (6) attend a Level II EMS Instructor workshop sponsored by the OEMS;

(b) The credential of a Level II EMS Instructor shall be valid for four years, unless any of the following occurs:

- (1) The OEMS imposes an administrative action against the instructor credential; or
- (2) The instructor fails to maintain a current EMT, EMT-I, EMT-P, or EMD credential at the highest level that the instructor is approved to teach.

History Note: Authority G.S. 143-508(d)(3);
Temporary Adoption Eff. January 1, 2002;
Eff. February 1, 2004.

10A NCAC 13P .0509 CREDENTIALING OF INDIVIDUALS TO ADMINISTER LIFESAVING TREATMENT TO PERSONS SUFFERING AN ADVERSE REACTION TO AGENTS THAT MIGHT CAUSE ANAPHYLAXIS

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

- (1) Be 18 years of age or older; and
- (2) successfully complete an educational program taught by a physician licensed to practice medicine in North Carolina or designee of the physician. The educational program shall instruct individuals in the appropriate use of procedures for the administration of epinephrine to pediatric and adult victims who suffer adverse reactions to agents that might cause anaphylaxis and shall include at a minimum the following:
 - (A) definition of anaphylaxis;
 - (B) agents that might cause anaphylaxis and the distinction between them, including drugs, insects, foods, and inhalants;
 - (C) recognition of symptoms of anaphylaxis for both pediatric and adult victims;
 - (D) appropriate emergency treatment of anaphylaxis as a result of agents that might cause anaphylaxis;
 - (E) availability and design of packages containing equipment for administering epinephrine to victims suffering from anaphylaxis as a result of agents that might cause anaphylaxis;
 - (F) pharmacology of epinephrine including indications, contraindications, and side effects;
 - (G) discussion of legal implications of rendering aid; and
 - (H) instruction that treatment is to be utilized only in the absence of the availability of physicians or other practitioners who are authorized to administer the treatment.

(b) A credential to administer epinephrine to persons who suffer adverse reactions to agents that might cause anaphylaxis may be issued by the North Carolina Medical Care Commission upon receipt of a completed application signed by the applicant and the physician who taught or was responsible for the educational program. Applications may be obtained from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707. All credentials shall be valid for a period of four years.

History Note: Authority G.S. 143-508(d)(11); 143-509(9); Temporary Adoption Eff. January 1, 2003; January 1, 2002; Eff. April 1, 2003; Amended Eff. February 1, 2004.

10A NCAC 13P .0510 RENEWAL OF CREDENTIALS FOR LEVEL I AND LEVEL II EMS INSTRUCTORS

(a) Level I and Level II EMS Instructor applicants shall renew credentials by presenting documentation to the OEMS that they:

- (1) are currently credentialed by the OEMS as an EMT, EMT-I, or EMT-P, or EMD;
- (2) successfully completed, within one year prior to application, both a clinical and educational scope of practice performance evaluation based on the educational objectives in Rule .0501(b) of this Subchapter consistent with their level of application and approved by the OEMS:
 - (A) To renew a credential to teach at the EMT level, this evaluation shall be conducted under the direction of a Level II EMS Instructor credentialed at or above the level of application;
 - (B) To renew a credential to teach at the EMT-I or EMT-P level, this evaluation shall be conducted under the direction of the educational medical advisor, a Level II EMS Instructor credentialed at or above the level of application and designated by the educational medical advisor; and
 - (C) To renew a credential to teach at the EMD level, this evaluation shall be conducted under the direction of the educational medical advisor or a Level I EMS Instructor credentialed at the EMD level designated by the educational medical advisor.
- (3) completed 96 hours of EMS instruction at the level of application; and
- (4) completed 40 hours of educational professional development.

(b) The credential of a Level I or Level II EMS Instructor shall be valid for four years, unless any of the following occurs:

- (1) the OEMS imposes an administrative action against the instructor credential; or
- (2) the instructor fails to maintain a current EMT, EMT-I, EMT-P, or EMD credential at the highest level that the instructor is approved to teach.

History Note: Authority G.S. 131E-159(a)(b); 143-508(d)(3); Eff. February 1, 2004.

10A NCAC 13P .0603 ADVANCED EMS EDUCATIONAL INSTITUTION REQUIREMENTS

(a) Advanced EMS Educational Institutions may offer all EMS educational programs for which they have been credentialed by the OEMS.

(b) For initial courses, Advanced EMS Educational Institutions shall have:

- (1) at least a Level I EMS Instructor as lead course instructor for MR and EMT courses. The lead course instructor must be credentialed at a level equal to or higher than the course offered;
- (2) at least a Level I EMS Instructor credentialed at the EMD level as lead course instructor for EMD courses;
- (3) a Level II EMS Instructor as lead instructor for EMT-I and EMT-P courses. The lead course instructor must be credentialed at a level equal to or higher than the course offered;
- (4) a lead EMS educational program coordinator. This individual may be either a Level II EMS Instructor credentialed at or above the highest level of course offered by the institution, or a combination of staff who cumulatively meet the requirements of the Level II EMS Instructor referenced in this Paragraph. These individuals may share the responsibilities of the lead EMS educational coordinator. The details of this option shall be defined in the educational plan required in Subparagraph (b)(6) of this Rule;
- (5) an Educational Medical Advisor that meets the criteria as defined in the "North Carolina College of Emergency Physicians: Standards for Medical Oversight and Data Collection," incorporated by reference in accordance with G.S. 150B-21.6, including subsequent amendments and editions. This document is available from the OEMS, 2707 Mail Service Center, Raleigh, North Carolina 27699-2707, at no cost; and
- (6) a written educational plan describing the delivery of educational programs, the record-keeping system detailing student attendance and performance; and the selection and monitoring of EMS instructors;
- (7) access to instructional supplies and equipment necessary for students to complete educational programs as defined in Rule .0501(c) of this Subchapter.

(c) For EMS continuing education programs, Advanced EMS Educational Institutions shall meet the requirements defined in Paragraphs (a) and (b) of Rule .0601 of this Section.

(d) An application for credentialing as an Advanced EMS Educational Institution shall be submitted to the OEMS for review. The application shall demonstrate that the applicant meets the requirements in Paragraphs (b) and (c) of this Rule.

(e) Advanced Educational Institution credentials shall be valid for a period of four years.

(f) It is not necessary for Advanced EMS Educational Institutions designated as the primary educational delivery agency for a Model EMS System to submit an application for renewal of credentials.

History Note: Authority G.S. 143-508(d)(4), (13);

*Temporary Adoption Eff. January 1, 2002;
Eff. February 1, 2004.*

10A NCAC 21A .0605 MONITORING THRESHOLDS AND CORRECTIVE ACTION

- (a) Division of Medical Assistance employees, known as application monitors, shall review a random sample of applications in all county departments of social services and the Disability Determination Section (DDS) of the Division of Vocational Rehabilitation to determine if counties are denying and withdrawing applications in accordance with federal/state rules. The application monitors shall also review inquiries where a person comes to the agency and decides not to make an application to ensure person was given correct information under federal/state rules. A county and DDS must meet a monitoring threshold of 80% in each area of denials, withdrawals and inquiries in order to be found in compliance with federal/state rules.
- (b) If the agency falls below the 80% threshold, the agency must analyze why it fell below 80% and implement a corrective action plan.
- (c) The agency or DDS may dispute monitoring findings within 10 workdays of receipt of findings.
- (d) Within 30 calendar days of the final monitoring results, the agency must take corrective action to reopen cases the application monitors determine were not handled pursuant to federal/state rules.

*History Note: Authority G.S. 108A-54; Alexander v. Bruton, U.S.D.C., File No. C-C-74-183-M, Consent Order dismissed effective February 1, 2002;
Temporary Adoption Eff. March 1, 2003;
Eff. August 1, 2004.*

SECTION .0200 - APPLICATION PROCESS

10A NCAC 21B .0201 ACCEPTANCE OF APPLICATION

- (a) A client shall be allowed to apply without delay. Without delay is the same day the client appears at the county department of social services expressing a financial or medical need.
- (b) The county department of social services shall not act to discourage any individual from applying for Medicaid. It shall be considered discouragement if any employee of the county department of social services:
 - (1) requires or suggests the individual wait to apply until he applies for other benefits or until an application for other benefits has been approved or denied; or
 - (2) incorrectly states or suggests the individual is ineligible for Medicaid; or
 - (3) gives incorrect or incomplete information about Medicaid programs; or
 - (4) requires the individual provide or obtain any information needed to establish eligibility prior to signing an application; or
 - (5) discourages a client from applying and this is proven by facts to the satisfaction of the county agency or a hearing officer; or

- (6) suggests that the individual make an appointment to apply when he appears at the agency; or
- (7) suggests that the individual complete a mail-in application when he appears at the agency; or
- (8) fails to explain the date of application when he appears at the agency and requests a mail-in application; or
- (9) fails to explain and offer Medicaid to individuals requesting Work First Employment Services.
- (c) The client shall be informed verbally and in writing, that:
 - (1) he can apply without delay;
 - (2) a decision shall be made concerning his eligibility within 45 calendar days from the date of application for Medicaid, except for M-AD. For M-AD the application processing standard shall be 90 calendar days from the date of application; and
 - (3) he shall receive a written decision concerning his eligibility.
- (d) The client shall apply in his county of residence.
- (e) The date of the application shall be:
 - (1) The date the client or his representative signs the state application form for Medicaid, including Work First, under penalty of perjury at the county department of social services; or
 - (2) The date a signed complete state mail-in application form is received by the county department of social services in the county of residence. Complete is defined as information that is legible, signed, submitted to correct county of residence, and has identifying information for the person applying, including name, mailing address, date of birth and gender.
- (f) If an individual requests assistance by mail, the letter shall be considered a request for information. Within three workdays following receipt of the request, the county agency shall mail follow-up information to the individual. The county agency shall advise the individual to come to the agency to apply and be interviewed, or if he is unable to come in person, to contact the agency so other arrangements can be made to take his application.
- (g) If an individual requests assistance by telephone, he shall be advised to come to the county agency to sign an application and be interviewed; or, if he is unable to come to the agency in person other arrangements shall be made to take his application.
- (h) If an individual sends in a complete state mail-in application form, the county department of social services shall use this application to determine eligibility for Medicaid. A mail-in application form may be picked up at a local county department of social services or other locations as determined by the State and county.
- (i) An individual or his representative must request a determination for retroactive SSI Medicaid no later than 60 days from the date of the SSI Medicaid disposition notice or 90 days if good cause is established. Good cause exists when:
 - (1) the applicant does not receive the SSI Medicaid notice;

- (2) the applicant or his representative dies;
- (3) the applicant is incapacitated, incompetent, or unconscious and there is no representative acting on his behalf;
- (4) the applicant or spouse, child, parent, or representative of applicant is hospitalized for an extended period of time; or
- (5) the applicant's representative fails to meet the required time frame.

- (G) Request the agency's help in obtaining third party information that he is responsible to provide;
- (H) Be informed of all information he must provide and all alternative sources for obtaining the information.

(3) The client shall:

- (A) Provide the county department, state and federal officials, the necessary sources from which to locate and obtain information needed to determine eligibility;
- (B) Report to the county department of social services any change in situation that may affect eligibility within 10 calendar days after it happens. The Income Maintenance Caseworker shall explain the meaning of fraud and shall inform the applicant that he may be suspected of fraud if he fails to report a change in situation and that in such situations, he may have to repay assistance received in error and that he may also be tried by the courts for fraud;
- (C) Inform the county department of social services of any persons or organization against whom he has a right to recover medical expenses. When he accepts medical assistance, the applicant shall assign his rights to third party insurance benefits to the state. The Income Maintenance Caseworker shall inform the applicant that it is a misdemeanor to fail to disclose the identity of any person or organization against whom he has a right to recover medical expenses;
- (D) Immediately report to the county department the receipt of an I.D. card that he knows to be erroneous. If he does not report such and uses the I.D. card, he shall repay any medical expenses paid in error.

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.906; 42 C.F.R. 435.907; 42 C.F.R. 435.911; Alexander v. Flaherty, U.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. January 1, 1995; April 1, 1993; August 1, 1990; Temporary Amendment Eff. March 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 21B .0202 FACE-TO-FACE INTERVIEW

- (a) The county department of social services shall conduct a face-to-face interview with the client or his representative who appears at the agency requesting financial or medical assistance. The client may have any person or persons of his choice participate in the interview. During the interview, the Income Maintenance Caseworker shall explain the application process, the client's rights and responsibilities, the programs of public assistance and the eligibility conditions.
- (b) The applicant shall be advised of his right to apply in more than one program category for which he qualifies and the advantages and disadvantages of the choices shall be explained.
- (c) The client shall be informed of the following:
 - (1) The client shall be told what information that he is required to provide, and what third party sources the agency shall contact to check the information. Third party sources are entities, other than the client, that can provide verification of information to determine eligibility.
 - (2) The client has the right to:
 - (A) Receive assistance if found eligible;
 - (B) Be protected against discrimination on the grounds of race, creed, or national origin by Title VI of the Civil Rights Act of 1964. He may appeal such discrimination;
 - (C) Have any information given to the agency kept in confidence;
 - (D) Appeal, if he believes the agency's action to deny, change, or terminate assistance is incorrect, or his request is not acted on with reasonable promptness;
 - (E) Reapply at any time, if found ineligible;
 - (F) Withdraw from the program at any time;

History Note: Authority G.S. 108A-25(b); 108A-57; 42 C.F.R. 435.908; Alexander v. Flaherty, U.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order Filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. April 1, 1993; August 1, 1990; March 1, 1986; Temporary Amendment Eff. August 22, 1996; Amended Eff. August 1, 1998; Temporary Amendment Eff. March 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 21B .0203 APPLICATION PROCESSING STANDARDS

(a) The county department of social services shall comply with the following standards in processing applications:

- (1) A decision on an individual's eligibility for Medicaid shall be made within 45 calendar days from the date of application for Medicaid except for applications in which a disability determination has already been made or is needed. For those applications, a decision on an individual's eligibility shall be made within 90 days from the date of application. These timeframes shall apply in accordance with 42 CFR 435.911.
- (2) Only require information or verification necessary to establish eligibility for assistance;
- (3) Make at least two requests for all necessary information from the applicant or third party;
- (4) Allow at least 12 calendar days between the initial request and a follow-up request and at least 12 calendar days between the follow-up request and denial of the application;
- (5) Inform the client in writing, and verbally when possible, of the right to request help in obtaining information requested from the client. The county department of social services shall not discourage any client from requesting such help;
- (6) An application may pend up to six months for verification that the deductible has been met or disability established.
- (7) When a hearing decision reverses the decision of the County Department of Social Services on an application, the application shall be reopened within five working days from the date the final appeal decision is received by the County Department of Social Services. If no additional information is needed, the application must be processed within five additional working days. If additional information is needed pursuant to the final decision, the county shall make such requests in accordance with rules for all applications. The first request for the additional information shall be made within five working days of receipt of the final appeal decision. The application shall be processed within five workdays of receipt of the last piece of required information.

(b) The county department of social services shall obtain verification other than the applicant's statement for the following:

- (1) Any element requiring medical verification. This includes verification of disability, pregnancy, incapacity, emergency dates for aliens referenced in Paragraph (c) of Rule .0302 of this Subchapter, incompetence, and approval of institutional care;
- (2) Proof a deductible has been met;
- (3) Legal alien status;
- (4) Proof of the rebuttal value for resources and of the rebuttal of intent to transfer resources to

become eligible for Medicaid. When an applicant or recipient disagrees with the determination of the county department of social services on the value of an asset, then the applicant/recipient must provide proof of what the value of the asset is;

- (5) Proof of designation of liquid assets for burial;
- (6) Proof of legally binding agreement limiting resource availability;
- (7) Proof of valid social security number or application for a social security number;
- (8) Proof of reserve reduction when resources exceed the allowable reserve limit for Medicaid;
- (9) Proof of earned and unearned income, including deductions, exclusions, and operational expenses when the applicant or Income Maintenance Caseworker has or can obtain the verification; and
- (10) Any other information for which the applicant does not know or cannot give an estimate.

(c) The county department of social services shall verify or obtain an item of information when:

- (1) A fee must be paid to obtain the verification;
- (2) It is available within the agency;
- (3) The county department of social services is required by federal law to assist or to use interagency or intra-agency verification aids;
- (4) The applicant requests assistance; or
- (5) The applicant is physically, mentally, or otherwise incapable of obtaining the information, or is unable to speak English or read and write, or is housebound, hospitalized, or institutionalized, and a representative does not accept responsibility for obtaining the information.

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.911; Alexander v. Flaherty, V.S.D.C., W.D.N.C., File No. C-C-74-183, Consent Order Filed 15 December 1989; Alexander v. Flaherty Consent Order filed February 14, 1992; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. April 1, 1993; August 1, 1990; Temporary Amendment Eff. March 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 21B .0204 EFFECTIVE DATE OF ASSISTANCE

(a) The first month of Medicaid coverage shall be:

- (1) The month of application, or for SSI recipients, the month of application for SSI; or
- (2) As much as three months prior to the month of application when the client received medical services covered by the program and was eligible during the month or months of medical need; or
- (3) If the client applies prior to meeting a non-financial requirement, no earlier than the

calendar month in which all non-financial requirements are met.

(b) Assistance shall be authorized beginning on the first day of the month except when:

- (1) The client's income exceeds the income level and he must spenddown the excess income for medical care. The assistance shall be authorized on the day his incurred medical care costs equal the amount of the excess income.
- (2) For groups identified in Rule .0311, Sub-item (3)(a) of this Subchapter, the client shall be authorized on the day the reserves are reduced, or incurred medical care costs equal the amount of the excess income, whichever occurs later.

(c) Medicaid coverage shall end on the last day of the last month of eligibility except for those individuals eligible for emergency conditions only as described in Rule .0302 of this Subchapter. The last month of eligibility shall be:

- (1) The month in which timely notice of termination expires; or
- (2) The month in which adequate notice of termination expires.

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.914; 42 C.F.R. 435.919; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. January 1, 1995; October 1, 1991; August 1, 1990; Temporary Amendment Eff. March 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 21B .0206 DISPOSITION

(a) Disposition of the application shall complete the application process and shall consist of one of the following actions:

- (1) Approval of assistance;
- (2) Denial of assistance;
- (3) Denial of assistance for ineligible month or months of the certification period and approval for eligible month or months of the certification period; or
- (4) Voluntary withdrawal of the application by the client. The Income Maintenance Caseworker shall not suggest to the client that he withdraw his application and shall explain alternatives to withdrawal. The Income Maintenance Caseworker shall explain the client's right to reapply at anytime.

(b) The county department of social services shall not deny an application prior to 45 days, or for M-AD, 90 days, except when:

- (1) It is established the applicant will not be able to meet the deductible;
- (2) The applicant cannot be located; or
- (3) The applicant refuses to cooperate or provide information to establish eligibility;

History Note: Authority G.S. 108A-54; 42 C.F.R. 435.912; 42 C.F.R. 435.913; Alexander v. Flaherty, U.S.D.C., W.D.N.C.,

File No. C-C-74-183, Consent Order filed 15 December 1989; Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. April 1, 1993; August 1, 1990; Temporary Amendment Eff. March 1, 2003; Amended Eff. August 1, 2004.

10A NCAC 21B .0207 REFERRALS AT A FACE-TO-FACE INTERVIEW

For all Medicaid applicants who have a face-to-face interview at the county department of social services, the Income Maintenance Caseworker shall explain and make referrals for:

- (1) Health Check;
- (2) Family planning services;
- (3) Food stamps;
- (4) Governmental benefits including RSDI, SSI, VA;
- (5) Women, Infants and Children Program (WIC);
- (6) Carolina ACCESS;
- (7) Medicaid Transportation;
- (8) Life Line/Link-up;
- (9) Health Insurance Premium Payment program; and
- (10) Voter Registration.

History Note: Authority G.S. 108A-54; 42 C.F.R. 441.56; 42 U.S.C. 1396a(a); Alexander v. Bruton Consent Order dismissed Effective February 1, 2002; Eff. September 1, 1984; Amended Eff. January 1, 1995; August 1, 1990; Temporary Amendment Eff. March 1, 2003; Amended Eff. August 1, 2004.

TITLE 12 - DEPARTMENT OF JUSTICE

12 NCAC 09A .0103 DEFINITIONS

The following definitions apply throughout Subchapters 12 NCAC 09A through 12 NCAC 09F, except as modified in 12 NCAC 09A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

- (1) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(2).
- (2) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of Crime Control and Public Safety as authorized by G.S. 18B-500.
- (3) "Chief Court Counselor" means the person responsible for administration and supervision of juvenile intake, probation and post-release supervision in each judicial district, operating under the supervision of the Department of Juvenile Justice and Delinquency Prevention.
- (4) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a

- person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (5) "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
- (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (6) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(3) and excluding Correctional officers; Probation/parole officers, and Probation/parole officers-surveillance.
- (7) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (1) of this Rule.
- (8) "Department Head" means the chief administrator of any criminal justice agency and specifically includes any chief of police or agency director. "Department Head" also includes a designee appointed in writing by the Department head.
- (9) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (10) "Educational Points" means points earned toward the Professional Certificate Programs for studies satisfactorily completed for semester hour or quarter hour credit at a regionally accredited institution of higher learning. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (11) "Enrolled" means that an individual is currently actively participating in an on-going presentation of a Commission-accredited basic training course that has not been concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
- (a) for law enforcement officers, that the officer is then attending an approved course presentation averaging a minimum of twelve hours of instruction each week; and
 - (b) for Department of Juvenile Justice and Delinquency Prevention personnel, that the officer is then attending the last or final phase of the approved training course necessary for fully satisfying the total course completion requirements.
- (12) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- (13) "In-Service Training" means any and all training prescribed in 12 NCAC 09E .0102 that must be satisfactorily completed by all certified law enforcement officers during each full calendar year of certification.
- (14) "Lateral Transfer" means the employment of a criminal justice officer, at any rank, by a criminal justice agency, based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.
- (15) "Law Enforcement Code of Ethics" means that code adopted by the Commission on September 19, 1973, that reads:
 As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.
 I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.
 I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.
 I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts or corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.
 I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance

and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.

- (16) "Juvenile Court Counselor" means a person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.
- (17) "Juvenile Justice Officer" means persons designated by the Secretary of the Department of Juvenile Justice and Delinquency Prevention to provide for the care and supervision of juveniles placed in the physical custody of the Department.
- (18) "Law Enforcement Officer" means an appointee of a criminal justice agency or of the State or of any political subdivision of the State who, by virtue of his office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from this title are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of G.S. 17E.
- (19) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of Commission-approved law enforcement training courses. Twenty classroom hours of Commission-approved law enforcement training equals one law enforcement training point.
- (20) "LIDAR" means a speed-measuring instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle under observation.
- (21) "Local Confinement Personnel" means any officer, supervisor or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or, any officer, supervisor or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.
- (22) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:
 - (a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state that is not classified as a Class B Misdemeanor pursuant to Sub-item (22)(b) of this Rule. Class A Misdemeanor also includes any act

committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Specifically excluded from this grouping of "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions, or duly enacted ordinances of an authorized governmental entity with the exception of the offense of impaired driving which is expressly included herein as a Class A Misdemeanor if the offender could have been sentenced for a term of not more than six months. Also specifically included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three [G.S. 20-179(I)], level four [G.S. 20-179(j)], or level five [G.S. 20-179(k)]. Class A Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance or criminal statute, of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state that is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice which is hereby incorporated by reference and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Copies of the publication may be obtained from the North Carolina Department of Justice, Post Office Box 629, Raleigh, North Carolina

27602. There is no cost per manual at the time of adoption of this Rule. Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Specifically excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor does expressly include, either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years, driving while license permanently revoked or permanently suspended, and those traffic offenses occurring in other jurisdictions which are comparable to the traffic offenses specifically listed in the Class B Misdemeanor Manual. "Class B Misdemeanor" shall also include acts committed or omitted in North Carolina prior to October 1, 1994 in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this state for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.

- (23) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when a certified institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified course.
- (24) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band or transmits microwave energy in the 24,050 to

- (25) "Resident" means any youth committed to a facility operated by the Department of Juvenile Justice and Delinquency Prevention.
- (26) "School" or "criminal justice school" means an institution, college, university, academy, or agency that offers criminal justice, law enforcement, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.
- (27) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- (28) "Speed-Measuring Instruments" (SMI) means those devices or systems, including radar time-distance, and LIDAR, approved under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all named devices or systems as specifically referenced in the approved list of 12 NCAC 09C .0601.
- (29) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (30) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217; Eff. January 1, 1981; Amended Eff. November 1, 1981; August 15, 1981; Readopted Eff. July 1, 1982; Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984; Amended Eff. November 1, 1993; March 1, 1990; July 1, 1989; Temporary Amendment Eff. October 1, 1994 for a period of 180 days to expire on April 1, 1995; Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998; January 1, 1995; Temporary Amendment Eff. January 1, 2001; Amended Eff. August 1, 2002; April 1, 2001; Temporary Amendment Eff. April 15, 2003; Amended Eff. April 1, 2004.

12 NCAC 09B .0116 MINIMUM STANDARDS FOR JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS
 In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every juvenile court

counselor and chief court counselor employed by the North Carolina Department of Juvenile Justice and Delinquency Prevention shall:

- (1) not have committed or been convicted of:
 - (a) a felony;
 - (b) a crime for which the punishment could have been imprisonment for more than two years;
 - (c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the date of application for employment;
 - (d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of conviction; or
 - (e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may be employed if the last conviction occurred more than two years prior to the date of application for employment; and
- (2) have attained a bachelor's degree from a regionally accredited institution of higher learning.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. April 15, 2003; Eff. April 1, 2004.

12 NCAC 09B .0235 BASIC TRAINING – JUVENILE COURT COUNSELORS AND CHIEF COURT COUNSELORS

(a) The basic training course for juvenile court counselors and chief court counselors shall consist of a minimum of 144 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a juvenile court counselor and a chief court counselor.

(b) Each basic training course for juvenile court counselors shall include training in the following identified topical areas:

- | | | |
|------|---|----------|
| (1) | Orientation to Basic Training | 8 Hours |
| (2) | Juvenile Law | 8 Hours |
| (3) | Roles and Responsibilities of Juvenile Court Counselors | 6 Hours |
| (4) | Special Program Procedures | 2 Hours |
| (5) | Report Writing, Documentation and Correspondence | 8 Hours |
| (6) | Interpersonal Communication Skills | 8 Hours |
| (7) | Interviewing | 8 Hours |
| (8) | Basic Individual Counseling Skills | 16 Hours |
| (9) | Working with Families of Delinquents | 4 Hours |
| (10) | Risk and Needs Assessment | 4 Hours |
| (11) | Intake | 8 Hours |
| (12) | Safety Issues | 4 Hours |
| (13) | First Aid/CPR and Blood Borne Pathogens | 8 Hours |

- | | | |
|------|---|----------|
| (14) | Restraint, Control and Defense Techniques | 28 Hours |
| (15) | Defensive Driving | 8 Hours |
| (16) | Secure Transportation | 8 Hours |
| (17) | Review and Examinations | 8 Hours |

(c) Upon successful completion of a Commission-certified training course for juvenile court counselors and chief court counselors, the director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a Report of Training Course Completion for each successful trainee.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. April 15, 2003; Eff. April 1, 2004.

12 NCAC 09B .0236 BASIC TRAINING - JUVENILE JUSTICE OFFICERS

(a) The basic training course for juvenile justice officers shall consist of a minimum of 160 hours of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function as a juvenile justice officer.

(b) Each basic training course for juvenile justice officers shall include training in the following identified topical areas:

- | | | |
|------|---|----------|
| (1) | Facility Specific Safety, Security and Supervision | 24 Hours |
| (2) | Orientation, Roles and Responsibilities of the JJO | 8 Hours |
| (3) | Interpersonal Communication Skills | 12 Hours |
| (4) | Basic Group Leadership Skills | 8 Hours |
| (5) | Adolescent Development | 4 Hours |
| (6) | Characteristics of Delinquents | 4 Hours |
| (7) | Gang Awareness | 2 Hours |
| (8) | Basic Individual Counseling Skills | 16 Hours |
| (9) | Effective Behavior Management of Juveniles | 12 Hours |
| (10) | Crisis Intervention Techniques | 8 Hours |
| (11) | Working with Families of Delinquent Juveniles | 4 Hours |
| (12) | Treatment Program Operation | 6 Hours |
| (13) | Maintaining Documentation of Activities and Behaviors | 8 Hours |
| (14) | First Aid/CPR and Blood Borne Pathogens | 8 Hours |
| (15) | Restraint, Control and Defense Techniques | 28 Hours |
| (16) | Review and Examinations | 8 Hours |

(c) Upon successful completion of a Commission-certified training course for juvenile justice officers the director of the school conducting such course shall notify the Commission of the satisfactory achievement of trainees by submitting a Report of Training Course Completion for each successful trainee.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; Temporary Adoption Eff. April 15, 2003; Eff. April 1, 2004.

12 NCAC 09G .0401 ADMINISTRATION OF BASIC CORRECTIONS TRAINING SCHOOLS

(a) The Secretary of the North Carolina Department of Correction shall have primary responsibility for implementation of the rules in this Section. The executive officer or officers of the institution or agency shall secure School Certification pursuant to 12 NCAC 09G .0402 prior to offering any corrections training course.

(b) The Secretary shall designate one compensated staff member for each Commission-certified program for which the North Carolina Department of Correction has been granted certification. Such staff member shall be formally certified by the Commission under Rule .0405 of this Subchapter to be the corrections School Director. The School Director shall have administrative responsibility for planning, scheduling, presenting, coordinating, reporting, and generally managing each sponsored certified corrections training course. If the certified institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified training course, an additional Qualified Assistant must be designated to assist the School Director in the administration of the course. This person must be selected by the School Director and must attend a course orientation conducted by Standards Division staff and attend the annual School Directors' Conference.

*History Note: Authority 17C-6;
Temporary Adoption Eff. January 1, 2001;
Temporary Adoption Expired December 20, 2001;
Temporary Adoption Eff. April 15, 2003;
Eff. April 1, 2004.*

**12 NCAC 09G .0407 SUSPENSION: REVOCATION:
DENIAL/SCHOOL DIRECTOR CERTIFICATION**

(a) The Commission may deny, suspend, or revoke certification of a School Director when the Commission finds that the person has failed to meet or continuously maintain any of the requirements for qualification or through performance fails to comply with program rules of the Commission or otherwise demonstrates incompetence.

(b) Prior to the Commission's action denying, suspending, or revoking a School Director's certification, the Standards Division may notify the person that a deficiency appears to exist and may attempt, in an advisory capacity, to assist the person in correcting the deficiency.

*History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Temporary Adoption Expired December 20, 2001;
Temporary Adoption Eff. April 15, 2003;
Eff. April 1, 2004.*

TITLE 13 - DEPARTMENT OF LABOR

13 NCAC 07A .0303 DISCLOSURE

(a) The Department shall disclose documents in investigative and other files in accordance with G.S. 132 and the exceptions set forth in GS. 95-136. Specific guidelines for OSH division files are set forth in this Rule. The department shall disclose all documents to which the public is entitled under North Carolina's

statutory provisions, while safeguarding the rights of complainants and witnesses required to be protected by law.

(b) Prior to the issuance of a citation, the contents and copies of the case file, including any complaints, samples, photographs, testing results, trade secrets, and the narrative of the investigator's report, shall not be disclosed.

(c) After a citation and notice of proposed penalty have been issued, the citation and notice are disclosable, upon request. Disclosure shall be issued by the director or his authorized representative. Prior to the contestment deadline, no other file contents shall be disclosable.

(d) If an employer or employee files a notice of contest respecting a citation, the case file (except for the citation and proposed penalty) shall not be disclosable until a final order is issued and the dates for all further appeals have expired. The disclosure of documents in proceedings before the Safety and Health Review Board shall take place in accordance with the rules of evidence of the Safety and Health Review Board.

(e) Case files shall be disclosed, upon written request, in the following situations:

- (1) if a determination is made that no citation will be issued and that no court action will be initiated, unless further inspection is contemplated, in which case the file shall not be disclosed until a final decision is made not to issue a citation; or
- (2) if no notice of contest is filed within the statutory period, or if a notice of contest is filed but a settlement is reached, the notice is withdrawn, or the case is otherwise closed; or
- (3) if a notice of contest is filed and the statutory requirements of G.S. 95-136(e) have been met.

(f) The following information contained in a releasable case file shall not be released at any time:

- (1) Trade secrets;
- (2) Personnel or medical files unless permission is granted for release by the employee;
- (3) Complainant and witness names or statements unless permission is granted for release by the complainant or witness, pursuant to the statutory requirements of G.S. 95-136(e); and
- (4) Interagency or intra-agency documents otherwise protected by law

(g) Documents that are matters of public record may be disclosed at any time; for example, pleadings and briefs filed with the Safety and Health Review Board or the courts.

*History Note: Authority G.S. 95-129; 95-136(e); 95-136(g);
Eff. February 1, 1976;
Readopted Eff. September 30, 1977;
Recodified from 13 NCAC 7B .1001 Eff. August 2, 1993;
Amended Eff. February 1, 2004; August 2, 1993.*

**13 NCAC 12 .0402 APPLICATION FOR A YOUTH
EMPLOYMENT CERTIFICATE**

(a) A youth may obtain a youth employment certificate from the county director of social services' office in the county in which the youth resides or the county in which the youth intends to work, or from a designee outside the social services' office in the

county in which the youth resides or the county in which the youth intends to work who has been approved to issue youth employment certificates pursuant to 13 NCAC 12 .0407.

(b) The youth must provide proof of age by means of one of the following:

- (1) A birth certificate;
- (2) Evidence from the bureau of vital statistics in the state in which the youth was born;
- (3) Any state driver's license, learner's permit, or state-issued identification card;
- (4) Passport;
- (5) School records or insurance records; or
- (6) Other documentary evidence determined as equivalent by the Wage and Hour Office.

(c) The youth shall obtain a youth employment certificate form on which the youth and the employer must supply the following information:

- (1) Youth's name, address, phone number, sex, age and birth date;
- (2) Employer's company name, type of business, address and phone number; and
- (3) Job description.

(d) The youth employment certificate must be signed by the youth, by a parent, guardian, custodian, or person standing in place of a parent as defined in 29 CFR 570.126, and by the employer. In the event that a final decree of emancipation has been issued for the youth by a court of competent jurisdiction pursuant to G.S. 7B, Article 35, the youth may sign the certificate without the approval of a parent, guardian or custodian, or person standing in place of a parent as defined in 29 CFR 570.126.

(e) A youth may obtain a youth employment certificate electronically from the Department of Labor, if available. The Department shall use electronic means to verify the age and permissibility of employment based on type of employment and prohibitions in G.S. 95-25.5 and the child labor provisions of the F.L.S.A. Electronically issued youth employment certificates shall not be valid until signed as set forth in Paragraph (d) of this Rule.

History Note: Authority G.S. 95-25.5; 95-25.19; Eff. November 1, 1980; Amended Eff. February 1, 2004; April 1, 2001.

TITLE 15A - DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

15A NCAC 02D .1109 112(J) CASE-BY-CASE MAXIMUM ACHIEVABLE CONTROL TECHNOLOGY

(a) Applicability. This Rule applies only to sources of hazardous air pollutants required to have a permit under 15A NCAC 02Q .0500 and as described in 40 CFR 63.50. This Rule does not apply to research or laboratory activities as defined in Paragraph (b) of this Rule.

(b) Definitions. For the purposes of this Rule, the definitions in 40 CFR 63.2, 63.51, 15A NCAC 02Q .0526, and the following definitions apply:

- (1) "Affected source" means the collection of equipment, activities, or both within a single

contiguous area and under common control that is in a Section 112(c) source category or subcategory that the Administrator has failed to promulgate an emission standard by the Section 112(j) deadline, and that is addressed by an applicable MACT emission limitation established pursuant to 40 CFR Part 63 Subpart B;

(2) "Control technology" means measures, processes, methods, systems, or techniques to limit the emission of hazardous air pollutants including measures that:

- (A) reduce the quantity, or eliminate emissions, of such pollutants through process changes, substitution of materials, or other modifications;
- (B) enclose systems or processes to eliminate emissions;
- (C) collect, capture, or treat such pollutants when released from a process, stack, storage, or fugitive emission point;
- (D) are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in 42 USC 7412(h); or
- (E) are a combination of Parts (A) through (D) of this definition.

(3) "EPA" means the United States Environmental Protection Agency or the Administrator of U.S. Environmental Protection Agency.

(4) "Hazardous air pollutant" means any pollutant listed under Section 112(b) of the federal Clean Air Act.

(5) "MACT" means maximum achievable control technology.

(6) "Maximum achievable control technology" means:

- (A) for existing sources,
 - (i) a MACT standard that EPA has proposed or promulgated for a particular category of facility or source,
 - (ii) the average emission limitation achieved by the best performing 12 percent of the existing facilities or sources for which EPA has emissions information if the particular category of source contains 30 or more sources, or
 - (iii) the average emission limitation achieved by the best performing five facilities or sources for which EPA has emissions information if the particular

- category of source contains fewer than 30 sources, or
 - (B) for new sources, the maximum degree of reduction in emissions that is deemed achievable but not less stringent than the emission control that is achieved in practice by the best controlled similar source.
- (7) "MACT floor" means:
 - (A) for existing sources:
 - (i) the average emission limitation achieved by the best performing 12 percent of the existing sources (for which EPA has emissions information) excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate (as defined in Section 171 of the federal Clean Air Act) applicable to the source category or subcategory for categories and subcategories with 30 or more sources; or
 - (ii) the average emission limitation achieved by the best performing five sources (for which EPA has emissions or could reasonably obtain emissions information) , in the category or subcategory, for categories or subcategories with fewer than 30 sources;
 - (B) for new sources, the emission limitation achieved in practice by the best controlled similar source.
- (8) "New affected source" means the collection of equipment, activities, or both, that constructed after the issuance of a Section 112(j) permit for the source pursuant to 40 CFR 63.52, is subject to the applicable MACT emission limitation for new sources. Each permit shall define the term "new affected source," that will be the same as the "affected source" unless a different collection is warranted based on consideration of factors including:
 - (A) Emission reduction impacts of controlling individual sources versus groups of sources;
 - (B) Cost effectiveness of controlling individual equipment;
 - (C) Flexibility to accommodate common control strategies;
 - (D) Cost/benefits of emissions averaging;
 - (E) Incentives for pollution prevention;
 - (F) Feasibility and cost of controlling processes that share common equipment (e.g., product recovery devices); and
 - (G) Feasibility and cost of monitoring,.
- (9) "New facility" means a facility for which construction is commenced after the Section 112(j) deadline, or after proposal of a relevant standard under Section 112(d) or (h) of the Federal Clean Air Act, whichever comes first.
- (10) "Research or laboratory activities" means activities whose primary purpose is to conduct research and development into new processes and products; where such activities are operated under the supervision of technically trained personnel and are not engaged in the manufacture of products for commercial sale in commerce, except in a de minimis manner; and where the source is not in a source category specifically addressing research or laboratory activities, that is listed pursuant to Section 112(c)(7) of the Clean Air Act.
- (11) "Section 112(j) deadline" means the date 18 months after the date for which a relevant standard is scheduled to be promulgated under 40 CFR Part 63, except that for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1994, the Section 112(j) deadline is November 15, 1996, and for all major sources listed in the source category schedule for which a relevant standard is scheduled to be promulgated by November 15, 1997, the Section 112(j) deadline is December 15, 1999.
- (12) "Similar source" means that equipment or collection of equipment that, by virtue of its structure, operability, type of emissions and volume and concentration of emissions, is substantially equivalent to the new affected source and employs control technology for control of emissions of hazardous air pollutants that is practical for use on the new affected source.
 - (c) Missed promulgation dates: 112(j). If EPA fails to promulgate a standard for a category of source under Section 112 of the Federal Clean Air Act by the date established pursuant to Sections 112(e)(1) or (3) of the federal Clean Air Act, the owner or operator of any source in such category shall submit, within 18 months after such date, a permit application, in accordance with the procedures in 15A NCAC 02Q .0526, to the

Director and to EPA to apply MACT to such sources. Sources subject to this Paragraph shall be in compliance with this Rule within three years from the date that the permit is issued.

(d) New facilities. The owner or operator of any new facility that is a major source of hazardous air pollutants (HAP) that is subject to this Rule shall apply MACT in accordance with the provisions of Rule .1112 of this Section, 15A NCAC 02Q .0528, and 02Q .0526(e)(2).

(e) Case-by-case MACT determination. The Director shall determine MACT according to 40 CFR 63.55(a).

(f) Monitoring and recordkeeping. The owner or operator of a source subject to this Rule shall install, operate, and maintain monitoring capable of detecting deviations from each applicable emission limitation or other standards with sufficient reliability and timeliness to determine continuous compliance over the applicable reporting period. Such monitoring data may be used as a basis for enforcing emissions limitations established under this Rule.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (10); Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. February 1, 2004; July 1, 1998; July 1, 1996.

15A NCAC 02Q .0526 112(J) CASE-BY-CASE MACT PROCEDURES

(a) The owner or operator of a source required to apply maximum achievable control technology (MACT) under 15A NCAC 02D .1109 shall follow the permit procedures set out in this Rule.

(b) For the purposes of this Rule, the definitions in 15A NCAC 02D.1109, 40 CFR 63.51, 40 CFR 63.2, and the following definitions apply:

- (1) "Equivalent emission limitation" means an emission limitation, established under Section 112(j) of the federal Clean Air Act, that is equivalent to the MACT standard that EPA would have promulgated under Section 112(d) or (h) of the federal Clean Air Act.
- (2) "Source category schedule for standards" means the schedule for promulgating MACT standards issued pursuant to Section 112(e) of the federal Clean Air Act.
- (3) "Title V permit" means a permit issued under this Section.

(c) Except as provided for in Paragraph (d) or (e) of this Rule, the owner or operator of a source required to apply MACT under 15A NCAC 2D .1109 shall submit an application for a permit or for a significant permit revision under this Section, whichever is applicable.

(d) Approval process for new and existing affected sources.

- (1) Sources subject to Section 112(j) as of the Section 112(j) deadline. The requirements of Subparagraphs (d)(1)(A) and (B) of this Paragraph shall apply to major sources that include, as of the Section 112(j) deadline, one or more sources in a category or subcategory for which the EPA has failed to promulgate an

emission standard under 40 CFR Part 63 on or before an applicable Section 112(j) deadline. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued to the facility pursuant to the requirements of 40 CFR Part 63, Subpart B, shall apply to such sources.

(A) The owner or operator shall submit an application for a permit or for a revision to an existing Title V permit issued or a pending Title V permit meeting the requirements of Subparagraph (m)(1) of this Rule by the Section 112(j) deadline if the owner or operator can reasonably determine that one or more sources at the facility belong in a category or subcategory subject to Section 112(j) of the federal Clean Air Act.

(B) The owner or operator of a source that does not submit an application under Subparagraph (d)(1)(A) of this Rule and that is notified in writing by the Division that one or more sources at the facility belong to a category or subcategory subject to Section 112(j) of the federal Clean Air Act shall submit an application for a Title V permit or for a revision to an existing Title V permit meeting the requirements of Paragraph (m)(1) of this Rule within 30 days after being notified in writing by the Division. The Division is not required to make such notification.

(C) The requirements in Parts (i) and (ii) of this Subparagraph shall apply when the owner or operator has obtained a Title V permit that incorporates a Section 112(g) case-by-case MACT determination by the Division under 15A NCAC 02D .1112, but has not submitted an application for a Title V permit revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean Air Act.

- (i) When the owner or operator has a Title V permit that incorporates a Section 112(g) case-by-case MACT determination under 15A NCAC 02D .1112, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule for a Title V permit revision within 30 days of

the Section 112(j) deadline or within 30 days of being notified that in writing by the Division that one or more sources at the major facility belong in such category or subcategory. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing limitations in the permit to effectuate Section 112(j) of the federal Clean Air Act. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule are satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.

- (ii) When the owner or operator that has submitted a Title V permit application that incorporates a Section 112(g) case-by-case MACT determination by the Division under 15A NCAC 02D .1112, but has not received the permit incorporating the Section 112(g) requirements, the owner or operator shall continue to pursue a Title V permit that addresses the requirements of Section 112(g) of the federal Clean Air Act. The owner or operator shall submit a permit application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of

issuance of that Title V permit. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Director shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule are satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.

- (e) Sources that become subject to Section 112(j) of the federal Clean Air Act after the Section 112(j) deadline and that do not have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph apply to sources that do not meet the criteria in Paragraph (d) of this Rule on the Section 112(j) deadline and are therefore not subject to Section 112(j) of the federal Clean Air Act on that date, but where events occur subsequent to the Section 112(j) deadline that would bring the source under the requirements of this Rule, and the source does not have a Title V permit that addresses the requirements of Section 112(j) of the federal Clean Air Act.

- (1) When one or more sources in a category or subcategory subject to the requirements of this Rule are installed at a major source, or result in the source becoming a major source due to the installation, and the installation does not invoke Section 112(g) requirements in 15A NCAC 02D .1112, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days of startup of the source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources. The Division shall use the

procedures in 40 CFR 63.52(e) to determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the MACT requirements of this Rule are satisfied upon issuance of a revised Title V permit incorporating any additional Section 112(j) requirements.

- (2) When one or more sources in a category or subcategory subject to 112(j) requirements are installed at a major source or result in the source becoming a major source due to the installation, and the installation requires 112(g) emission limitations to be established and permitted under 15A NCAC 02Q .0528, and the owner or operator has not submitted an application for a Title V permit revision that addresses the emission limitation requirements of Section 112(j) of the federal Clean Air Act, the owner or operator shall apply for and obtain a Title V permit that addresses the emission limitation requirements of Section 112(g) of the federal Clean Air Act. Within 30 days of issuance of that Title V permit, the owner or operator shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule for a revision to the existing Title V permit. The Division shall determine whether the emissions limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question. If the Division determines the previously adopted 112(g) emission limitations are substantially as effective, then the Division shall retain the existing emission limitations to effectuate Section 112(j) of the federal Clean Air Act and revise the permit accordingly. If the Division does not retain the previously adopted 112(g) emission limitations, the permit shall be revised to incorporate any additional Section 112(j) requirements.
- (3) The owner or operator of an area source that, due to a relaxation in any federally enforceable emission limitation (such as a restriction on hours of operation), increases its potential to

emit hazardous air pollutants such that the source becomes a major source that is subject to this Rule, shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule within 30 days after the date that such source becomes a major source. The Director shall use the procedures in Paragraph (n) of this Rule in reviewing the application. The existing source MACT requirements (including relevant compliance deadlines), shall apply to such sources.

- (4) If EPA establishes a lesser quantity emission rate under Section 112(a)(1) of the Federal Clean Air Act that results in an area source becoming a major source that is subject to this Rule, then the owner or operator of such a major source shall submit an application meeting the requirements of Paragraph (m)(1) of this Rule on or before the date six months after the date that such source becomes a major source. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule, shall apply to such sources.

(f) Sources that have a Title V permit addressing Section 112(j) requirements. The requirements of this Paragraph apply to major sources that include one or more sources in a category or subcategory for which EPA fails to promulgate an emission standard on or before the Section 112(j) deadline, and the owner or operator has a permit meeting the Section 112(j) requirements, and where changes occur at the major source to equipment, activities, or both, subsequent to the Section 112(j) deadline.

- (1) If the Title V permit already provides the requirements that address the events that occur under this Paragraph subsequent to the Section 112(j) deadline, then the source shall comply with the applicable new source MACT or existing source MACT requirements as specified in the permit, and the Section 112(j) requirements are thus satisfied.
- (2) If the Title V permit does not contain the requirements that address the events that occur under this Paragraph subsequent to the Section 112(j) deadline, then the owner operator shall submit an application for a revision to the existing Title V permit that meets the requirements of Paragraph (m)(1) of this Rule within 30 days of beginning construction. Existing source MACT requirements (including relevant compliance deadlines), as specified in a Title V permit issued pursuant to the requirements of this Rule shall apply to such sources.

(g) Requests for applicability determination. An owner or operator who is unsure of whether one or more sources at a major source belong in a category or subcategory for which EPA has failed to promulgate an emission standard under this 40 CFR Part 63 may, on or before an applicable Section 112(j) deadline,

request an applicability determination from the Division by submitting an application meeting the requirements of Paragraph (m)(1) of this Rule by the applicable deadlines specified in Paragraphs (d), (e), or (f) of this Rule.

(h) An owner or operator who submits a Part 1 MACT application meeting the requirements of Paragraph (m)(1) of this Rule shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule no later than the applicable date specified in 40 CFR 63 Subpart B Table 1. The submission date specified in 40 CFR 63 Subpart B Table 1 for Miscellaneous Organic Chemical Manufacturing shall apply to sources in each of the source categories listed in 40 CFR 63 Subpart B Table 2. When an owner or operator is required by 15A NCAC 02D .1109 and this Rule to submit an application meeting the requirements of Paragraph (m)(1) of this Rule by a date that is after the date for a Part 2 MACT application for sources in the category or subcategory in question established by 40 CFR 63 Subpart B Table 1, the owner or operator shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule within 60 additional days after the applicable deadline for submission of the Part 1 MACT application. The Part 2 applications shall be reviewed by the Division according to the procedures established in 40 CFR 63.55.

- (1) Any owner or operator who submitted a request for an applicability determination on or before May 15, 2002, that remained pending as of May 30, 2003, and who still wishes to obtain such a determination must resubmit that request by the date that is 60 days after the Administrator publishes in the Federal Register a proposed standard under Section 112(d) or 112(h) of the Clean Air Act for the category or subcategory in question. Such a resubmitted request must be supplemented to discuss the relation between the source(s) in question and the applicability provision in the proposed standard for the category or subcategory in question, and to explain why there may still be uncertainties that require a determination of applicability. The Director shall take action on each supplemented and resubmitted request within an additional 60 days after the applicable deadline for the resubmitted request. If more than three years remain on the current Title V permit, the owner or operator shall submit an application for a Title V permit revision to make any conforming changes in the permit required to adopt the existing emission limitations as the Section 112(j) MACT emission limitations. If less than three years remain on the current Title V permit, any required conforming changes shall be made when the permit is renewed. If the applicability determination is positive, the owner or operator shall submit a Part 2 MACT application meeting the requirements of Paragraph (m)(2) of this Rule by the date specified for the category or subcategory in question in 40 CFR 63 Subpart

B Table 1. If the applicability determination is negative, no further action by the owner or operator is necessary.

- (2) An owner or operator who has submitted an application meeting the requirements of Paragraph (m)(1) of this Rule may request a determination of whether emission limitations adopted pursuant to a prior case-by-case MACT determination under Section 112(g) that apply to one or more sources in a relevant category or subcategory are substantially as effective as the emission limitations that the Division would otherwise adopt pursuant to this Rule for the source in question. Such a request must be submitted by the date for the category or subcategory in question specified in 40 CFR 63 Subpart B Table 1. Each request for a determination under this Paragraph shall be construed as a complete application for an equivalent emission limitation under this Rule. If the Director determines that the emission limitations in the prior case-by-case MACT determination are substantially as effective as the emission limitations the Director would otherwise adopt under this Rule, then the Director must adopt the existing emission limitations in the permit as the emission limitations to effectuate Section 112(j) for the source in question. If the Director determines that the emission limitations in the prior case-by-case MACT determination under Section 112(g) are not substantially as effective as the emission limitations that the Director would otherwise adopt for the source in question under this Rule, the Director must make a new MACT determination and adopt a Title V permit incorporating an appropriate equivalent emission limitation under this Rule. The Division shall use the procedures in 40 CFR 63.52(e) to determine whether the emission limitations adopted pursuant to the prior 112(g) case-by-case MACT determination are substantially as effective as the emission limitations which Division would otherwise adopt pursuant to Section 112(j) of the federal Clean Air Act for the source in question.

- (i) If the Director disapproves a permit application submitted under this Rule or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the Director's objections not later than six months after first receiving notification that the application has been disapproved or is incomplete.
- (j) If the owner or operator of a source subject to this Rule has submitted a timely and complete application for a permit, significant permit revision, or administrative amendment required by this Rule, any failure to have this permit shall not be a violation of the requirements of this Rule unless the delay in final action is due to the failure of the applicant to submit, in a timely manner, information required or requested to process the application.

(k) The permit shall contain the items specified in 40 CFR 63.52 including:

- (1) specification of the affected source and the new affected source
- (2) an emission limitation (or limitations) or emission standard equivalent to existing source MACT and an emission limitation (or limitations) equivalent to new source MACT for control of emissions of hazardous air pollutants for that category or subcategory determined by the Director according to 40 CFR 63.55(a) on a case-by-case basis;
- (3) any emission limits, production limits, operational limits or other terms and conditions necessary to ensure practicable enforceability of the MACT emission limitation;
- (4) any notification, operation and maintenance, performance testing, monitoring, reporting, and recordkeeping requirements; and
- (5) a compliance date(s) by which the owner or operator of an existing source shall be in compliance with the MACT emission limitation and all other applicable terms and conditions of the permit not to exceed three years from the date of issuance of the permit (The owner or operator of a new affected source shall comply with a new source MACT level of control immediately upon startup.)

(l) Early reductions made pursuant to Section 112(i)(5)(A) of the federal Clean Air Act shall be achieved not later than the date on which the relevant standard should have been promulgated according to the source category schedule for standards.

(m) A permit application for a MACT determination shall consist of two parts.

- (1) The Part 1 application shall contain the information required under 40 CFR 63.53(a) and shall be submitted by the applicable deadline specified in Paragraph (d), (e), or (f) of this Rule.
- (2) The Part 2 application shall contain the information required under 40 CFR 63.53(b) and shall be submitted no later than the deadline in 40 CFR 63 Subpart B Table 1.

(n) Permit application review. The Director shall follow 40 CFR 63.55 (a) in reviewing permit applications for MACT. The resulting MACT determination shall be incorporated into the facility's Title V permit according to the procedures established under this Section. Following submittal of a Part 1 or Part 2 MACT application, the Director may request, pursuant to 15A NCAC 02Q .0507(c) and .0525(a), additional information from the owner or operator; and the owner or operator shall submit the requested information within 30 days. A Part 2 MACT application is complete if it is sufficient to begin processing the application for a Title V permit addressing Section 112(j) requirements. If the Division disapproves a permit application or determines that the application is incomplete, the owner or operator shall revise and resubmit the application to meet the objections of the Division within the time period specified by the

Division. Such time period shall not exceed six months from the date that the owner or operator is first notified that the application has been disapproved or is incomplete. The Director shall issue a Title V permit meeting Section 112(j) requirements after receipt of a complete Part 2 MACT application following the schedule in 15A NCAC 02Q .0525.

(o) The following requirements apply to case-by-case determinations of equivalent emission limitations when a MACT standard is subsequently promulgated:

- (1) If EPA promulgates an emission standard that is applicable to one or more sources within a major facility before the date a proposed permit under this Rule is approved, the permit shall contain the promulgated standard rather than the emission limitation determined under 15A NCAC 02D .1109, and the owner or operator of the source shall comply with the promulgated standard by the compliance date in the promulgated standard.
- (2) If EPA promulgates an emission standard that is applicable to a source after the date that a permit is issued under this Rule, the Director shall revise the permit on its next renewal to reflect the promulgated standard. (Subparagraph (a)(1) of Rule .0517 of this Section does not apply to requirements established under this Rule.) The Director shall establish a compliance date in the revised permit that assures that the owner or operator shall comply with the promulgated standard within a reasonable time, but no longer than eight years after such standard is promulgated or eight years after the date by which the owner or operator was first required to comply with the emission limitation established by permit, whichever is earlier. However, in no event shall the period for compliance for existing sources be shorter than that provided for existing sources in the promulgated standard.
- (3) Notwithstanding the requirements of Subparagraphs (1) or (2) of this Paragraph, if EPA promulgates an emission standard that is applicable to a source after the date a proposed permit is approved, the Director need not change the emission limitation in the permit to reflect the promulgated standard if the level of control required by the emission limitation in the permit is as effective as that required by the promulgated standard. If EPA promulgates an emission standard that is applicable to an affected source after the date a permit application is approved, and the level of control required by the promulgated standard is less stringent than the level of control required by any emission limitation in the prior MACT determination, the Division is not required to incorporate any less stringent emission limitation of the promulgated standard and may consider any more stringent

provisions of the MACT determination to be applicable legal requirements when issuing or revising such a Title V permit.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Eff. July 1, 1996; Amended Eff. February 1, 2004.

SECTION .0500 - TRAFFIC AND PARKING

15A NCAC 12B .0501 VEHICLES: WHERE PROHIBITED

- (a) A person shall not drive a vehicle including bicycles, mopeds or similar conveyances in any park within or upon a safety zone, walk, bridle trail, hiking trail, fire trail, service road or any part of any park area not designated or customarily used for such purpose. Operation of unlicensed motor vehicles, motorcycles, golf carts, snow mobiles, utility vehicles, mini-bikes and all terrain vehicles are prohibited within any park, including the Fort Fisher Recreation Area.
- (b) Park employees, their agents, contractors and on duty emergency response personnel may use unlicensed vehicles including golf carts, utility vehicles and all terrain vehicles within park areas to carry out official duties.
- (c) A mobility-impaired person using a manual or motorized wheelchair is considered a pedestrian. This Rule is not intended to restrict the activities of such a person beyond the degree that

the activities of a pedestrian are restricted by the same Rule, except where use of such wheelchairs constitutes a safety hazard or would damage fragile natural resources.

- (d) No person shall drive a vehicle, bicycle or other conveyance on areas with fragile natural resources that would be damaged by the vehicle, bicycle or other conveyance, or where the use of the vehicle, bicycle or other conveyance would be unsafe.
- (e) Operation of licensed vehicles on the unpaved areas of the Fort Fisher Recreation Area is prohibited unless the operator has obtained a vehicle beach use permit.

History Note: Authority G. S. 113-35; Eff. February 1, 1976; Amended Eff. February 1, 2004; January 1, 1983.

15A NCAC 12B .1206 FEES AND CHARGES

The following fee schedule shall apply at all state parks, state lakes, state recreation areas, and state natural areas under the stewardship of the Department, except for the N.C. Zoological Park. Payment of the appropriate fee shall be a prerequisite for the use of the public service facility or convenience provided. Unless otherwise provided in this Rule, the number of persons camping at a particular campsite may be limited by the park superintendent depending upon the size of the camping group and the size and nature of the campsite. Any senior citizen (person 62 or older) registering for a campsite shall receive the discounted senior citizens rate.

(1) TYPE OF FACILITY OR CONVENIENCE	FEE
CAMPING	
(a) Campsites with electrical hookups, picnic table, and grill. Water, restrooms, and shower facilities also available	\$ 20.00 (per campsite daily) \$ 14.00 (senior citizens daily, 62 or older)
(b) Campsites with picnic table and grill. Water, restrooms, and shower facilities also available.	\$ 15.00 (per campsite daily) \$ 10.00 (senior citizens daily, 62 or older)
(c) Primitive, unimproved campsites with pit privies. Fresh water also available.	\$ 9.00 (per campsite, daily)
(d) Primitive group tent camping, unimproved campsites with pit privies.	\$ 1.00 (per person, with \$9.00 minimum)
(e) Improved Group Camping (water, restrooms and shower facilities available.	\$ 40.00 (per day/maximum capacity 35) \$ 50.00 (per day/maximum capacity 50) \$ 105.00 (per day/maximum capacity 100)
(f) Group Lodge William B. Umstead State Park	\$ 30.00 (per day/maximum 25 people)
(g) Group Camps	
(i) William B. Umstead State Park	Daily April, May, Sept., Oct. \$ 30.00 One Unit per day \$ 75.00 Mess Hall per day
	Weekly Only June thru August \$ 375.00 Camp Crabtree \$ 375.00 Camp Whispering Pines \$ 425.00 Camp Laphio
(ii) Singletary Lake State Park	Daily April, May, Sept., Oct.

APPROVED RULES

		\$ 95.00	Camp Ipecac or Loblolly
		\$ 40.00	Cabin Unit per day
		\$ 75.00	Mess Hall per day
		Weekly Only	June thru August
		\$ 390.00	Camp Ipecac or Loblolly
			Nov., Dec., Feb., March
			Camp Loblolly available
			at Weekly or daily rates.
		Daily	January Thru Dec.
(h)	Equestrian Facilities	Per Campsite	
	(i) Campsite with picnic table and grill	\$ 15.00	
	(ii) Horse Stalls	\$ 7.00	5' X 10' Per Day
		\$ 10.00	10' X 10' Per Day
(2)	CABINS (not available Dec. - Feb.) (reservation only at Hanging Rock State Park and Morrow Mountain State Park.)	\$ 500.00	(per week only from June to Labor Day)
		\$ 520.00	(per week only from June to Labor Day, with swimming privileges)
		\$ 100.00	(per day - rest of year)
(3)	SWIMMING/BATHHOUSE	\$ 4.00	(per adult, age 13 and over)
		\$ 3.00	(per child, ages 3-12)
(4)	BOAT RAMPS	\$ 4.00	(per boat)
(5)	ROWBOAT/CANOE RENTAL	\$ 5.00	(for first hour)
		\$ 3.00	(for each additional hour)
(6)	PADDLE BOAT RENTAL	\$ 5.00	(for first hour)
		\$ 3.00	(for additional hour)
(7)	PICNIC SHELTER RENTAL (by reservation only)	\$ 25.00	(1-2 tables)
		\$ 40.00	(3-4 tables)
		\$ 60.00	(5-8 tables)
		\$ 85.00	(9-12 tables)
(8)	ADMISSION FEE (Kerr Lake, Jordan and Falls only)	\$ 5.00	(per car)
		\$ 3.00	(per car-senior citizens 62 or older)
		\$ 10.00	(per bus)
		\$ 30.00	(for 10 daily passes)
		\$ 40.00	(for annual pass)
(9)	HAMMOCKS BEACH FERRY	\$ 5.00	(per adult, age 13 and over)
		\$ 3.00	(Sr. Citizen and per child, ages 6-12)
(10)	COMMUNITY BUILDINGS	\$ 175.00	
(11)	SPECIAL ACTIVITY PERMIT	\$ 30.00	(permit fee plus any additional appropriate charges)
(12)	CATCH AND RELEASE FISHING (Stone Mountain State Park)	\$ 15.00	per day per section
(13)	SLIP RENTAL AND OTHER FEES FOR THE CAROLINA BEACH STATE PARK MARINA (All slip rental fees shall be paid in full at the time the lease is executed.)		
	(a) Transient, overnight dockage (no longer than 14 consecutive days in any 30 day period.)	\$ 20.00	
	(b) Slip Rental (Fees charged according to term of lease and vessel size.) One month lease		
	25 feet and smaller	\$ 175.00	
	26 feet to 35 feet	\$ 260.00	
	36 feet to 42 feet	\$ 305.00	
	43 feet to 45 feet	\$ 345.00	
	(c) Six month lease (runs 183 days from date executed)		
	25 feet and smaller	\$ 830.00	
	26 feet to 35 feet	\$1250.00	
	36 feet to 42 feet	\$1460.00	
	43 feet to 45 feet	\$1665.00	

(d)	Twelve month lease (runs 365 days from date executed)	
	25 feet and smaller	\$1250.00
	26 feet to 35 feet	\$1875.00
	36 feet to 42 feet	\$2185.00
	43 feet to 45 feet	\$2500.00
(e)	Boat Launching Fee	\$ 5.00
(f)	Holding Tank Pump Out	\$ 12.00
(g)	Battery Charging Service	\$ 4.00
(14)	Fort Fisher 4WD Beach Access Annual Permit	
(a)	Daily Permit	\$ 10.00
(b)	Annual Permit	\$ 40.00

*History Note: Authority G.S. 113-35(b);
Eff. April 1, 1997;
Amended Eff. February 1, 2004.*

15A NCAC 18A .1210 RESTRICTIONS ON DISPENSING RAW MILK

- (a) Dairy farms shall dispense raw milk or raw milk products only to a permitted milk hauler or to a processing facility for which the processing of milk is permitted, graded or regulated by a state or federal agency.
- (b) The farmer or the owner of the raw milk or raw milk products may, nevertheless, destroy the milk or dispense it for animal feed in accordance with any applicable state and federal regulations.

*History Note: Authority G.S. 130A-275;
Temporary Adoption Eff. April 2, 2001;
Temporary Adoption Expired January 11, 2002;
Temporary Adoption Eff. June 1, 2003;
Eff. February 1, 2004.*

15A NCAC 18A .1301 DEFINITIONS

The following definitions shall apply throughout this Section in the interpretation and enforcement of this Section:

- (1) "Disinfect" means a process used on inanimate surfaces to destroy or irreversibly inactivate infectious fungi and bacteria but not necessarily their spores.
- (2) "Environmental Health Specialist" means a person authorized by the Department of Environment and Natural Resources under G.S. 130A-6 to enforce environmental health rules adopted by the Commission for Health Services.
- (3) "Institution" includes the following establishments providing room or board and for which a license or certificate of payment must be obtained from the Department of Health and Human Services, other than those operated exclusively by the State of North Carolina:
 - (a) hospital, as defined in G.S. 131E-76 including doctors' clinics with food preparation facilities;
 - (b) nursing home, as defined in G.S. 131E-101;

- (c) sanitarium, sanatorium, and any similar establishment, other than hospital and nursing home, for the recuperation and treatment of 13 or more persons suffering from physical or mental disorders;
- (d) adult care home, providing custodial care on a 24-hour basis for 13 or more persons, including homes for the aged;
- (e) orphanage, or children's home providing care on a 24-hour basis for 13 or more children.

However, the term shall not include a child day care facility, an adult day service facility as defined in 15A NCAC 18A .3300 or a residential care facility as defined in 15A NCAC 18A .1600.

- (4) "Department of Environment and Natural Resources" shall mean the Secretary, or his authorized representative.
- (5) "Local health director" shall mean local health director as defined in G.S. 130A-2(6) or his authorized representative.
- (6) "Patient" means a patient or resident living in an institution as defined in this Section.
- (7) "Person" shall mean an individual, firm, association, organization, partnership, business trust, corporation, or company.
- (8) "Personal Hygiene" means maintenance of personal health, including grooming, brushing teeth, showering, applying makeup, or washing/drying face, hands, and body.
- (9) "Potentially hazardous food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including *Clostridium botulinum*. This term includes raw or heat treated foods of animal origin, raw seed sprouts, and treated foods of plant origin. The term does not include foods that have a pH level of 4.6 or below or a water activity (Aw) value of 0.85 or less.

- (10) "Sanitize" means a bactericidal treatment that meets the temperature and chemical concentration levels in 15A NCAC 18A .2619.
- (11) "Soiled utility room" means a room or area with fixtures used for cleaning and disinfecting soiled patient-care items.

*September 1, 1990; June 30, 1980;
Temporary Amendment Eff. June 1, 2003;
Amended Eff. February 1, 2004.*

*History Note: Authority G.S. 130A-235;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. March 1, 2003 (see S.L. 2002-160);
August 1, 1998; February 1, 1997; September 1, 1990;
March 1, 1988;
Temporary Amendment Eff. June 1, 2003;
Amended Eff. February 1, 2004.*

15A NCAC 18A .1304 INSPECTIONS

- (a) Institutions shall be graded once each six months and food services at institutions that prepare and serve meals to 13 or more patients or residents shall be inspected at least once each quarter.
- (b) The grading of institutions shall be done on inspection forms furnished by the Department to local health departments. The form shall include the following information:
 - (1) the name and address of the facility;
 - (2) the name of the person in charge of the facility;
 - (3) the standards of construction and operation as listed in .1309 - .1324 of this Section;
 - (4) the score; and
 - (5) the signature of the authorized agent of the Department.

(c) Whether or not a permit is required under G.S. 130A-248, inspections of food preparation and central dining areas in institutions serving meals to 13 or more patients or residents shall be documented separately using the inspection forms and grading system used for grading restaurants as specified in current "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600. When grading the food preparation and central dining areas of institutional food services that are not required to obtain a permit under G.S. 130A-248, the provisions of Rule .1323(d) of this Section shall supercede the provisions of Rule 15A NCAC 18A .2610(e) regarding animals in dining areas. Except as required by G.S. 130A-247 through 250, food services at institutions shall not be required to obtain foodhandling establishment permits. Facilities that the "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" are made effective by the rules of this Section that were in operation before March 1, 2003 may continue to use equipment and construction in use on that date if no imminent hazard exists. Points shall not be deducted from the food service sanitation score for existing equipment that is kept clean and performs the task for which it is used. Replacement equipment for these facilities shall comply with 15A NCAC 18A .2600.

*History Note: Authority G.S. 130A-235;
Eff. February 1, 1976;
Readopted Eff. December 1, 1977;
Amended Eff. March 1, 2003 (see S.L. 2002-160);*

15A NCAC 18A .1308 APPROVED INSTITUTIONS AND SCORING SYSTEM

(a) The sanitation grading of all institutions shall be based on a system of scoring wherein all institutions receiving a score of at least 90 percent shall be awarded Grade A; all institutions receiving a score of at least 80 percent and less than 90 percent shall be awarded Grade B; all institutions receiving a score of at least 70 percent and less than 80 percent shall be awarded Grade C; and all institutions receiving a score of less than 70 percent do not meet the minimum sanitation standards. If an institution or an institutional food service fails to maintain a sanitation score of at least 70 percent or if the Environmental Health Specialist determines that conditions found at the institution at the time of any inspection are dangerous to the health of residents or the public, the Environmental Health Specialist shall notify the licensing agency within 24 hours. A copy of the inspection report documenting the dangerous conditions shall be sent to the licensing agency within two working days following the inspection.

(b) Sanitation scores for institutions shall be determined by an Environmental Health Specialist authorized by the Department by completing an inspection report Form DENR 1213. The score is a percentage compliance determined by deducting points from 100 percent for each item found not to be in compliance with the Rules of this Section. The authorized Environmental Health Specialist shall deduct full or half credit for non-compliant items based on the severity, pervasiveness and persistence of the rule violation. The percentage point value of each item is determined as follows:

- (1) Violation of Rule .1309 of this Section regarding cleanability of floors and provision of floor drains shall be assessed a value of two points
- (2) Violation of Rule .1309 of this Section regarding cleaning and maintenance of floors and carpet shall be assessed a value of two points.
- (3) Violation of Rule .1310 of this Section regarding cleanability and repair of walls and ceilings shall be assessed a value of two points.
- (4) Violation of Rule .1311(a) of this Section regarding lighting levels shall be assessed a value of two points.
- (5) Violation of Rule .1311(b) or (c) of this Section regarding ambient air temperatures and cleaning of ventilation equipment shall be assessed a value of two points.
- (6) Violation of Rule .1311(d) of this Section regarding moisture control shall be assessed a value of three points.
- (7) Violation of Rule .1311(e) of this Section regarding control of indoor smoke exposure shall be assessed a value of two points.
- (8) Violation of Rules .1312(a), (b), or (f) of this Section regarding location, cleaning and repair

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| <p>(9) Violation of Rule .1312(b) of this Section regarding toilet rooms shall be assessed a value of one point.</p> <p>(10) Violation of Rule .1312(c) of this Section regarding bedpans, urinals, bedside commodes and emesis basins shall be assessed a value of one point.</p> <p>(11) Violation of Rule .1312(c) or (d) of this Section regarding provision, accessibility and use of hand sinks shall be assessed a value of two points.</p> <p>(12) Violation of Rule .1312(d) of this Section regarding equipment for handwashing facilities shall be assessed a value of three points.</p> <p>(13) Violation of Rule .1312(e) of this Section regarding hot water temperature at lavatory and bathing facilities shall be assessed a value of two points.</p> <p>(14) Violation of Rule .1312(f) of this Section regarding accessibility and mixing of cleaning and disinfectant agents shall be assessed a value of two points.</p> <p>(15) Violation of Rule .1313(a) or (d) of this Section regarding water supply and cross-connections shall be assessed a value of four points.</p> <p>(16) Violation of Rule .1313 (e) or (f) of this Section regarding quantity of hot water and backup water supply plans shall be assessed a value of two points.</p> <p>(17) Violation of Rule .1314(a) of this Section regarding cleaning, repair and flow regulation of drinking fountains shall be assessed a value of two points.</p> <p>(18) Violation of Rule .1314(a) of this Section regarding drinking utensils shall be assessed a value of two points.</p> <p>(19) Violation of Rule .1314(b) of this Section regarding protection of ice and cleaning and repair of ice making and handling equipment and utensils shall be assessed a value of two points.</p> <p>(20) Violation of Rule .1315 of this Section regarding wastewater disposal shall be assessed a value of four points.</p> <p>(21) Violation of Rule .1316(a), (b) or (c) of this Section regarding solid waste storage and container cleaning facilities shall be assessed a value of four points.</p> <p>(22) Violation of Rule .1316(d) of this Section regarding solid waste disposal and control of insect breeding or nuisance shall be assessed a value of two points.</p> <p>(23) Violation of Rule .1316(e) of this Section regarding handling and disposal of medical wastes shall be assessed a value of two points.</p> | <p>(24) Violation of Rule .1317(a) of this Section regarding exclusion of vermin shall be assessed a value of three points.</p> <p>(25) Violation of Rule .1317(b) of this Section regarding storage and handling of pesticides shall be assessed a value of two points.</p> <p>(26) Violation of Rule .1317(c) of this Section regarding cleaning and maintenance of premises shall be assessed a value of two points.</p> <p>(27) Violation of Rule .1317(e) or (f) of this Section regarding pet maintenance shall be assessed a value of two points.</p> <p>(28) Violation of Rule .1318(a) of this Section regarding storage areas shall be assessed a value of one point.</p> <p>(29) Violation of Rule .1318(b) of this Section regarding mop sinks shall be assessed a value of one point.</p> <p>(30) Violation of Rule .1318(c) of this Section regarding medication carts shall be assessed a value of two points.</p> <p>(31) Violation of Rule .1318(d) of this Section regarding feeding syringes, oral suction catheters and tube-feeding bags shall be assessed a value of two points.</p> <p>(32) Violation of Rule .1319(a) of this Section regarding cleaning and repair of furniture and use of mattress covers shall be assessed a value of two points.</p> <p>(33) Violation of Rule .1319(b) of this Section regarding linen changes and handling of soiled laundry shall be assessed a value of two points.</p> <p>(34) Violation of Rule .1319 of this Section regarding laundry areas and equipment, cleaning and sanitizing of laundry, and storage and handling of clean laundry shall be assessed a value of two points.</p> <p>(35) Violation of Rule .1319(c) of this Section regarding repair, storage, cleaning and disinfection of patient contact items shall be assessed a value of one point.</p> <p>(36) Violation of Rule .1320 of this Section regarding approval, cleaning and sanitizing food contact items shall be assessed a value of two points.</p> <p>(37) Violation of Rule .1320 of this Section regarding approved uses of activity kitchens shall be assessed a value of one point.</p> <p>(38) Violation of Rule .1320(b) of this Section regarding handwashing lavatories in foodhandling areas shall be assessed a value of two points.</p> <p>(39) Violation or Rule .1321(a) of this Section regarding food sources and supplies shall be assessed a value of four points.</p> <p>(40) Violation of Rule .1321(b) of this Section regarding disposition of food brought by</p> |
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- employees or visitors shall be assessed a value of one point.
- (41) Violation of Rule .1322 of this Section regarding milk and milk products shall be assessed a value of two points.
 - (42) Violation of Rule .1323(a) of this Section regarding food protection, temperature control and time in lieu of temperature shall be assessed a value of four points.
 - (43) Violation of Rule .1323(b) of this Section regarding hot and cold food storage and display units and thermometers shall be assessed a value of one point.
 - (44) Violation of Rule .1323(c) of this Section regarding food storage shall be assessed a value of one point.
 - (45) Violation of Rule .1323(d) of this Section regarding control of live animals in food service areas shall be assessed a value of two points.
 - (46) Violation of Rule .1324(a) of this Section regarding employee clothing and tobacco use while handling food shall be assessed a value of one point.
 - (47) Violation of Rule .1324(a) or (b) of this Section regarding employee hand washing and hand antisepsis shall be assessed a value of three points.
 - (48) Violation of Rule .1324(c) of this Section regarding exclusion of persons with infections from food service work shall be assessed a value of two points.

*History Note: Authority G.S. 130A-235;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. February 1, 2004; August 1, 2002.*

15A NCAC 18A .1312 TOILET; HANDWASHING; LAUNDRY; AND BATHING FACILITIES

- (a) All institutions shall be provided with toilet, handwashing, and bathing facilities that are conveniently located and readily accessible to residents and staff. These facilities, and laundry facilities when provided, shall be kept clean and in good repair.
- (b) Toilet facilities shall comply with the requirements of the state agency licensing the facility. Toilet rooms shall not be used for storage. Fixtures and furnishings shall be kept clean and in good repair. Durable, legible signs shall be posted or stenciled conspicuously in each toilet room for food service employees directing them to wash their hands before returning to work.
- (c) Institutions where bedpans, urinals or emesis basins are used shall provide facilities for emptying, cleaning, and disinfecting bedpans, urinals and emesis basins. Bedpans, urinals and emesis basins shall be cleaned after each use and shall be disinfected before use by other patients. Where bedpans are cleaned in patient rooms, bedpan cleaning facilities shall consist of a water closet with bedpan lugs or spray arms. Where facilities for cleaning bedpans are not provided in patient rooms, bedpans shall be taken to a soiled utility room and be cleaned and

disinfected using an EPA registered hospital disinfectant after each use. Where disposable bedpans are reused, they shall be labeled with the patient's name and date and shall not be used by more than one patient. Bedside commodes shall be cleaned after each use and shall be cleaned and disinfected before use by successive patients. Hand sinks shall not be used for cleaning bedpans or bedside commodes.

(d) Handwashing facilities shall be accessible to all areas where personnel may be exposed to bodily excretions or secretions and in sterile supply processing areas, medication rooms, laundry areas, and soiled utility rooms. Any area where personnel may be exposed to bodily excretions or secretions shall have handwashing facilities located in the same room or have a doorway connecting to an adjacent room or corridor containing handwashing facilities. All lavatories shall be supplied with hot and cold running water through a mixing faucet, or with tempered warm water, soap, and sanitary towels or hand-drying devices. Facilities in operation prior to March 1, 2003 that do not have handwashing lavatories in all areas required shall not be required to install additional lavatories if an approved hand hygiene program is used. Hand hygiene programs shall be approved by the Environmental Health Specialist case-by-case based on type and frequency of activities involving contamination with bodily excretions or secretions, use of gloves to reduce contamination, availability of pre-moistened detergent wipes for hand cleaning, use of alcohol rubs or other skin antiseptics, and availability of handwashing facilities on the same wing or floor of the building. Handwashing facilities shall be provided in kitchens and any other food preparation areas in addition to any lavatories provided at employees' toilet rooms. Sinks used for washing utensils and equipment shall not be accepted as a substitute for required handwashing facilities. Handwash lavatories shall be used only for handwashing. Lavatories provided for use of patients or residents shall be used only for handwashing, personal hygiene, rinsing feeding tubes and obtaining water. Lavatories used for handwashing or personal hygiene shall not be used for disposal of body fluids or cleaning soiled linens. Lavatories in medication rooms used primarily for handwashing can be used for other purposes, such as disposal of medications, which do not interfere with effective handwashing.

(e) Water heating facilities shall provide hot water within the temperature range of 100 degrees F to 116 degrees F at all lavatories and bathing facilities.

(f) Bathing facilities as required by the licensing agency shall be provided, maintained and kept clean. Bathing facilities shall be supplied with hot and cold running water and a mixing device, or tempering device. Shared bathing equipment that has contact with patient's skin shall be cleaned with detergent and an EPA registered hospital disinfectant between patient uses. Manufacturer's instructions shall be followed for cleaning equipment with pumps. A supply of cleaning and disinfectant agents shall be accessible to bathing areas. Where disinfectants are mixed on site, the concentration of the mix shall be assured by use of a metering pump, measuring device or chemical test kit.

*History Note: Authority G.S. 130A-235;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;*

*Amended Eff. March 1, 2003 (see S.L. 2002-160);
September 1, 1990;
Temporary Amendment Eff. June 1, 2003;
Amended Eff. February 1, 2004.*

15A NCAC 18A .1313 WATER SUPPLY

- (a) Water supplies at institutions shall meet the requirements in 15A NCAC 18C or 15A NCAC 18A .1700.
- (b) Non-community public water supplies shall be listed with the Public Water Supply Section, Division of Environmental Health.
- (c) In institutions that use a non-community water supply, a sample of water shall be collected by the Department at least once a year and submitted to the Division of Laboratory Services or other laboratory certified by the Department to perform bacteriological examinations.
- (d) Cross-connections with sewage lines, non-potable water supplies, or other potential sources of contamination are prohibited.
- (e) Hot water heating facilities shall be provided. Hot and cold running water under pressure shall be provided to food preparation areas, and to any other areas where water is required in sufficient quantities to carry out all operations.
- (f) The local health department shall be immediately notified if the primary water supply is interrupted for more than four hours. Each institution shall have a plan to obtain a backup water supply in the event that the water supply is lost for more than four hours. The backup water supply plan shall provide for two liters of water per day per person for drinking. The backup water supply plan shall include a plan for either relocating residents or providing an alternative source of water for essential functions such as food preparation, hand washing, bathing, cleaning, dishwashing, laundry and disposal of bodily waste. The amount of water provided for uses other than drinking may be reduced if the plan includes alternatives for water use for services such as laundry and dishwashing. If an assessment determines that tap water is not to be used for drinking, sources shall be prominently labeled or hooded to restrict use and potable water shall be provided.

*History Note: Authority G.S. 130A-235;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. March 1, 2003 (see S.L. 2002-160);
September 1, 1990; July 1, 1986;
Temporary Amendment Eff. June 1, 2003;
Amended Eff. February 1, 2004.*

15A NCAC 18A .1319 FURNISHINGS AND PATIENT CONTACT ITEMS

- (a) All furniture, bed springs, mattresses, sleeping mats, draperies, curtains, shades, venetian blinds, or other furnishings in institutions shall be kept clean and in good repair. Mattresses shall be kept clean, dry and odor free.
- (b) Clean bed linen in good repair shall be provided for each individual and shall be changed when soiled. Soiled linen shall be placed in a covered container or bag at the point of use and stored and handled so as to contain and minimize aerosolization of and exposure to any waste products. Soiled laundry shall be handled and stored separately from clean laundry using separate

cleanable carts or bags. Carts used for soiled laundry shall be labeled for soiled laundry use only. If hot water is used, linen including sheets, pillow cases, absorbent pads, towels and wash cloths provided by the facility shall be washed with a detergent in water at least 71°C (160°F) for 25 minutes. If low temperature (less than 71° C) laundry cycles are used, linens shall be washed in at least 50 parts per million chlorine or an EPA Listed laundry sanitizer shall be used in accordance with the manufacturer's instructions. This shall not preclude the approval of other chemicals or processes shown to produce a 99.9 percent reduction of the pathogens *Staphylococcus aureus*, *Klebsiella pneumoniae* and *Pseudomonas aeruginosa* on laundry. The wash temperatures and chemicals required for linens shall not apply to personal laundry provided and used by a resident. Clean linen shall be stored and handled in a separate room or area, or in another manner that will prevent contamination of clean linen. Laundry areas and equipment shall be kept clean.

(c) Patient contact items shall be kept clean and in good repair. Soiled patient contact items shall be taken to a designated area for cleaning and shall be stored separately from clean items. A room or area shall be provided for cleaning patient contact equipment such as wheelchairs. Patient contact items such as diaper changing surfaces that become contaminated during use shall be cleaned and disinfected after each use. Shared toys subject to mouthing shall be washed and rinsed with soap and water and disinfected with 70 percent alcohol or 100 parts per million chlorine after each day's use. Shared plush toys shall be laundered after each day's use. Shared toys that are not washable shall be gas sterilized or disposed of when soiled.

*History Note: Authority G.S. 130A-235;
Eff. February 1, 1976;
Readopted Eff. December 5, 1977;
Amended Eff. March 1, 2003 (see S.L. 2002-160);
August 1, 1998; February 1, 1997; September 1, 1990;
Temporary Amendment Eff. June 1, 2003;
Amended Eff. February 1, 2004.*

15A NCAC 18A .1320 FOOD SERVICE UTENSILS AND EQUIPMENT

- (a) All food service equipment and utensils used in institutions for preparing meals for 13 or more people shall comply with the requirements of "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600. Residential style rehabilitation activity kitchens with domestic utensils and equipment may be used by groups of 12 or less people to prepare meals only for members of the group. Potentially hazardous foods prepared in rehabilitation activity kitchens shall not be served to groups of more than 12 people. This shall not preclude the use of an activity kitchen as a serving area for meals catered from a main kitchen and served to groups of 13 or more people in connection with a planned event from which the public is excluded. For planned events, the equipment in the activity kitchen may be used for heating prepared foods received from a main kitchen or a commercial source. Bread machines, soup kettles and other food contact items used at nutrition stations shall be so constructed as to be easily cleanable.
- (b) At activity kitchens or nutrition stations, provisions shall be made for cleaning all food service utensils and equipment and

sanitizing utensils and equipment not continuously subjected to high temperatures. Where utensils and equipment are not returned to a central kitchen for cleaning, designated nutrition stations shall be equipped with at least a two compartment sink with 24 inch drainboards or counter top space at each end for handling dirty items and air drying clean items. Sinks shall be of sufficient size to submerge, wash, rinse and sanitize utensils and equipment. At nutrition stations, dish machines listed with NSF International shall meet this provision. Any area where food is portioned, served or handled shall be equipped with a separate handwash lavatory with hot and cold mixing faucet, soap and individual towels or hand drying device. Separate handwashing lavatories shall not be required for activity kitchens used only by groups of 12 or less people.

(c) All kitchenware and food-contact surfaces of equipment, exclusive of cooking surfaces of equipment, used in the preparation or serving of food or drink, and all food storage utensils, shall be cleaned after each use. Cooking surfaces of equipment shall be cleaned at least once each day. All utensils and food-contact surfaces of equipment used in the preparation, service, display, or storage of potentially hazardous foods shall be cleaned and sanitized prior to each use. Non-food-contact surfaces of equipment shall be cleaned at such intervals as to keep them in a clean and sanitary condition.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. March 1, 2003 (see S.L. 2002-160); September 1, 1990; Temporary Amendment Eff. June 1, 2003; Amended Eff. February 1, 2004.

15A NCAC 18A .1321 FOOD SUPPLIES

(a) All food and food supplies provided by an institution shall be from sources that comply with North Carolina "Rules Governing the Sanitation of Restaurants and Other Foodhandling Establishments" 15A NCAC 18A .2600 and shall be clean, free from spoilage, free from adulteration and misbranding, and safe for human consumption.

(b) Food brought from home by employees or visitors of patients or residents shall be stored separately from the institution's food supply and shall be labeled with the name of the person to receive the food and the date the food was brought in and shall be kept only as long as it is clean, and free from spoilage. Labeling shall not be required for food items stored in employee-designated or individual resident's refrigerators or rooms.

History Note: Authority G.S. 130A-235; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. March 1, 2003 (see S.L. 2002-160); September 1, 1990; Temporary Amendment Eff. June 1, 2003; Amended Eff. February 1, 2004.

15A NCAC 18A .2516 POOL PROFILE

(a) The vertical walls of a public swimming pool shall not exceed 11 degrees from plumb. Corners formed by intersection

of walls and floors shall be coved or radiused. Hopper bottomed pools shall be prohibited.

(b) Underwater ledges or protrusions shall be prohibited; except that underwater stairs, seats and benches may be installed in areas of the pool no more than four feet deep, provided underwater seats and benches have a maximum seat depth of two feet, protrude no more than 18 inches into the pool and they are marked by a contrasting color band on the leading edge and underwater stairs meet the requirements of Rule .2521 of this Section. Underwater seats shall not project into swim lanes.

(c) The slope of the bottom of any portion of any public swimming pool having a water depth of less than five feet (1.52 m) shall not be more than one foot vertical change in 10 feet (10 cm in one meter) of horizontal distance and the slope shall be uniform.

(d) In portions of pools with water depths greater than five feet (1.52 m), the slope of the bottom shall not be more than one foot vertical in three feet (33.3 cm in one meter) of horizontal distance.

(e) Design of diving areas shall be in accordance with Tables 1A and 1B of Rule .2517 of this Section.

(f) Fountains installed in public swimming pools shall be approved prior to installation and shall comply with the following:

- (1) Shall not be installed in an area with a water depth exceeding 18 inches;
- (2) Shall be recommended by the manufacturer for use in a public swimming pool;
- (3) Shall be installed in accordance with the manufacturer's instructions;
- (4) Shall be separate from the pool water recirculation system; and
- (5) Shall not release water at a velocity greater than 10 feet per second.

History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. February 1, 2004; January 1, 1996.

15A NCAC 18A .2517 DIVING EQUIPMENT

(a) When diving equipment is installed in a public swimming pool, it shall be located in the diving area of the pool so as to provide the minimum dimensions as shown in Tables 1A and 1B of this Rule and shall conform to the following specifications:

- (1) Diving equipment shall be designed for swimming pool use and shall be installed in accordance with the manufacturer's recommendations.
- (2) Installation instructions and specifications shall be provided with each unit.
- (3) A label shall be permanently affixed to the diving equipment and shall include:
 - (A) manufacturer's name and address;
 - (B) board length;
 - (C) type of diving board;
 - (D) fulcrum setting specifications if applicable.
- (4) Diving equipment shall have slip-resistant tread surfaces.

(b) Supports, platforms, and steps for diving equipment shall be of sufficient strength to carry safely the maximum anticipated loads. Steps shall be of corrosion-resistant design. Handrails shall be provided at all steps and ladders leading to diving boards that are one meter or more above the water.

(c) There shall be a completely unobstructed clear vertical distance of 13 feet above any diving board measured from the center of the front end of the board. This area shall extend horizontally at least eight feet behind, eight feet to each side, and 16 feet ahead of Point A in Table 1A.

Table 1A

Maximum Board Length	Maximum Board Height Above Water	Board Overhang (Pt. A)		Minimum Water Depths		
		Max	Min	D1	D2	D3
12 feet	30 in	5 feet	4 feet	8'0"	9'0"	8'3"
16 feet	1 meter	6 feet	5 feet	8'6"	10'0"	8'6"
16 feet	3 meters	6 feet	5 feet	11'6"	12'0"	11'6"

KEY TO ABBREVIATIONS:

Pt A is the point on the water line of the pool directly beneath the end of the diving board.

D1 is the depth of the water measured from the water line to the floor at the beginning of the radius connecting the end wall with the floor at the deep end of the pool.

D2 is the depth of the water at the deepest point in the pool.

D3 is the depth of the water at the point where the deep area of the pool meets the transition to the shallow area of the pool.

Table 1B

Maximum Board Length	Horizontal Distances						Minimum Pool Width	Minimum Separation Distances	
	L1	L2	L3	L4	L5	L6		F	G
	12 feet	3'	7'	10'3"	9'9"	30'		4'	20'
16 feet	5'	5'	11'6"	10'6"	32'	4'	24'	12'	10'
16 feet	5'	5'	7'6"	19'6"	37'	3'	28'	14'	12'

KEY TO ABBREVIATIONS:

L1 is the radius of the curve connecting the side wall to the floor at the deep end of the pool.

L2 is the distance between the center of the radius connecting the end wall to the floor at the deep end of the pool and the deepest point in the pool.

L3 is the distance between the deepest point in the pool and the beginning of the transition to the shallow area of the pool.

L4 is the length of the transition zone.

L5 is the total of L1 + L2 + L3 + L4.

L6 is the length of the shallow area of the pool.

F is the distance between the side wall of the pool and the centerline of the diving board.

G is the distance between the center lines of two adjacent diving boards.

(d) Public pools with diving facilities in excess of three meters in height, or pools designed for platform diving, shall meet the Federation Internationale De Nation Amateur (FINA) guidelines that are incorporated by reference in accordance with G.S. 130B-21.6 including any subsequent amendments or additions.

(e) Starting platforms used for racing starts during competition shall be secured from use when the pool is open for general use by removal; covering; or signage and active supervision. Minimum water depth for starting platforms shall be measured at a distance of 3 feet, 3 ½ inches (1.0 meter) to 16 feet, 5 inches (5.0 meters) from the end wall. Height of starting platforms shall not exceed the following:

- (1) In pools with water depth less than 3 feet, 6 inches (1.07 meters) at the starting end, raised starting platforms shall be prohibited.
- (2) In pools with water depth 3 feet, 6 inches (1.07 meters) to less than 4 feet (1.22 meters) at the starting end, starting platforms shall be no more than 18 inches (0.46 meter) above the water surface.
- (3) In pools with a water depth of 4 feet (1.22 meters) or greater at the starting end, starting platforms shall be no more than 30 inches (0.762 meter) above the surface of the water.

Starting platforms shall be constructed to be easily removed from the deck when the swimming pool is used for other than competitive purposes.

History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. February 1, 2004; April 1, 1999; January 1, 1996.

15A NCAC 18A .2518 CIRCULATION SYSTEM

- (a) Pools shall be equipped with a circulation system.
- (b) The capacity of the circulation system shall be sufficient to clarify and disinfect the entire volume of swimming pool water four times in 24 hours. The system shall be operated 24 hours per day during the operating season.
- (c) The piping of the circulation system shall be designed and installed so that the main drains, and the lines from the perimeter overflow system or the automatic surface skimmers shall be connected to the suction line of the circulation pump.
- (d) The circulation piping shall be designed and installed with the necessary valves and pipes so that the flow from the swimming pool can be from main drains or the surface overflow system. The circulation piping shall be designed such the flow of water from the swimming pool can be simultaneous from the surface overflow system and the main drains. Skimmer piping shall be sized to handle the maximum flow rate for the required number of skimmers, but in no case less than 50 percent of the design flow rate. Perimeter overflow system piping shall be sized to handle 50 percent of the design flow rate. The main drain piping shall be sized to handle 50 percent of the design flow rate.
- (e) Piping shall be designed to reduce friction losses to a minimum and to carry the required quantity of water at a maximum velocity not to exceed six feet per second for suction piping and not to exceed 10 feet per second for discharge piping except for copper pipe where the velocity shall not exceed eight feet per second. Piping shall be of non-toxic material, resistant to corrosion, and able to withstand operating pressures. If plastic pipe is used, a minimum of Schedule 40 PVC shall be required. Flexible pipe shall not be used except that flexible PVC hoses that meet NSF Standard 50 may be affixed to spa shells where rigid pipes do not provide the necessary angles to connect circulation components. Exposed pipes and valves shall be identified by a color code or labels.
- (f) The circulation system shall include a strainer to prevent hair, lint, and other debris from reaching the pump. A spare basket shall be provided. Strainers shall be corrosion-resistant with openings not more than ¼ inch (6.4 mm) in size that shall provide a free flow area at least four times the cross-section area of pump suction line and shall be accessible for daily cleaning.
- (g) A vacuum cleaning system shall be provided to remove debris and foreign material that settles to the bottom of the swimming pool. Pools with more than two skimmers shall be provided with a vacuum cleaning system that is an integral part of the circulation system. Connections shall be located at intervals sufficient to reach the entire pool with a 50 foot hose. Skimmer vacuums may be used in pools with two or fewer skimmers provided the skimmer basket remains in place while the vacuum is in operation. The vacuum cleaning system shall be provided with valves and protective caps.

(h) A rate-of-flow indicator, reading in liters or gallons per minute, shall be installed on the filtered water line and located so that the rate of circulation is indicated. The indicator shall be capable of measuring flows that are at least 1 ½ times the design flow rate, shall be accurate within 10 per cent of true flow, and shall be easy to read. The indicator shall be installed in accordance with manufacturers' specifications.

(i) A pump or pumps shall be provided with adequate capacity to recirculate the swimming pool water four times in 24 hours, and shall be so located as to eliminate the need for priming. If the pump or pumps, or suction piping is located above the overflow level of the pool, the pump or pumps shall be self-priming. The pump or pumps shall be capable of providing a flow adequate for the backwashing of filters. Unless headloss calculations are provided by the designing engineer, pump design shall be based on an assumed total dynamic head of 65 feet of water. Pumps three horsepower or smaller shall be NSF International (NSF) listed or verified by an independent third-party testing laboratory to meet all applicable provisions of NSF/ANSI Standard 50. Verification shall include testing and in-plant quality control inspections. Larger pumps for which NSF listing is not available shall be approved on a case-by-case basis.

(j) Inlets.

- (1) Inlets shall be provided and arranged to produce a uniform circulation of water and maintain a uniform disinfectant residual throughout the pool.
- (2) The number of inlets for any swimming pool shall be determined based on return water flow. There shall be at least one inlet per 20 gallons per minute of return water flow. There shall be a minimum of four inlets for any swimming pool.
- (3) Inlets shall be located so that no part of the swimming pool is more than 25 feet of horizontal distance from the nearest return inlet.
- (4) Provision shall be made to permit adjustment of the flow through each inlet, either with an adjustable orifice or provided with replaceable orifices to permit adjustments of the flows.

(k) Drains.

- (1) Swimming pools shall be provided with at least two main drain outlets which shall be located at the deepest section of the pool and connected by "T" piping. Connecting piping shall be sized and configured such that blocking any one drain will not result in flow through the remaining drains or pipes exceeding a velocity of six feet per second while handling 50 percent of the design flow rate. The drains shall be capable of permitting the pool to be emptied completely. Drains shall be spaced not more than 30 feet apart, and not more than 15 feet) away from the side walls. There shall be at least 3 feet of clear separation between drain grates or covers.
- (2) Suction outlets to pumps other than the recirculation pump shall be provided with two

drains with "T" connection pipe. This provision does not apply to capped vacuum outlets.

- (3) Outlet drain gratings shall have a total area of at least four times the area of the discharge pipe and shall be designed so as not to be readily removed by or create any hazard to bathers.
- (4) The outlet grate open area shall be such that when maximum flow of water is being pumped through the floor outlet, the velocity through the open grate shall not be greater than one and one-half feet per second. Outlet gratings shall be anchored and openings in gratings shall be slotted and the maximum dimension of slots shall not be more than one-half inch. Where outlet fittings consist of parallel plates, of the anti-vortex type where the water enters the fittings from the sides, rather than through a grating facing upward, entrance velocities may be increased to six feet per second.

(l) **Surface Overflow Systems.**

- (1) Swimming pools shall be provided with a surface overflow system that shall be an integral part of the circulation system and that shall consist of a built-in-place perimeter overflow system, a pre-fabricated perimeter overflow system, or recessed automatic surface skimmers.
- (2) Whenever a built-in-place perimeter overflow system or a pre-fabricated perimeter overflow system is provided, it shall be designed and installed as follows:
 - (A) The system shall be capable of handling 50 percent of the circulation flow without the overflow troughs being flooded;
 - (B) A surge capacity shall be provided either in the system or by use of a surge tank; and the total surge capacity shall be at least equal to one gallon per square foot (41L per square meter) of swimming pool water surface area;
 - (C) The water level of the swimming pool shall be maintained at, or slightly higher than, the level of the overflow rim of the perimeter overflows, except for the time needed to transfer all of the water that may be in the surge capacity back into the swimming pool after a period of use; provided that this transfer time shall not be greater than 20 minutes;
 - (D) When installed the tolerance of the overflow rim shall not exceed 1/4 inch (6.4 mm) as measured between the highest point and the lowest point of the overflow rim;

- (E) During quiescence, the overflow system shall be capable of providing continuously and automatically a skimming action to the water at the surface of the swimming pool;
- (F) The overflow troughs shall be installed completely around the perimeter of the swimming pool, except at steps, recessed ladders and stairs;
- (G) The exposed surfaces of the overflow trough shall be capable of providing a firm and safe hand-hold; and
- (H) The overflow trough shall be cleanable and shall be of such configuration as to minimize accidental injury.

(3) Whenever a recessed automatic surface skimmer or skimmers are installed, they shall be designed and constructed in accordance with Section 8 of NSF Standard #50 for circulation system components for swimming pools, spas, or hot tubs, that is hereby incorporated by reference including any subsequent amendments and editions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from the NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan 48113-0140 at a cost of seventy dollars (\$70.00). Recessed automatic surface skimmers shall be installed as follows:

- (A) The flow-through rate through any one recessed automatic surface skimmer shall be between 20 and 30 gallons per minute. Piping shall be sized to allow a flow of 30 gallons per minute for each skimmer except the maximum pipe size for skimmer piping shall not be required to exceed what is needed to handle 100 percent of the design flow rate for the pool, and;
- (B) There shall be at least one recessed automatic surface skimmer for each 400 square feet of water surface area of the swimming pool or fraction thereof, and;
- (C) When two or more recessed automatic surface skimmers are required, they shall be so located as to minimize interference with each other and as to insure proper and complete skimming of the entire swimming pools water surface, and;
- (D) Skimmers shall not protrude into the swimming pool. Automatic surface

skimmer or skimmers without a perimeter overflow system, shall be installed so that the operating level of the pool is no more than nine inches below the finished deck level so that the deck can be used as a handhold.

(m) Where flooded suction on the pump is not possible to prevent cavitation and loss of prime, skimmers shall have a device or other protection to prevent air entrainment in the suction line. The inlet to the equalizer line shall be provided with a grate.

(n) Nothing in this Section shall preclude the use of a roll-out or deck-level type of swimming pool. Such designs shall conform to the general provisions relating to surface overflow systems.

(o) Nothing in this Section shall preclude the use of a surface overflow system that combines both a perimeter overflow system and a recessed automatic surface skimmer or skimmers.

History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. February 1, 2004; April 1, 1999; January 1, 1996; July 1, 1992.

15A NCAC 18A .2522 DECKS

(a) Outdoor swimming pools shall have a continuous deck extending completely around the swimming pool. The width of the deck or walkway shall provide at least six feet of clear walking space at all points. If the swimming area of the pool is 1600 square feet or larger, at least eight feet of clear walking space is required.

(b) Indoor swimming pools shall have a continuous deck or walkway extending completely around the swimming pool. The width of the deck shall provide at least five feet of clear walking space at all points. Structures covering swimming pools, including temporary domes, shall be constructed to maintain a vertical clearance of at least seven feet from all parts of the required clear walk space.

(c) Wading pools shall have a continuous deck extending completely around the wading pool. The width of the deck or walkway shall provide at least four feet of clear walking space at all points.

(d) Spas shall have a continuous deck extending at least one-half way around the spa. The width of the deck or walkway shall provide at least four feet of clear walking space at all points.

(e) There shall be at least five feet of clear walking space around any diving board, handrail, slide or other permanent structure installed on a swimming pool deck.

(f) All deck areas and walkways shall be sloped at a grade of one-fourth inch to one-half inch per foot to a deck drain or sheet drain to deck edge. Deck drains shall not be connected to the circulation system in any manner.

(g) All decks and walkways shall have a slip-resistant, impervious surface.

(h) Sufficient hose bibs shall be provided to allow all areas of the deck to be reached with a 100 foot hose.

(i) Special purpose pools such as waterslides and wave pools may vary from the minimum deck area requirements to the extent necessary to accommodate the special features of the pool.

(j) Structures necessary to provide access to a public swimming pool by persons with disabilities shall be allowed to vary from the provisions of this Section to the extent necessary to accommodate such access. Such structures shall be approved on a case-by-case basis and shall be designed so as to minimize obstruction of the deck.

(k) For all swimming pools constructed after April 1, 2000 decks shall be continuous with the top of the pool wall or gutter and shall not be more than nine inches above the standard operating water level.

History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. February 1, 2004; April 1, 1999; January 1, 1996; July 1, 1992.

15A NCAC 18A .2523 DEPTH MARKINGS AND SAFETY ROPES

(a) On swimming pools, the depth of the water shall be marked at or above, the water surface on the vertical wall of the swimming pool where possible, and on the edge of the deck next to the swimming pool. Where depth markers cannot be placed on the vertical walls at or above the water level, other means shall be used; provided said markings shall be visible to persons in the swimming pool. Depth markers shall be placed at the following locations:

- (1) at the points of maximum and minimum depths;
- (2) at the transition point where the slope of the bottom changes from the uniform slope of the shallow area;
- (3) if the pool is designed for diving, at appropriate points as to denote the water depths in the diving area;
- (4) at both ends of the pool.

(b) Depth markers shall be so spaced that the distance between adjacent markers is not greater than 25 feet (7.5 m) when measured peripherally.

(c) Depth markers shall be in Arabic numerals at least four inches (10 cm) high and of a color contrasting with the background. Depth markings shall indicate the depth of the pool in feet of water and shall include the word "feet" or symbol "ft" to indicate the unit of measurement. Depth markings installed in pool decks shall provide a slip resistant walking surface.

(d) No Diving markers shall be provided on the pool deck adjacent to all areas of the pool less than five feet deep. No Diving markers shall consist of the words "No Diving" in letters at least four inches high and of a color contrasting with the background or at least a six-by-six inch international symbol for no diving in red and black on a white background. The distance between adjacent markers shall not be more than 25 feet. Posting of No Diving markers shall not preclude shallow diving for racing starts and supervised practice.

(e) A minimum of 3/4 inch diameter safety rope shall be provided at the breakpoint where the slope of the bottom changes to exceed a 1 to 10 vertical rise to horizontal distance at a water depth of five feet (1.5 m) or less. The position of the rope shall be marked with colored floats at not greater than a five-foot spacing and a 2 inch wide contrasting color band across the pool bottom.

*History Note: Authority G.S. 130A-282;
Eff. May 1, 1991;
Amended Eff. February 1, 2004; January 1, 1996; July 1, 1992.*

15A NCAC 18A .2524 LIGHTING AND VENTILATION

- (a) Artificial lighting shall be provided at all indoor and outdoor pools that are to be used at night, or when natural lighting is insufficient to provide clear visibility in the pool area.
- (b) Lighting fixtures shall be of such number and design as to illuminate all parts of the pool, the water, the depth markers, signs, entrances, restrooms, safety equipment and the required deck area and walkways.
- (c) Fixtures shall be installed so as not to create hazards such as burning, electrical shock, mechanical injury, or temporary blinding by glare to the bathers, and so that lifeguards, when provided, can clearly see every part of the pool area without being blinded by glare. The illumination shall be sufficient so that the floor of the pool can be seen at all times the pool is in use.
- (d) If underwater lighting is used, it shall provide at least 0.5 watts or 8.35 lumens per square foot of water surface.
- (e) If underwater lighting is used, area lighting shall provide at least 0.6 watts or 10 lumens per square foot of required deck area. Where underwater lighting is not used, and night swimming is permitted, area and pool lighting combined shall provide not less than 2.0 watts or 33.5 lumens per square foot of pool and required deck area.
- (f) Mechanical ventilation shall be required for all indoor pools.

*History Note: Authority G.S. 130A-282;
Eff. May 1, 1991;
Amended Eff. February 1, 2004; January 1, 1996; July 1, 1992.*

15A NCAC 18A .2526 DRESSING AND SANITARY FACILITIES

- (a) Dressing and sanitary facilities shall be provided at all pools, except for pools at hotels, motels, condominiums, and apartments where pool use is restricted to residents or guests. At hotels, motels, condominiums and apartments where the farthest unit is more than 300 feet from the pool, as measured along walkways provided for access by residents or guests to the pool area, a toilet and lavatory shall be provided. All public swimming pools shall post a sign visible upon entering the pool enclosure directing pool users to shower before entering the pool.
- (b) Partitions shall be of material, not subject to damage by water and shall be designed so that a waterway is provided between partitions and floor to permit thorough cleaning of the walls and floor areas with hoses and brooms.
- (c) Dressing facility floors shall be continuous throughout the areas. Floors shall have a slip-resistant surface that shall be smooth, to insure complete cleaning. Floor drains shall be provided, and floors shall be sloped not less than ¼ inch per foot toward the drains to insure positive drainage.
- (d) Hose bibs shall be provided such that all parts of the dressing facility interior can be reached with a 50 foot hose.
- (e) The minimum number of fixtures required in dressing and sanitary facilities shall be based upon the maximum bather load.

- (f) One water closet, one lavatory, and one urinal shall be provided for the first 100 male users. One additional water closet, lavatory, and urinal shall be provided for each additional 200 male users up to a total of 500 users. Where user load exceeds 500 male users, two additional water closets or urinals and one lavatory shall be provided for each additional 250 male users. Where the maximum bather load includes less than 50 male users, one water closet and one lavatory will be sufficient.
- (g) Two water closets and two lavatories shall be provided for the first 100 female users. One additional water closet and lavatory shall be provided for each additional 100 female users up to a total of 500 users. Where user load exceeds 500 female users, two additional water closets and one lavatory shall be provided for each additional 250 female users. Where the maximum bather load includes less than 50 female users, one water closet and one lavatory will be sufficient.
- (h) Showers shall be provided in the proportion of one for each 200 persons at the time of maximum bather load.
- (i) The water heater shall be inaccessible to users. The system shall be designed such that water temperature at the shower heads and lavatories cannot exceed 128° Fahrenheit.
- (j) Soap dispensers with either liquid or powdered soap shall be provided at each lavatory or required shower. The dispenser shall be of all metal or plastic type, with no glass permitted in these units.
- (k) If mirrors are provided, they shall be of shatterproof materials.
- (l) Toilet paper holders with toilet paper shall be provided at each water closet.
- (m) Dressing and sanitary facilities shall be kept clean and in good repair.

*History Note: Authority G.S. 130A-282;
Eff. May 1, 1991;
Amended Eff. February 1, 2004; April 1, 1999; January 1, 1996;
July 1, 1992.*

15A NCAC 18A .2528 FENCES

Swimming pools shall be protected by a fence, wall, building, or other enclosure, or any combination thereof, which completely encloses the swimming pool area such that all of the following conditions are met:

- (1) Constructed so as to afford no external handholds or footholds. However, the use of wire mesh fences with a mesh size of 2 ¼ inches or less is permitted;
- (2) A four foot (1.22 m) minimum height (from the outside approach) is provided entirely around the swimming pool;
- (3) The horizontal space between vertical members of the enclosure shall not exceed four inches; where the horizontal space between vertical members exceeds 1 ¾ inches there shall be at least 30 inches between any horizontal bottom rails or stringers and the next horizontal rails or stringers;
- (4) The height of any opening under the bottom of the enclosure shall not exceed four inches (10 cm);

- (5) Openings under and through a fringe or barrier with the gate(s) closed shall be sized so that a 4 inch diameter sphere cannot be passed through the openings;
- (6) All gates and doors shall be equipped with self-closing and positive self-latching closure mechanisms and shall be equipped with locking devices. Gates provided to allow bathers access to the pool shall be located so as to open to the pool at a point where the water is no greater than five feet deep. On pools built after May 1, 1996, access gates shall open away from the pool except when natural topography or other conditions dictate that it open inward. Release of the latch on the self-latching device shall be activated:
 - (a) at a height no less than 54 inches above grade; or
 - (b) on the pool side of the gate at a distance of no less than three inches below the top of the gate provided. On fences constructed after April 1, 2000 there shall be no opening greater than one-half inch within 18 inches of where the latch release is activated when the gate is closed; or
 - (c) by a card reader, key, or combination lock.
- (7) Gates provided specifically for access to equipment rooms shall be locked at all times when not in use by the pool operator;
- (8) Ground level doors and windows opening inside the pool enclosure must be self-closing or child protected by means of a barrier or audible alarm; and
- (9) Self-closing, self-latching gates are not required for gates that are kept locked, or for entrances where access is controlled by a gate attendant and a lifeguard is on duty in the pool area.
 - (b) Two units of lifesaving equipment must be provided for any pool that exceeds 3,000 square feet (186 sq m) of total surface area.
 - (c) When a swimming pool does not have at least one lifeguard on duty, a sign shall be posted with legible letters of at least four inches (10 cm) in height stating: "WARNING-NO LIFEGUARD ON DUTY." In addition there shall be signs legible from all bather entrances with a minimum letter size of one inch stating: "CHILDREN SHOULD NOT USE THE SWIMMING POOL WITHOUT ADULT SUPERVISION", and: "ADULTS SHOULD NOT SWIM ALONE". Wading pools that do not have a lifeguard inside the wading pool enclosure shall have a sign posted stating "WARNING NO LIFEGUARD ON DUTY". Such signs shall be mounted permanently.
 - (d) A sign prohibiting pets and glass containers in the pool area shall be provided.
 - (e) Pool closed signs shall be provided and shall be posted at bather entrances whenever an operation permit is suspended for water quality or safety violations.
 - (f) A telephone capable of directly dialing 911 or other emergency notification system shall be provided and accessible to all pool users. Effective April 1, 2005 the telephone shall be permanently affixed to a location inside the pool enclosure or outside the enclosure within 75 feet of a bather entrance. The telephone shall be visible from within the pool enclosure or a sign shall be posted indicating the location of the emergency telephone. A sign with legible letters shall be posted at the telephone providing dialing instructions, address of the pool location and the telephone number. Where the telephone does not directly access 911, the emergency notification system shall:
 - (1) Provide 24 hour monitoring of all incoming calls by a telecommunicator who answers only emergency calls;
 - (2) Be capable of routing calls to the local 911 telecommunicator via the 911 dedicated emergency trunk line; and
 - (3) Electronically transfer Automatic Number Identification and Automatic Locator Identification for the emergency telephone at the pool to the Enhanced 911 system for all calls routed to 911.

History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. February 1, 2004; April 1, 1999; January 1, 1996; July 1, 1992.

15A NCAC 18A .2530 SAFETY PROVISIONS

- (a) Swimming pools shall have lifesaving equipment conspicuously and conveniently on hand at all times. A unit of lifesaving equipment shall include the following:
 - (1) A pole not less than 12 feet long, with a body hook securely attached. The pole attached to the body hook shall be non-telescoping, non-adjustable and non-collapsible.
 - (2) A minimum ¼ inch diameter throwing rope as long as one and one-half times the maximum width of the pool or 50 feet, whichever is less, attached to a U.S. Coast Guard approved ring buoy. A rescue tube or rescue can shall be accepted as a substitute for the ring buoy

History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. February 1, 2004; April 1, 1999; January 1, 1996; July 1, 1992.

15A NCAC 18A .2531 WADING POOLS

- (a) Wading pools shall meet all design specifications for swimming pools and wading pools included in Rules .2512-.2530 of this Section with the following exceptions:
 - (1) Wading pools shall be physically separate from other public swimming pools except that a fill pipe and valve from a swimming pool recirculation system can be used to introduce water to a wading pool.
 - (2) Every wading pool shall be equipped with a circulation system that is separate from, and

independent of, the circulation system of the swimming pool. Such circulation system shall at least consist of a circulating pump, piping, a filter, a rate-of-flow meter, a disinfectant feeder, two inlets, two main drains with "T" connecting piping, and one automatic surface skimmer. Individual components of a wading pool system must meet the criteria of Rule .2518 of this Section.

- (3) The capacity of the circulation system shall be capable of filtering and disinfecting the entire volume of water in the wading pool 12 times in every 24 hours.
 - (4) Wading pools shall be equipped with main drains located at the deepest point of the wading pool and covered by gratings that meet the requirements of Rule .2518(k) of this Section.
 - (5) Wading pools shall be equipped with a surface overflow system capable of removing floating material.
 - (6) Wading pools shall be no deeper than 24 inches (61 cm) at the deepest point.
 - (7) Wading pools' floor slope shall not exceed one foot in 12 feet.
 - (8) Wading pools shall be located in the vicinity of the shallow end of the swimming pool, and shall be separated from the swimming pool by a fence or structure similar to that described in Rule .2528 of this Section, that shall be equipped with self-closing and positive self-latching closure mechanisms, and shall be equipped with permanent locking devices. Wading pool entrance gates located inside another public swimming pool enclosure shall open away from the deeper pool. Wading pool fences constructed after April 1, 2000 shall be at least four feet high.
 - (9) Wading pools shall be designed to provide at least 10 square feet per child.
 - (10) Depth markers are not required at wading pools.
 - (11) The free chlorine residual in wading pools shall be maintained at no less than two parts per million.
 - (12) Wading pools are not required to provide the lifesaving equipment described in Rule .2530(a) of this Section.
- (b) Children's activity pools shall be constructed and operated in accordance with the rules of this section including the requirements for wading pools with the following exceptions:
- (1) The filter circulation system shall be separate from any feature pump circulation system.
 - (2) The filter circulation system for stand-alone children's activity pools shall filter and return the entire water capacity in no more than one hour and shall operate 24 hours a day.
 - (3) The disinfectant residual in children's activity pools shall be maintained at a level of at least two parts per million of free chlorine measured

in the pool water and at least one part per million in all water features.

- (4) Valves shall be provided to control water flow to the features in accordance with the manufacturers' specifications.
- (5) Children's activity pools built prior to February 1, 2004 that do not comply with these design and construction requirements shall be permitted to operate as built if no water quality or safety violations occur.

History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. February 1, 2004; April 1, 1999; January 1, 1996.

15A NCAC 18A .2532 SPAS AND HOT TUBS

Spas and hot tubs shall meet all design specifications for swimming pools and wading pools included in Rules .2512-.2530 of this Section with the following exceptions:

- (1) The circulation system equipment shall provide a turnover rate for the entire water capacity at least once every 30 minutes.
- (2) The arrangement of water inlets and outlets shall produce a uniform circulation of water so as to maintain a uniform disinfectant residual throughout the spa.
- (3) A minimum of two inlets shall be provided with inlets added as necessary to maintain required flowrate.
- (4) Water outlets shall be designed so that each pumping system in the spa (filter systems or booster systems if so equipped) provides the following:
 - (a) Two drains connected by "T" piping. Connecting piping shall be of the same diameter as the main drain outlet. Filter system drains shall be capable of emptying the spa completely. In spas constructed after April 1, 2000 drains shall be installed at least three feet apart or located on two different planes of the pool structure.
 - (b) Filtration systems shall provide at least one surface skimmer per 100 square feet, or fraction thereof of surface area.
- (5) The water velocity in spa or hot tub discharge piping shall not exceed 10 feet per second (3.05 m/second); except for copper pipe where water velocity shall not exceed eight feet per second (2.44 m/second). Suction water velocity in any piping shall not exceed six feet per second (1.83 m/second).
- (6) Spa recirculation systems shall be separate from companion swimming pools.
 - (a) Where a two-pump system is used, one pump shall provide the required turnover rate, filtration and disinfection for the spa water. The

- other pump shall provide water or air for hydrotherapy turbulence without interfering with the operation of the recirculation system. The timer switch shall activate only the hydrotherapy pump.
- (b) Where a single two-speed pump is used, the pump shall be designed and installed to provide the required turnover rate for filtration and disinfection of the spa water at all times without exceeding the maximum filtration rates specified in Rule .2519 of this Section. The timer switch shall activate only the hydrotherapy portion of the pump.
- (c) Where a single one-speed pump is used, a timer switch shall not be provided.
- (7) A timer switch shall be provided for the hydrotherapy turbulence system with a maximum of 15 minutes on the timer. The switch shall be placed such that bathers must leave the spa to reach the switch.
- (8) The maximum operational water depth shall be four feet (1.22 m) measured from the water line.
- (9) The maximum depth of any seat or sitting bench shall be two feet (61 cm) measured from the waterline.
- (10) A minimum height between the top of the spa/hot tub rim and the ceiling shall be 7 ½ feet.
- (11) Depth markers are not required at spas.
- (12) Steps, step-seats, ladders or recessed treads shall be provided where spa and hot tub depths are greater than 24 inches (61 cm).
- (13) Contrasting color bands or lines shall be used to indicate the leading edge of step treads, seats, and benches.
- (14) A spa or hot tub shall be equipped with at least one handrail (or ladder equivalent) for each 50 feet (15.2 m) of perimeter, or portion thereof, to designate points of entry and exit.
- (15) Where water temperature exceeds 90° Fahrenheit (32° C), a caution sign shall be mounted adjacent to the entrance to the spa or hot tub. It shall contain the following warnings in letters at least 2 inch in height:
- (a) CAUTION:
- (b) -Pregnant women; elderly persons, and persons suffering from heart disease, diabetes, or high or low blood pressure should not enter the spa/hot tub without prior medical consultation and permission from their doctor;
- (c) -Do not use the spa/hot tub while under the influence of alcohol, tranquilizers, or other drugs that

- cause drowsiness or that raise or lower blood pressure;
- (d) -Do not use alone;
- (e) -Unsupervised use by children is prohibited;
- (f) -Enter and exit slowly;
- (g) -Observe reasonable time limits (that is, 10-15 minutes), then leave the water and cool down before returning for another brief stay;
- (h) -Long exposure may result in nausea, dizziness, or fainting;
- (i) -Keep all breakable objects out of the area.
- (16) A sign shall also be posted requiring a shower for each user prior to entering the spa or hot tub and prohibiting oils, body lotion, and minerals in the water.
- (17) Spas shall not be required to provide the lifesaving equipment described in Rule .2530(a) of this Section.

History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. February 1, 2004; April 1, 1999; January 1, 1996; July 1, 1992.

15A NCAC 18A .2533 EQUIPMENT ROOM

- (a) All pumps, chemical feeding apparatus and other mechanical and electrical equipment shall be enclosed in a weatherproof structure with a minimum ceiling height of seven feet. The equipment room shall be provided with a door with a permanent lock that must be kept locked when not in use by the pool operator. Filters located outside the equipment room shall be completely enclosed by a fence.
- (b) Lighting to allow the operator to read all gauges and control devices shall be provided.
- (c) Valves and control devices shall be accessible and visible to the pool operator. At least three feet of clear walkway shall be provided to allow access to equipment.
- (d) Drainage in and around the equipment room shall preclude the possibility of water entering or accumulating on any interior surface of the enclosure. Equipment room floors shall be sloped not less than ¼ inch per foot toward the drains.
- (e) Natural cross draft or continuous forced ventilation is required.
- (f) A permanent means of access shall be provided to all equipment rooms.
- (g) A hose bib with an approved backflow prevention device shall be provided within 50 feet of the equipment room.

History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. February 1, 2004; January 1, 1996.

15A NCAC 18A .2534 CHEMICAL STORAGE ROOM

A separate chemical storage room that meets the following criteria shall be provided:

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| <p>(1) The chemical storage room shall be in a dry, weatherproof structure with a minimum ceiling height of seven feet.</p> <p>(2) For public swimming pools built after May 1, 1996, chemical storage space shall be provided based on a minimum of five square feet for the first 10,000 gallons of pool water plus one additional square foot for each additional 3,000 gallons or portion thereof up to a total area of 100 square feet. Public swimming pools constructed after April 1, 2004 shall provide a separate room for storage of pool chemicals.</p> <p>(3) Natural cross draft or continuous forced ventilation is required.</p> <p>(4) Provision shall be made for dry storage of all pool chemicals in waterproof containers or above the floor on shelves, pallets or dollies.</p> <p>(5) The chemical storage room shall be arranged so that chemicals which can react with other pool chemicals are stored separately and shall be constructed and arranged to permit easy cleanup of chemical spills.</p> <p>(6) Lighting shall be provided in chemical storage rooms.</p> | <p>level of one part per million in the same body of water.</p> <p>(4) When chlorine is used as the disinfectant, a free chlorine residual of at least one part per million (ppm) shall be maintained throughout the pool whenever it is open or in use. Pools that use chlorine as the disinfectant must be stabilized with cyanuric acid except at indoor pools or where it can be shown that cyanuric acid is not necessary to maintain a stable free chlorine residual. The cyanuric acid level shall not exceed 100 parts per million.</p> <p>(5) When bromine or compounds of bromine are used as the disinfectant, a free bromine residual of at least two parts per million, shall be maintained throughout the pool whenever it is open or in use.</p> <p>(6) When chlorine or bromine are used as the disinfectant, automatic chemical feeders shall be used. Automatic chlorine or bromine feeders shall be manufactured and installed in accordance with NSF/ANSI Standard number 50 that is incorporated by reference including any subsequent amendments and additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from NSF International, 3475 Plymouth Road, PO Box 130140, Ann Arbor, Michigan 48311-0140 at a cost of seventy dollars (\$70.00). Automatic chlorine and bromine feeder pumps shall be automatically prevented from operating when the circulation pump is not in operation.</p> |
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History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. February 1, 2004; January 1, 1996.

15A NCAC 18A .2535 WATER QUALITY STANDARDS

Whenever a public swimming pool is open for use, water quality shall be maintained in accordance with the following:

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| <p>(1) The chemical quality of the water shall be maintained in an alkaline condition at all times with the pH between 7.2 and 7.8.</p> <p>(2) The clarity of the water shall be maintained such that the main drain grate is visible from the pool deck at all times.</p> <p>(3) Disinfection shall be provided in accordance with manufacturers' instructions for all pools by a chemical or other process that meets the criteria listed as follows:</p> <p>(a) registered with the U.S. Environmental Protection Agency for pool water or potable water;</p> <p>(b) provides a residual effect in the pool water that can be measured by portable field test equipment;</p> <p>(c) will not impart any immediate or cumulative adverse physiological effects to pool bathers when used as directed;</p> <p>(d) will not produce any safety hazard when stored or used as directed;</p> <p>(e) will not damage pool components or equipment;</p> <p>(f) will demonstrate reduction of total coliform and fecal coliform to a level at least equivalent to free chlorine at a</p> | <p>(7) When biguanide is used as the disinfectant, a residual of 30 to 50 parts per million shall be maintained throughout the pool whenever it is open or in use.</p> <p>(8) When silver/copper ion systems are used, the copper concentration in the pool water shall not exceed one part per million and a chlorine residual must be maintained in accordance with Item (4) of this Rule.</p> <p>(9) The use of chlorine in its elemental (gaseous) form for disinfection of public swimming pools is prohibited.</p> <p>(10) Test kits or equipment capable of measuring disinfectant level, pH, and total alkalinity must be maintained at all public swimming pools. Pools using cyanuric acid and or chlorinated isocyanurates must have a test kit capable of measuring cyanuric acid levels.</p> <p>(11) The pool operator shall inspect the pool at least daily and maintain written records of the operating conditions of each pool. Records shall be maintained at the pool site for a period of not less than six months. Records shall include the following:</p> |
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| <ul style="list-style-type: none"> (a) daily recording of the disinfectant residual in the pool; (b) daily recording of pool water pH; (c) daily recording of water temperature in heated pools; recording of activities pertaining to pool water maintenance including chemical additions and filter backwash cycles; and (d) weekly recording of total alkalinity and cyanuric acid levels. <p>(12) Water temperature in heated swimming pools shall not exceed 90° Fahrenheit (32°C) and in heated spas shall not exceed 104° Fahrenheit (40°C).</p> <p>(13) The pool operator shall take the following steps to manage fecal and vomitus accidents:</p> <ul style="list-style-type: none"> (a) Direct everyone to leave all pools into which water containing the feces or vomit is circulated and do not allow anyone to enter the pool(s) until decontamination is completed; (b) Remove as much of the feces or vomit as possible using a net or scoop and dispose of it in a sewage treatment and disposal system; (c) Raise the free available chlorine concentration to 2 ppm at a pH of 7.2 to 7.5 and test to assure the chlorine concentration is thoroughly mixed throughout the pool; (d) For accidents involving formed stools, or vomit maintain the free available chlorine concentration at 2 ppm for at least 25 minutes or at 3 ppm for at least 19 minutes before reopening the pool. For accidents involving liquid stools increase the free chlorine residual and closure time to reach a CT inactivation value of 9600 then backwash the pool filter before reopening the pool. CT refers to concentration (C) of free available chlorine in parts per million multiplied by time (T) in minutes. | <ul style="list-style-type: none"> (1) All safety provisions of Rule .2530 of this Section shall be met. (2) Decks shall be structurally sound and shall be maintained free of trip hazards or offsets greater than one-half inch resulting from deterioration or changes from the original deck profile. (3) There shall be no loose coping. (4) Artificial lighting shall be provided for all pools used when natural lighting is not sufficient to make all parts of the pool and pool area clearly visible. (5) Swimming pools shall be protected by a fence, wall, building, or other enclosure, or any combination thereof, that completely encloses the swimming pool area. All gates and doors shall be equipped with self-closing and positive self-latching closure mechanisms. Existing waterslide flumes and other appurtenances are not required to be located inside the fence. (6) Depth and safety markings shall be provided as required in Rule .2523 of this Section (7) Drain covers shall be in good condition and securely attached. (8) Damaged face plates or fittings shall be repaired or replaced. (9) Underwater light niches shall be maintained or covered so as not to present a potential hazard to bathers. (10) Diving equipment and pool slides including stairs and railing shall be maintained in good working order. (11) A timer switch that allows no more than 15 minutes of operation without manual resetting shall be used to control air blowers and hydrotherapy pumps on heated spas. (12) All breaks in grade of the pool bottom including the leading edges of stair treads and seats and the tops of breakpoints where the slope of the bottom changes at a depth of five feet (15m) or less shall be marked with a contrasting color band by May 1, 2000. Contrasting color bands are not required where a registered engineer, registered architect or licensed swimming pool contractor certifies in writing that structural weakness or materials of construction prevent the installation of permanent markings. (13) All heated spas shall post a caution sign as specified in Rule .2532 of this Section. (14) Pool maintenance shall include removal of debris from the water surface and bottom of the pool. (15) All pool chemicals shall be stored in a clean, dry, well ventilated area and shall be organized so as to prevent chemicals from reacting. (16) No submersible pumps or mechanical pool cleaning equipment shall be placed or used in the pool while bathers are in the pool. |
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History Note: Authority G.S. 130A-282; Eff. May 1, 1991; Amended Eff. February 1, 2004; April 1, 1999; January 1, 1996; July 1, 1992.

15A NCAC 18A .2537 MAINTENANCE AND OPERATION

- (a) All public swimming pools constructed or remodeled on or after May 1, 1991 shall be maintained and operated in accordance with the Rules of this Section.
- (b) On or after May 1, 1993 all public swimming pools including those constructed prior to May 1, 1991 shall be maintained and operated in accordance with the following:

(c) The owner of a public swimming pool shall provide for the operation of the pool by a person or persons who shall be responsible to the owner for operation, maintenance, pool safety and record keeping. The pool owner shall maintain documentation that the person responsible for operating the pool has been trained on pool equipment operation, disease and injury prevention, pool water chemistry and regulatory requirements for public swimming pools. A pool and spa operator certificate issued by the National Swimming Pool Foundation or other organization that provides training on those subjects shall be accepted as meeting this requirement.

History Note: Authority G.S. 130A-282; Eff. July 1, 1992;

Temporary Amendment Eff. May 11, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

The Codifier of Rules determined that the agency's findings of need did not meet the criteria listed in GS 150B-21.1(a); Temporary Amendment Eff. May 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. February 1, 2004; April 1, 1999; January 1, 1996; October 1, 1993; May 1, 1993.

15A NCAC 18A .2539 SUCTION HAZARD REDUCTION

(a) At all public wading pools that use a single main drain for circulation of water, signs shall be posted stating: "WARNING To prevent serious injury do not allow children in wading pool if drain cover is broken or missing". Signs shall be in letters at least one-half inch in height and shall be posted where they are visible to people entering the wading pool.

(b) No public swimming pool shall operate with a single outlet to any pump. Where flow from a single drain is balanced with flow from a surface skimmer, the skimmer valve shall be kept in the open position and immobilized with a lock, tie or other method to secure against tampering. Effective April 1, 2006 all public swimming pools with a single main drain shall be protected from potential bather entrapment by a safety vacuum release system installed on the drain piping and single drains smaller than 12 inches in diameter shall be protected by an anti-entrapment drain cover meeting AMSE/ANSI A112.19.8M Standard that is incorporated by reference including any subsequent amendments and additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Copies may be obtained from Global Engineering Documents, 15 Inverness Way East, Englewood, CO 80112 at a cost of forty-one dollars (\$41.00).

(c) Operators of all public wading pools shall inspect pools daily to ensure the drain covers are in good condition and securely attached.

History Note: Authority G.S. 130A-282;

Temporary Adoption Eff. June 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. October 1, 1994;

Amended Eff. February 1, 2004; April 1, 1999.

15A NCAC 18A .2542 IN POOL EXERCISE EQUIPMENT

(a) Exercise equipment such as steps, weights, or floats used in a public swimming pool shall be designed and constructed so as not to pose a threat to water quality or bather safety and shall be removed from the pool after each use.

(b) Where in-pool exercise equipment such as underwater treadmills remain in a swimming pool when not in use, the following conditions shall be met:

- (1) The swimming pool shall be restricted to use only by adults or a lifeguard shall be on duty at all times when children are allowed in the pool.
- (2) Exercise equipment shall meet Underwriters' Laboratories Standard Number 1647 for exercise equipment as verified in writing by an independent third party testing laboratory.
- (3) The position of underwater equipment shall be marked with colored floats attached by a 3/4 inch diameter rope or other movable barrier that surrounds the equipment with a visible perimeter designed so as not to entangle or otherwise threaten bather safety.
- (4) Equipment shall be verified by the manufacturer to be designed for use in a public swimming pool and to be free of grease or oil that might negatively impact pool water quality.
- (5) Any cords or hoses attached to underwater exercise equipment shall not pose a threat of bather entanglement. Cords or hoses which cross a pool deck shall be covered or shielded to prevent tripping. Covers that protrude more than one-half inch from the deck surface shall be sloped at an angle of no more than 30° from the horizontal deck surface.

History Note: Authority G.S. 130A-282; Eff. January 1, 1996;

Amended Eff. February 1, 2004.

15A NCAC 18A .2620 STORAGE AND HANDLING OF UTENSILS AND EQUIPMENT

(a) After bactericidal treatment, utensils shall be air-dried and stored above the floor in a clean place. Wherever practicable, containers and utensils shall be covered or inverted or stored in tight, clean cabinets; and glasses and cups shall be stored inverted. It shall not be considered practicable to invert plates and bowls which slide when inverted or to cover plates and bowls positioned for immediate use during business hours. Utensils used in restaurants or food service establishments and equipment shall be handled in such a manner as to prevent contamination, and employees shall avoid handling clean surfaces that will come in contact with customers' mouths.

(b) Drain racks, trays, and shelves shall not be made of corrodible material, and shall be kept clean. These items are not required to be made of plastic.

(c) Spoons, spatulas, dippers, and other in-use utensils shall be stored between use in the food product with the handles extending out of the food, stored dry on a clean surface or in a container of water if the water is maintained at a temperature of at least 140F.

(d) When utensils are used to dispense frozen products or moist foods, the utensils may be stored in running water dipper wells only when the water has sufficient velocity to flush food residues into the overflow drain.

(e) Single-service utensils shall be purchased only in sanitary containers, shall be stored therein in a clean, dry place until used, and shall be handled in a manner to prevent contamination of the utensils by hands. Single-service cup dispensers or similar devices shall be used when single-service cups are used. Nothing in the rules in this Section shall prohibit the use of plastic bags in which single-service cups or similar devices are received as the dispenser for those items.

History Note: Authority G.S. 130A-248; Eff. May 5, 1980; Amended Eff. February 1, 2004; August 1, 1998.

15A NCAC 18A .3401 DEFINITIONS

The following definitions shall apply throughout Section 18A .3400 of this Subchapter:

- (1) "Enterococcus" means a gram positive coccoid-shaped bacteria that is found in the intestinal tracts of warm-blooded animals that include *Enterococcus faecalis*, *Enterococcus faecium*, *Enterococcus avium*, and *Enterococcus gallinarium*.
- (2) "Geometric mean" means the mean of "n" positive numbers obtained by taking the "n"th root of the product of the numbers with at least five samples collected within a 30 day period.
- (3) "Point source discharge" means the discharge of liquids through a pipe, drain, ditch or other conveyance into a swimming area.
- (4) "Primary contact" means an activity in water in which a person's head is partially or completely submerged.
- (5) "Storm water discharge" means any natural or manmade conveyance of rainwater or the resultant runoff into recreational waters.
- (6) "Swimming advisory" means a notification to the public that recommends no primary contact with the water in a specific area for public health reasons but does not close a swimming area to the public. A swimming advisory shall include a sign posted at the site of the advisory and a press release to notify the public of the risks of swimming in the area.
- (7) "Swimming alert" means a notification to the public by media contact including a press release to warn the public of risks of swimming in an area that exceeds bacteriological swimming area levels.
- (8) "Swimming area" means a coastal recreation area that is used for primary contact located

within waters classified by the Division of Water Quality as SA, SB, or SC.

- (9) "Swimming season" means from April 1 through October 31 of each year.
- (10) "Tier I swimming area" means a swimming area used daily during the swimming season, including any public access swimming area and any other swimming area where people use the water for primary contact, including all oceanfront beaches.
- (11) "Tier II swimming area" means a swimming area used an average of three days a week during the swimming season.
- (12) "Tier III swimming area" means a swimming area used an average of four days a month during the swimming season.
- (13) "Winter season" means from November 1 through March 31 of each year.

History Note: Authority G.S. 130A-233.1; Eff. February 1, 2004.

15A NCAC 18A .3402 BACTERIOLOGICAL LIMITS FOR SWIMMING AREAS

- (a) The enterococcus level in a Tier I swimming area shall not exceed either:
 - (1) A geometric mean of 35 enterococci per 100 milliliter of water, that includes a minimum of at least five samples collected within 30 days; or
 - (2) A single sample of 104 enterococci per 100 milliliter of water.
- (b) The enterococcus level in a Tier II swimming area shall not exceed a single sample of 276 enterococci per 100 milliliter of water.
- (c) The enterococcus level in a Tier III swimming area shall not exceed two consecutive samples of 500 enterococci per 100 milliliter of water.

History Note: Authority G.S. 130A-233.1; Eff. February 1, 2004.

15A NCAC 18A .3403 PUBLIC NOTICE OF INCREASED HEALTH RISKS IN SWIMMING AREAS

- (a) Tier I Swimming areas:
 - (1) A swimming advisory shall be issued by the Division when samples of water from a swimming area exceeds a geometric mean of 35 enterococci per 100 milliliter during the swimming season.
 - (2) A swimming alert shall be issued by the Division when a single sample of water from a swimming area exceeds 104 enterococci per 100 milliliter and does not exceed 500 enterococci per 100 milliliter during the swimming season.
 - (3) A swimming advisory shall be issued by the Division when a sample of water from a swimming area exceeds a single sample of 500

enterococci per 100 milliliter during the swimming season.

- (4) A swimming advisory shall be issued by the Division when at least two of three concurrent water samples collected at a swimming area exceeds 104 enterococci per 100 milliliter during the swimming season.

(b) Tier II swimming areas:

- (1) A swimming alert shall be issued by the Division when a single sample of water from a swimming area exceeds 276 enterococci per 100 milliliter and does not exceed 500 enterococci per 100 milliliter during the swimming season.

- (2) A swimming advisory shall be issued by the Division when a single sample of water from a swimming area exceeds 500 enterococci per 100 milliliter during the swimming season.

(c) A Tier III swimming area with a water sample result of 500 enterococci per 100 milliliter or higher on the first sample shall be resampled the following day. If the laboratory results of the second sample exceed 500 enterococci per 100 milliliter a swimming advisory shall be issued by the Division.

(d) Signs posted pursuant to this Section shall be placed or erected in open view where the public may see the sign(s) prior to entering the water.

(e) Signs shall convey the following:

ATTENTION: SWIMMING IN THIS AREA IS NOT RECOMMENDED. BACTERIA TESTING INDICATES LEVELS OF CONTAMINATION THAT MAY BE HAZARDOUS TO YOUR HEALTH. THIS ADVISORY AFFECTS WATERS WITHIN 200' OF THIS SIGN. OFFICE OF THE STATE HEALTH DIRECTOR.

History Note: Authority G.S. 130A-233.1; Eff. February 1, 2004.

TITLE 19A - DEPARTMENT OF TRANSPORTATION

19A NCAC 02E .0221 FEES

(a) All logo signs shall be constructed and maintained by the Department. These logo signs shall be owned by the Department. The participating logo business shall pay an annual fee established by the Board of Transportation. All logo contracts existing under prior administrative code provisions are terminated in accordance with the terms of those contracts. However, existing participants shall not be required to reapply, but shall be required to sign an appropriate contract in accordance with the new regulations in order to continue their participation.

(b) The fee for participation in the Logo program is as follows: Mainline, ramp, and trailblazer panels are billed an annual fee of three hundred dollars (\$300.00) per each mainline, ramp and trailblazer panel. The initial payment of the fee shall be paid prior to installation. The contract runs for one year from the date of installation. Contracts shall be renewed annually and the fee

is due at the contract renewal date. Every participating business that meets program requirements has a valid contract and pays all required fees shall be automatically renewed except for provisional contracts which shall be reviewed by the Department annually prior to renewal.

(c) The business shall provide a new or renovated business panel when necessary due to damages caused by acts of vandalism, accidents, or natural causes including natural deterioration. If the Department replaces a business panel on a logo sign or removes or masks a business panel because of seasonal operation, there shall be no additional charge to the business.

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

History Note: Authority G.S. 136-89.56; 136-137; 136-139; 143B-346; 143B-348; 143B-350(f); 23 C.F.R. 750, Subpart A; 23 U.S.C. 131(f); Eff. April 1, 1982; Amended Eff. July 1, 2000; August 1, 1998; April 1, 1994; October 1, 1993; December 1, 1992; September 1, 1990; Temporary Amendment Eff. October 13, 2003; Amended Eff. February 1, 2004.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 10 - BOARD OF CHIROPRACTIC EXAMINERS

21 NCAC 10 .0202 APPLICATION FOR LICENSURE

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

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

- (1) Application Form: personal background of the applicant; his educational history; a recent photograph; and a statement confirming that he has read, understands and will abide by the General Statutes and administrative rules governing chiropractic.
- (2) Character Reference Form: the statements of three persons not related to the applicant attesting to his good moral character.

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

(d) Application Fee. An application fee of three hundred dollars (\$300.00) must accompany each application. This fee shall be paid in cash, or by certified check, cashier's check or money

order made payable to the North Carolina Board of Chiropractic Examiners. Personal checks will not be accepted.

History Note: Authority G.S. 90-142; 90-143; 90-143.1; 90-145; 90-146; 90-149; Eff. February 1, 1976; Readopted Eff. January 27, 1978; Amended Eff. October 17, 1980; Legislative Objection Lodged Eff. December 17, 1982; Curative Amendment Eff. December 30, 1982; Amended Eff. January 1, 1983; Legislative Objection Lodged Eff. January 31, 1983; Curative Amendment Eff. February 28, 1983; Amended Eff. January 1, 1989; Temporary Amendment Eff. January 1, 2003; Temporary Amendment Expired October 31, 2003; Amended Eff. February 1, 2004.

21 NCAC 10 .0208 ACUPUNCTURE

In order to perform acupuncture, a licentiate or applicant for licensure must first certify to the Board that he has completed a minimum of 100 hours' coursework in acupuncture-meridian therapy, including sterile needle technique, theory of acupuncture and differential diagnosis of clinical indications. This coursework must be offered as either part of the curriculum leading to the Doctor of Chiropractic degree or the post-doctoral level, and by a college accredited pursuant to G.S. 90-143 (b).

History Note: Authority G.S. 90-142; 90-143; 90-151; Eff. February 1, 2004.

CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

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 that teaches cosmetic art as defined by, G.S. 88B-2(5), but is not a manicurist or an esthetics school.
- (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 that 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" is a service that results in tension 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" 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 G.S. 88B, 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.

History Note: Authority G.S. 88B-2; 88B-4; Eff. February 1, 1976; Amended Eff. June 1, 1993; October 1, 1991; May 1, 1991; January 1, 1989; Temporary Amendment Eff. January 1, 1999; Amended Eff. February 1, 2004; April 1, 2001; August 1, 2000.

21 NCAC 14H .0113 CLEANLINESS OF SCISSORS: SHEARS: RAZORS AND OTHER EQUIPMENT

(a) All scissors, shears, razors, and other metal instruments used while shaping hair must be cleaned and disinfected after each use in the following manner:

- (1) If the implement is not immersible, it shall be cleaned by wiping it with a clean cloth moistened with a disinfectant that states the solution will destroy HIV, TB or HBV viruses and approved by the Federal Environmental Protection Agency in accordance with the manufacturer's instructions.
- (2) If it is immersible, it shall be disinfected by immersion, at least once a day and whenever it comes in contact with blood, with:

- (A) a disinfectant that states the solution will destroy HIV, TB or HBV viruses, and approved by the Federal Environmental Protection Agency in accordance with the manufacturer's instructions;
 - (B) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and or tuberculocidal, that is mixed and used according to the manufacturer's directions;
 - (C) household bleach in a ten(10) percent solution for 10 minutes;
 - (D) 70% or higher isopropyl alcohol for 15 minutes; or
 - (E) 90% ethyl alcohol for 15 minutes.
- (3) If the implement is not used immediately after cleaning, it must be stored in a clean, closed cabinet until it is needed.

(b) Furniture, equipment and fixtures must be of a washable material and kept clean and in good repair.

History Note: Authority G.S. 88B-4; Eff. February 1, 1976; Amended Eff. February 1, 2004; August 1, 1998; June 1, 1994; January 1, 1989; April 1, 1988.

21 NCAC 14H .0120 FOOTSPA SANITATION

Cosmetologists shall use the following disinfection procedures to ensure proper cleaning and maintenance of the footspa equipment and to prevent bacterial infection:

- (1) Between each customer a cosmetologist shall:
 - (a) drain all water and remove all debris from the footspa;
 - (b) clean the surfaces and walls of the footspas with soap or detergent and rinse with clean, clear water; and
 - (c) disinfect with an EPA registered disinfectant with bactericidal, fungicidal, and virucidal activity used according to the manufacturer's instructions.
- (2) At the end of the day a cosmetologist shall:
 - (a) remove the screen. All debris trapped behind the screen of each footspa shall be removed, and the screen and the inlet shall be washed with soap or detergent and water;
 - (b) before replacing the screen:
 - (i) wash the screen with a chlorine bleach solution of one teaspoon of five per cent chlorine bleach to one gallon of water, or totally immerse the screen in an EPA registered disinfectant;
 - (ii) flush the system with low sudsing soap and warm water for 10 minutes; and

History Note: Authority G.S. 88-B-4; Eff. February 1, 2004.

21 NCAC 14I .0105 TRANSFER OF CREDIT

- (a) In order that hours may be transferred from one cosmetic art school to another, a student must pass an entrance examination given by the school to which the student is transferring.
- (b) A cosmetology student must complete at least 500 hours in the cosmetic art school certifying his or her application for the state board examination.
- (c) Upon written petition by the student, the Board shall make an exception to the requirements set forth in Paragraph (b) of this Rule if the student shows that circumstances beyond the student's control prohibited him or her from completing 500 hours at the school that certifies his or her application.
- (d) A student who transfers from a cosmetology curriculum to a manicuring or an esthetics curriculum shall not receive credit for hours received in the cosmetology curriculum.
- (e) A student who transfers from a manicurist or an esthetic curriculum to a cosmetology curriculum shall not receive credit for hours received in the manicurist curriculum.
- (f) If a student is transferring from another state, the student shall submit certification of hours and performances to the cosmetic art school in which they are enrolled.

History Note: Authority G.S. 88B-4; Eff. February 1, 1976; Amended Eff. February 1, 2004; August 1, 1998; December 1, 1993; January 1, 1991; January 1, 1989; April 1, 1988.

21 NCAC 14N .0113 RE-EXAMINATION

- (a) If, upon application for re-examination, the applicant has taken and passed one section of an examination, he or she shall apply for re-examination only on the section of the examination that he or she did not pass.
- (b) Applicants for re-examination must apply for re-examination in writing and pay the appropriate examination fee.
- (c) Notwithstanding any other provision of the rules in this Subchapter, pursuant to G.S. 88B-18(d) a cosmetology candidate who has failed either section of the examination three times,

shall complete an additional 200 hours of study at an approved cosmetic art school before another application for re-examination shall be accepted by the Board.

(d) Upon written request by any candidate, the Board shall release a summary of the results of each category of the practical section of the most recent examination to the school in which the candidate is enrolled for the additional study, pursuant to G.S. 88B-18 (d).

(e) The school in which the student has enrolled pursuant to G.S. 88B-18(d) shall design a course of study for that student in order to correct the student's deficiencies.

(f) A candidate for licensure as an apprentice cosmetologist who

- (1) passes the examination with a score of 75 percent or more on both sections; and
- (2) subsequently completes an additional 300 hours within one year of the examination date may be licensed as a cosmetologist under G.S. 88B-7 without retaking the examination.

History Note: Authority G.S. 88B-4; 88B-18; Eff. June 1, 1992; Amended Eff. August 1, 1998; June 1, 1993; Temporary Amendment Eff. January 1, 1999; Amended Eff. February 1, 2004; August 1, 2000.

21 NCAC 140 .0103 EQUIPMENT AND INSTRUMENTS

(a) An Esthetician school shall be equipped with the following equipment:

- (1) 3 facial treatment chairs, treatment tables, or hydraulic treatment chairs,
- (2) 3 esthetician's stools;
- (3) 1 facial vaporizer;
- (4) 1 galvanic current apparatus;
- (5) 1 infra-red lamp;
- (6) 1 woods lamp;
- (7) 1 footed magnifying lamp or magnifying lamp that attaches to the wall;
- (8) 1 hair removal wax system;
- (9) 1 thermal wax system;
- (10) 1 suction machine;
- (11) 1 exfoliation (brushes);
- (12) table for machines; and
- (13) lavatory with hot and cold running water in the treatment area.

(b) All equipment shall be maintained in a sanitary, safe operating order at all times.

(c) A school of cosmetology with a department of esthetics in its training program shall be equipped with at least one of each item specified in Paragraph (a) of this Rule.

(d) Each esthetician student shall be supplied with:

- (1) cape;
- (2) spatulas;
- (3) astringents;
- (4) tweezers;
- (5) cotton pads;
- (6) make up supplies;
- (7) sponges; and
- (8) all purpose cream.

History Note: Authority G.S. 88B-4; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. February 1, 2004.

21 NCAC 14P .0105 RENEWALS; EXPIRED LICENSES; LICENSES REQUIRED:

(a) The presumptive civil penalty for operating a cosmetic art shop/school with an expired license is:

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

(b) The presumptive civil penalty for practicing cosmetology, manicuring, or esthetics with an expired license is :

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

(c) The presumptive civil penalty for allowing an apprentice or someone with a temporary permit to practice cosmetic art without direct supervision is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$300.00 |
| (3) | 3rd offense | \$500.00 |

(d) The presumptive civil penalty for practicing in a cosmetic art shop with an apprentice license or a temporary permit without direct supervision is:

- | | | |
|-----|-------------|----------|
| (1) | 1st offense | \$100.00 |
| (2) | 2nd offense | \$300.00 |
| (3) | 3rd offense | \$500.00 |

(e) The presumptive civil penalty for an improperly licensed cosmetic art shop (incorrect number of chairs licensed) is:

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

History Note: Authority G.S. 88B-4; 88B-21; 88B- 23(a); 88B-24; 88B-29; Temporary Adoption Eff. January 1, 1999; Eff. August 1, 2000; Amended Eff. February 1, 2004; August 1, 2002; April 1, 2001;

21 NCAC 14P .0107 LICENSES TO BE POSTED

(a) The presumptive civil penalty for failure to display a current cosmetic art shop/school license is:

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

(b) The presumptive civil penalty for failure to display a current individual license is:

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

(c) The presumptive civil penalty for a school/shop for allowing an employee to practice cosmetic art without displaying a current license is:

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

(d) The presumptive civil penalty for displaying a copied license is:

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

*History Note: Authority G.S. 88B-4; 88B-29;
Temporary Adoption Eff. January 1, 1999;
Eff. August 1, 2000;
Amended Eff. February 1, 2004; April 1, 2001.*

**CHAPTER 50 - BOARD OF EXAMINERS OF
PLUMBING, HEATING AND FIRE SPRINKLER
CONTRACTORS**

21 NCAC 50 .0413 PROPOSAL, BID OR ESTIMATE
Proposal or bid within the meaning of G.S. 87-21 refers to a firm offer or commitment to perform work, which becomes a contract upon acceptance by a property owner or other for whom the work is to be performed, but does not include a non-binding estimate.

*History Note: Authority G.S. 87-18; 87-21;
Eff. February 1, 2004.*

21 NCAC 50 .1006 INFORMAL PROCEDURES
(a) The Board and party or parties may agree at a pre-hearing conference to simplify the hearing by: decreasing the number of issues to be contested at the hearing; accepting the validity of proposed evidence; accepting the findings in another case with relevance to the case at hand; or agreeing to such other matters as may expedite the hearing.

(b) The Board may appoint a resolution committee consisting of two members of Board staff, together with a third person appointed by the Board, to conduct an informal conference when it appears there may not be a need for a formal hearing. In the event one committee member cannot be present, the committee may proceed with two members. Any party who does not agree with a proposal for resolution resulting from an informal conference may notify the Board within 30 days. The matter will subsequently be heard *de novo* by a majority of the Board or as otherwise provided by 21 NCAC 50 .1005, or this Rule. If there is no objection to the proposed resolution within 30 days, the proposed resolution will be received and considered by a majority of the Board with a recommendation for adoption by the staff, any Board member involved and the licensee.

(c) As a part of the contested case hearing process, the Board may elect to conduct a summary proceeding in a contested case. The procedure for a summary proceeding is substantially as follows:

- (1) After issuance of a notice of hearing in accordance with 21 NCAC 50 .1004, the matter is considered by a single board member without a record. Each party may tender

affidavits, documents and a closing statement. Live testimony will not be received.

(2) Each party may present a suggestion as to the terms of a Recommended Order. The presiding board member will consider the materials and suggestions and issue a Recommended Decision in summary proceeding. If there is no objection within 30 days, the Recommended Order shall be received and considered by a majority of the Board with a recommendation for adoption by the staff, the Board member involved and the respondent.

(3) Any party who does not agree with the recommended decision may notify the Board. The matter shall subsequently be heard *de novo* by a majority of the Board or as otherwise provided by 21 NCAC 50 .1005. The *de novo* hearing shall be conducted as other contested case hearings are conducted pursuant to 21 NCAC 50 .1000. The Board member who conducted the summary proceedings shall be disqualified from the *de novo* hearing.

*History Note: Authority G.S. 87-18; 150B-41;
Eff. May 1, 1989;
Amended Eff. February 1, 2004; August 1, 2000;
November 1, 1993.*

TITLE 25 - STATE PERSONNEL

25 NCAC 01E .1702 OTHER CONTAGIOUS DISEASES

(a) Anyone who believes that an employee has a communicable disease that could endanger the health of others in the workplace may report such findings to management. Management shall notify the local health department. If state public health authorities determine that the employee poses a significant risk to the general population or could endanger the health of coworkers, the agency shall require the employee to take paid administrative leave until the specified period of time ends or the employee becomes ill with the communicable disease, whichever comes first.

(b) If the employee becomes ill and it is determined to be work related, the Workers' Compensation Policy shall apply.

(c) If the employee becomes ill as a result of off-the-job exposure, the Sick Leave Policy shall apply.

*History Note: Authority G.S. 126-4;
Temporary Adoption Eff. July 1, 2003;
Eff. February 1, 2004.*

This Section contains information for the meeting of the Rules Review Commission on Thursday, February 19, 2004, 10:00 a.m. at 1307 Glenwood Avenue, Assembly Room, Raleigh, NC. Anyone wishing to submit written comment on any rule before the Commission should submit those comments by Friday, February 13, 2004 to the RRC staff, the agency, and the individual Commissioners. Specific instructions and addresses may be obtained from the Rules Review Commission at 919-733-2721. Anyone wishing to address the Commission should notify the RRC staff and the agency at least 24 hours prior to the meeting.

RULES REVIEW COMMISSION MEMBERS

Appointed by Senate

Jim R. Funderburke - 1st Vice Chair
David Twiddy - 2nd Vice Chair
Thomas Hilliard, III
Robert Saunders
Jeffrey P. Gray

Appointed by House

Jennie J. Hayman - Chairman
Graham Bell
Dana E. Simpson
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

February 19, 2004 March 18, 2004

**RULES REVIEW COMMISSION
JANUARY 15, 2004
MINUTES**

The Rules Review Commission met on Thursday morning, January 15, 2004, in the Cabinet Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jennie Hayman, Graham Bell, Jeffrey Gray, Thomas Hilliard, Robert Saunders, Dana Simpson, and John Tart .

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

The following people attended:

Lisa Martin	NC Home Builders Association
R. Paul Wilms	NC Home Builders Association
Bill Sturges	Attorney/Sea Trail Corporation
Tom Jackson	DENR/Parks & Recreation
Kay Sigmon	DENR/DEH
David Mickey	
Gretchen Aycock	Department of Administration
Dee Williams	Board of Cosmetology
Craig Bromby	Hunton & Williams/Business for a Sound Economy
J.D. Potts	NC Shellfish Sanitation & Rec. Water Quality
Wayne Mobley	NC Shellfish Sanitation & Rec. Water Quality
Malcolm Blalock	NC Shellfish Sanitation & Rec. Water Quality
Jim Hayes	DENR
Phillip Thompson	DENR
Trip Van Noppen	Southern Environmental Law Center
Doug Duncan	NC Forestry Association
John Spurrell	NCLM
Elva Barnhardt	DFS-OEMS
Dale Hill	DFS/OEMS
Ed Browning	DFS/OEMS
Michael Cobb	DFS/OEMS
Dedra Alston	DENR
Jim Stepheason	NC Coastal Federation
Robin Smith	DENR

Nadine Puffer	DFS
Thomas Allen	DENR/DAQ
Janice Smith	Department of Social Services
Jane Schwartz	Department of Social Services
Bradley Bennett	DENR/DWQ
Mary Penny Thompson	Attorney General's Office/DWQ
Amy Pickle	SELC
Ken Pickle	DENR/DWQ
John Hoomoni	Department of Labor
Joel Hansel	EPA Region 4
Susan Grayson	DENR
Scott Perry	Criminal Justice Education & Training Standards Comm.
Teresa Marrella	Criminal Justice Education & Training Standards Comm.
Nick Fountain	Plumbing, Heating & Fire Sprinkler Examiners
Bob Brooks	Board of CPA Examiners
Kris Horton	DHHS/DMA
George Givens	NCGA/ERC

APPROVAL OF MINUTES

The meeting was called to order at 10:07 a.m. with Commissioner Hayman presiding. Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the December 19, 2003, meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

1 NCAC 30A .0406: State Building Commission – The Commission approved the rewritten rule submitted by the agency.
1 NCAC 30J .0201; .0302: State Building Commission – The Commission approved the rewritten rules submitted by the agency.
8 NCAC 9 .0106; .0108; .0109: Board of Elections – No rewritten rules were received and no action was taken.
8 NCAC 10B .0103: Board of Elections – No rewritten rules were received and no action was taken.
10A NCAC 13J .1302: Medical Care Commission – The Commission approved the rewritten rule submitted by the agency.
10A NCAC 13P .0201: Medical Care Commission – The Commission approved the rewritten rule submitted by the agency. Ten letters were received requesting that this rule be subject to legislative review.
10A NCAC 13P .0502; .0504; .0507; .0508; .0509; .0510; .0603: Medical Care Commission – The Commission approved the rewritten rules submitted by the agency.
15A NCAC 2H .0126; .1014: Environmental Management Commission – This matter was discussed after the log was reviewed.
15A NCAC 18A .3401-.3404: Commission for Health Services – The Commission approved the rewritten rules submitted by the agency with the exception of .3404 which was withdrawn by the agency.
19A NCAC 2E .0221: Department of Transportation – The Commission approved the rewritten rule submitted by the agency.
21 NCAC 10 .0202; .0208: State Board of Chiropractic Examiners – The Commission approved the rewritten rules submitted by the agency.
21 NCAC 50 .0413; .1006: State Board of Examiners of Plumbing, Heating & Fire Sprinkler Contractors – The Commission approved the rewritten rules submitted by the agency.
21 NCAC 64 .0212; .0213: NC Examiners for Speech & Language Pathologists & Audiologists – No rewritten rules were received and no action was taken.
25 NCAC 1E .1702: State Personnel Commission – The Commission approved the rewritten rule submitted by the agency.

LOG OF FILINGS

Chairman Hayman presided over the review of the log and all rules were approved unanimously with the following exceptions:

10A NCAC 21A .0201: DHHS/Division of Medical Assistance – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (38), it is not clear what is meant by “DMA policy as described in the appropriate Medical Program Manual.” This appears to be an attempt to bypass the rule-making process by calling rules policy and putting them in a manual. There is no authority for the agency to do so. It is also not clear what is meant by “extended” hospitalization.

10A NCAC 21A .0602: DHHS/Division of Medical Assistance – The Commission objected to the rule due the ambiguity. The problems with the definition of “good cause” in .0201 make the use of the term in (a)(7) and (a)(8) unclear. The definition of “good cause” also does not seem to fit (a)(8).

10A NCAC 21A .0603: DHHS/Division of Medical Assistance – The Commission objected to the rule due to ambiguity. In (c)(2), it is not clear how to determine which of the four listed dates a change is effective.

10A NCAC 21A .0606: DHHS/Division of Medical Assistance – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (a)(3) and (4), it is not clear which counties fall into which levels or what the population requirements are. In (c), the “Adjusted Application Report Card,” whatever that is, appears to set requirements or at least grant waivers of requirements without going through the rulemaking process. There is no authority for this. It is also not clear what is meant by “points of eligibility”.

10A NCAC 21A .0607: DHHS/Division of Medical Assistance – The Commission objected to the rule due to ambiguity. It is not clear what the “adjusted Application Report Card” is. In (b)(3), it is not clear how DMA decides whether or not to hold a conference call. In (d), it is not clear what is meant by “report card thresholds.” Paragraph (e) of this Rule says the Secretary of the Department of Health and Human Services convenes the State Corrective Action Team while .0608 says the Chairperson does the convening. It is not clear who does the convening.

10A NCAC 21A .0608: DHHS/Division of Medical Assistance – The Commission objected to the rule due to ambiguity. In paragraph (e) of .0607 says that the DHHS Secretary convenes the State Corrective Action Team while the Rule says this Chairperson does. It is not clear which is correct. In (c), it is not clear what is meant by “report card thresholds”.

12 NCAC 9G .0405: Criminal Justice Education & Training Standards Commission – The Commission objected to the rule due to ambiguity. It is not clear what Subparagraph (b)(1)(c) is requiring. It is not clear what is meant by a degree being “acceptable to ... school in its ... program.” It is not even clear if the degree has to be acceptable to the school designating the person.

15A NCAC 18A NCAC .2508: Commission for Health Services – The Commission originally objected to this rule due to lack of statutory authority. Sub-item (2)(d)(v) appears to bring attraction within the definition of public swimming pools that do not meet the statutory definition in G.S. 130A-280. These attractions do not incorporate standing or captured water as part of the user activity area. The statutory definition limits the definition of “public swimming pools” to “any structure, chamber, or tank containing an artificial body of water used by the public for swimming, diving, wading, recreation or therapy...” This seems to imply contact with the water while it is part of the body of water is necessary to meet the definition. These attractions do not provide for contact with the water as part of the body of water so it appears these attractions are beyond the authority of the agency to regulate pursuant to the cited statutes. The Commission then voted to reconsider the rule and voted to extend the period of review so that the agency could provide the Commission with more information about the effect of these amendments on interactive play attractions. Do these amendments allow the agency to regulate structures not regulated in the past? What will the effect of the amendments be on existing structures? Will some structures that could legally operate under the old rules now be unable to legally operate? The agency will also have another chance to explain its statutory authority.

15A NCAC 18A NCAC .2511: Commission for Health Services – The Commission objected to the rule due to lack of statutory authority. It is not clear what the relevance of the demerits provided for in this rule is. There does not appear to be any rule that says anything happens when any particular number are assessed. They appear to serve no purpose and the provision establishing them is therefore unnecessary.

15A NCAC 18A NCAC .2529: Commission for Health Services – The Commission objected to this rule due to lack of statutory authority. Since it does not appear that interactive play attractions meet the statutory definition of public swimming pools, there is no authority for Item (4). The Commission then voted to reconsider the rule and voted to extend the period of review so that the agency could provide the Commission with more information about the effect of these amendments on interactive play attractions. Do these amendments allow the agency to regulate structures not regulated in the past? What will the effect of the amendments be on existing structures? Will some structures that could legally operate under the old rules now be unable to legally operate? The agency will also have another chance to explain its statutory authority.

15A NCAC 18A NCAC .2543: Commission for Health Services – The Commission originally objected to this rule due to lack of statutory authority. Because interactive play attractions do not fall within the statutory definition of public swimming pools, there is no authority for paragraph (d) of this rule. The Commission then voted to reconsider the rule and voted to extend the period of review so that the agency could provide the Commission with more information about the effect of these amendments on interactive play attractions. Do these amendments allow the agency to regulate structures not regulated in the past? What will the effect of the amendments be on existing structures? Will some structures that could legally operate under the old rules now be unable to legally operate? The agency will also have another chance to explain its statutory authority.

LOG OF FILINGS TEMPORARY RULES

Chairman Hayman presided over the review of the log of temporary rules and all rules were approved unanimously.

The Commission adjourned for a break at 11:25 a.m.

The Commission reconvened at 11:45 a.m.

Commissioner Saunders and Simpson recused themselves from the Environmental Management Commission rules.

15A NCAC 2H .0126; .1014: Environmental Management Commission – At its January 15, 2004 meeting the Rules Review Commission voted to return the above rules to the Environmental Management Commission for failure to adopt the rules in accordance with Part 2 of Article 2A, Chapter 150B. The new rulemaking was conducted without compliance with Part 2 of Article 2A, Chapter 150B, and is returnable under N.C. Gen. Stat. § 150B-21.9(a) (2001), or objectionable under N.C. Gen. Stat. § 150B-21.9(a)(4)(2003), since the non-responsive rulemaking was concluded after October 1, 2003. In addition, the Rules Review Commission objected to Rules .0126 and .0150 - .0156 on the basis of lack of statutory authority (N.C. Gen. Stat. § 150B-21.9(a)(1)), for failure to appropriately respond to the objection made at the RRC's October 16, 2003 meeting; and ambiguity (N.C. Gen. Stat. § 150B-21.9(a)(2)), for failure to appropriately respond to the objection made at the RRC's October 16th meeting. The RRC also objected to Rules .1014 - .1019 on the basis of lack of statutory authority (N.C. Gen. Stat. § 150B-21.9(a)(1)), for failure to appropriately respond to the objection made at the RRC's October 16th meeting; and ambiguity (N.C. Gen. Stat. § 150B-21.9(a)(2)), for failure to appropriately respond to the objection made at the RRC's October 16th meeting. The changes to Rules .1014 - .1019 made by the EMC are not responsive to an objection by the RRC because the objection was to a lack of statutory authority to compel a local government to adopt ordinances and to require a local government which was not an owner or operator of a MS4 to adopt ordinances or obtain a permit. The responsive EMC change was to make application for a storm water permit optional for a local government which was not the owner or operator of a MS4. The EMC's changes went beyond this to require permits from dischargers of storm water located within the counties from which the EMC had purported to require permits. Creation of a permit obligation for entities which are not owners or operators of MS4s and not governmental bodies is not responsive to the objection; it was new rulemaking designed to accomplish a comparable substantive result.

COMMISSION PROCEDURES AND OTHER BUSINESS

Joe DeLuca informed the Commission that the Pharmacy Board lawsuit court date is scheduled for January 20, 2004.

The meeting adjourned at 1:00 p.m.

The next meeting of the Commission is Thursday, February 19, 2004 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Administrative Rules
Log of Filings (Log #206)
December 22, 2003 through January 20, 2004

NC PLANT CONSERVATION BOARD

Endangered Plant Species List	02 NCAC 48F .0301	Amend
Threatened Plant Species List	02 NCAC 48F .0302	Amend
Plant Species of Special Concern	02 NCAC 48F .0304	Amend

DEPARTMENT OF INSURANCE

Disclosure Requirements	11 NCAC 04 .0427	Amend
Replacement upon Reduction of Market Value	11 NCAC 11B .0104	Repeal
Deposits Required Revocation/License Foreign Co	11 NCAC 11B .0106	Repeal
Right of Company to Receive Interest	11 NCAC 11B .0108	Repeal
Right of the Commissioner to Receive and Hold	11 NCAC 11B .0109	Repeal
Sale of Deposit for Payment of Liabilities	11 NCAC 11B .0110	Repeal
Conversion to Cash Master Trust	11 NCAC 11B .0111	Repeal
Deposit Required Upon Initial Licensing	11 NCAC 11B .0113	Repeal
Deposits Held in Trust by Commissioner of Insurance	11 NCAC 11B .0114	Repeal
Continuation of Deposits of Securities of Merging	11 NCAC 11B .0119	Repeal
Exchange of Deposit procedural Handling	11 NCAC 11B .0122	Repeal
Sale of Securities by the Insurance Company	11 NCAC 11B .0123	Repeal
Master Trust Creation Thereof	11 NCAC 11B .0124	Repeal

Master Trust Use Procedural Handling Step 1	11 NCAC 11B .0125	Repeal
Master Trust Use Procedural Handling Step 2	11 NCAC 11B .0126	Repeal
Master Trust Use Procedural Handling Step 3	11 NCAC 11B .0127	Repeal
Master Trust Use Procedural Handling Step 4	11 NCAC 11B .0128	Repeal
Master Trust Use Procedural Handling Step 5	11 NCAC 11B .0129	Repeal
Master Trust Solvent Companies	11 NCAC 11B .0130	Repeal
Master Trust Insolent Companies	11 NCAC 11B .0131	Repeal
Deposit/Amount Foreign Fire and/or Casualty Insurance	11 NCAC 11B .0133	Repeal
Deposit Required Amount Domestic Life Insurers	11 NCAC 11B .0134	Repeal
Deposit/Amount Domestic Fire and/or Casualty Insurance	11 NCAC 11B .0135	Repeal
Foreign Deposit Required Amount Foreign Misc Insurance	11 NCAC 11B .0136	Repeal
Deposit Required Amount Domestic Miscellaneous Insurance	11 NCAC 11B .0137	Repeal
Deposit Use of Master Trust All New Companies	11 NCAC 11B .0139	Repeal
Master Trust DK Transaction	11 NCAC 11B .0144	Repeal
Master Trust Charges	11 NCAC 11B .0145	Repeal
Master Trust Bank Ability to Register Securities	11 NCAC 11B .0146	Repeal
Use of Federal Book Entry/Depository Trust Corp/	11 NCAC 11B .0147	Repeal
Master Trust Use of DTC	11 NCAC 11B .0149	Repeal
Master Trust-Release of Securities	11 NCAC 11B .0150	Repeal
Master Trust-Payment of Interest	11 NCAC 11B .0151	Repeal
Investment in Gold or Gold Futures by Insurance	11 NCAC 11C .0110	Repeal
Sale of Exchange Traded Call Options	11 NCAC 11C .0122	Repeal
Accounting Procedures	11 NCAC 11C .0124	Repeal
Valuation	11 NCAC 11C .0125	Repeal
Prohibition against Speculating in Options	11 NCAC 11C .0126	Repeal
Valuation of Debt Securities	11 NCAC 11C .0131	Repeal
Accounting for Premium Over 90 Days Past Due	11 NCAC 11C .0206	Repeal
Admitted Assets HMO	11 NCAC 11C .0309	Repeal
Proxies ETC Domestic Insurers	11 NCAC 11D .0115	Repeal
Proxies Consents and Authorization	11 NCAC 11D .0116	Repeal
Proxies Disclosure of Equivalent Information	11 NCAC 11D .0117	Repeal
Proxies Definitions and Instructions	11 NCAC 11D .0118	Repeal
Proxies Information to be Furnished to Security	11 NCAC 11D .0119	Repeal
Proxies Requirements as to Proxy	11 NCAC 11D .0120	Repeal
Proxies Material required to be Filed	11 NCAC 11D .0121	Repeal
Proxies False or Misleading Statements	11 NCAC 11D .0122	Repeal
Proxies Prohibition of Certain Solicitations	11 NCAC 11D .0123	Repeal
Proxies Special Provision Applicable to Election	11 NCAC 11D .0124	Repeal
Proxy Information Required Revocability of Proxy	11 NCAC 11D .0125	Repeal
Proxy Information Required Dissenters Right of	11 NCAC 11D .0126	Repeal
Proxy Information Required Subject to 11 NCAC 11D	11 NCAC 11D .0127	Repeal
Proxy Info Required Interest in Matters to be Act	11 NCAC 11D .0128	Repeal
Proxy Information Required Voting Securities	11 NCAC 11D .0129	Repeal
Proxy Information Required Nominee and Directors	11 NCAC 11D .0130	Repeal
Proxy Information Required Transactions with Manag	11 NCAC 11D .0131	Repeal
Proxy Info Required Bonus Profit Sharing Remunerat	11 NCAC 11D .0132	Repeal
Proxy Info Required Pension and Retirement Plans	11 NCAC 11D .0133	Repeal
Proxy Info Required Options Warrants or Rights	11 NCAC 11D .0134	Repeal
Proxy Info Required Authorization or Issuance of	11 NCAC 11D .0135	Repeal
Proxy Info Required Merger Consolidation	11 NCAC 11D .0136	Repeal
Proxy Information Required Restatement of Accounts	11 NCAC 11D .0137	Repeal
Proxy Info Required Matters not required to be Sub	11 NCAC 11D .0138	Repeal
Proxy Information Required Amendment of Charter by	11 NCAC 11D .0139	Repeal
Proxy Information Required In Election Contest	11 NCAC 11D .0140	Repeal
Proxy Statement in Elec Insurer Identity and Backg	11 NCAC 11D .0141	Repeal
Proxy Statement in Election Interest in Equity Sec	11 NCAC 11D .0142	Repeal
Proxy Statement in Election Contest Further Matter	11 NCAC 11D .0143	Repeal
Proxy Statement in Election Contest Signature	11 NCAC 11D .0144	Repeal
Insider Trading of Stock Definitions	11 NCAC 11D .0145	Repeal
Who Must File Under Insider Trading of Stock	11 NCAC 11D .0146	Repeal

What Must Be Filed Under Insider Trading of Stock	11 NCAC 11D .0147	Repeal
Determining Beneficial Ownership Insider Trading	11 NCAC 11D .0148	Repeal
Disclaimer of Beneficial Ownership Insider Trading	11 NCAC 11D .0149	Repeal
Exemptions from Subsections (a) and (b)	11 NCAC 11D .0150	Repeal
Securities Bought or Sold by Odd-Lot Dealers Exemp	11 NCAC 11D .0151	Repeal
Certain Transactions Subject to Subsection (a) of	11 NCAC 11D .0152	Repeal
Ownership of Securities held in Trust Insider Trad	11 NCAC 11D .0153	Repeal
Exemption for Small Transactions Insider Trading	11 NCAC 11D .0154	Repeal
Exemptions in General Insider Trading of Stock	11 NCAC 11D .0155	Repeal
Exemption effected in Connection with a Distributi	11 NCAC 11D .0156	Repeal
Exemption Stock Options Stock Bonus or Similar Pla	11 NCAC 11D .0157	Repeal
Other Securities Exemption Received by Redeeming	11 NCAC 11D .0158	Repeal
Exemption of Long Term Profits within Six Months	11 NCAC 11D .0159	Repeal
Exemptions Acquisitions Dispositions Pursuant to	11 NCAC 11D .0160	Repeal
Exemption Deposit or Withdrawal of Equity Securiti	11 NCAC 11D .0161	Repeal
Exemption Involving the Conversion of Equity Secur	11 NCAC 11D .0162	Repeal
Exemption Involving the Sale of Subscription Right	11 NCAC 11D .0163	Repeal
Exemption of Securities from Subsection (c) of the	11 NCAC 11D .0164	Repeal
Exemption from Subsection (c) Distribution	11 NCAC 11D .0165	Repeal
Exemption from Subsection (c) Sales of Securities	11 NCAC 11D .0166	Repeal
Arbitrage Transactions under Subsection (e) of the	11 NCAC 11D .0167	Repeal
Definitions	11 NCAC 11F .0601	Adopt
CSO Mortality Table as Minimum Standard	11 NCAC 11F .0602	Adopt
Conditions	11 NCAC 11F .0603	Adopt
Applicability of the 2001 CSO Mortality Table to	11 NCAC 11F .0604	Adopt
Gender-Blended Tables	11 NCAC 11F .0605	Adopt
Petition for Admission	11 NCAC 14 .0415	Repeal
Filing and Payment of Premium Taxes	11 NCAC 14 .0705	Repeal
NC ALARM SYSTEMS LICENSING BOARD		
Recording and Reporting Continuing Education	12 NCAC 11.0505	Amend
DENR		
Fees	15A NCAC 01R .0101	Amend
DEPARTMENT OF TRANSPORTATION		
Ferry Toll Operations	19A NCAC 02D .0532	Amend
NC BOARD OF DENTAL EXAMINERS		
Dentists	21 NCAC 16M .0101	Amend
Dental Hygienists	21 NCAC 16M .0102	Amend
NC LOCKSMITH LICENSING BOARD		
Petitions for adoption, amendment or repeal of	21 NCAC 29 .0601	Adopt
Declaratory Rulings	21 NCAC 29 .0602	Adopt
Right to Hearing	21 NCAC 29 .0603	Adopt
Request for Hearing	21 NCAC 29 .0604	Adopt
Granting or denying hearing request	21 NCAC 29 .0605	Adopt
Notice of Hearing	21 NCAC 29 .0606	Adopt
Who shall hear contested cases	21 NCAC 29 .0607	Adopt
Informal Procedures	21 NCAC 29 .0608	Adopt
Petition for Intervention	21 NCAC 29 .0609	Adopt
Types of Intervention	21 NCAC 29 .0610	Adopt
Disqualification of Board Members	21 NCAC 29 .0611	Adopt
Failure to Appear	21 NCAC 29 .0612	Adopt
Subpoenas	21 NCAC 29 .0613	Adopt
Witnesses	21 NCAC 29 .0614	Adopt
Final Decision	21 NCAC 29 .0615	Adopt
Proposals for Decisions	21 NCAC 29 .0616	Adopt
NC BOARD OF MORTUARY SCIENCE		
Fees and Penalties	21 NCAC 34A .0201	Amend
NC BOARD OF PHARMACY		
Definitions	21 NCAC 46 .1317	Amend
Experience in Pharmacy	21 NCAC 46 .1503	Amend
Examination	21 NCAC 46 .1505	Amend

RULES REVIEW COMMISSION

License by Reciprocity	21 NCAC 46 .1602	Amend
When New Permit Required	21 NCAC 46 .1603	Amend
When New Permit Not Required	21 NCAC 46 .1604	Amend
Right to Refuse a Prescription	21 NCAC 46 .1801	Amend
Receiving and Dispensing	21 NCAC 46 .1804	Amend
Transfer to Prescription Information	21 NCAC 46 .1806	Amend
Facsimile Transmission of Prescription Orders	21 NCAC 46 .1807	Amend
Transmission of Prescription Orders	21 NCAC 46 .1813	Amend
Prescription Labels	21 NCAC 46 .1818	Adopt
Responsibilities of Pharmacist-Manager	21 NCAC 46 .2502	Amend
Patient Counseling	21 NCAC 46 .2504	Amend
Patient Choice	21 NCAC 46 .2508	Adopt
Availability of Pharmacy Records	21 NCAC 46 .2509	Adopt
Unique Projects	21 NCAC 46 .2510	Adopt
Dispensing and Delivery	21 NCAC 46 .2601	Amend
Registration of Non-Pharmacists	21 NCAC 46 .2605	Amend
Storage of Devices and Medical Equipment	21 NCAC 46 .2612	Adopt
Clinical Pharmacist Practitioner	21 NCAC 46 .3101	Amend
Peer Review Agreements	21 NCAC 46 .3202	Amend
Due Process	21 NCAC 46 .3203	Amend
Receipt and Use of Information of Suspected Impair	21 NCAC 46 .3204	Amend
Intervention and Referral	21 NCAC 46 .3205	Amend
Monitoring Rehabilitation and Performance	21 NCAC 46 .3207	Amend
Reports of Individual Cases to the Board	21 NCAC 46 .3209	Amend
REAL ESTATE COMMISSION		
Proof of Licensure	21 NCAC 58A .0101	Amend
Agency Agreements and Disclosure	21 NCAC 58A .0104	Amend
Broker-in-Charge	21 NCAC 58A .0110	Amend
Filing and Fees	21 NCAC 58A .0302	Amend
Payment of Application Fees	21 NCAC 58A .0303	Amend
Scheduling Examinations	21 NCAC 58A .0401	Amend
Re-Applying for Examination	21 NCAC 58A .0403	Amend
Business Entities	21 NCAC 58A .0502	Amend
License Renewal Penalty for Operating While License	21 NCAC 58A .0503	Amend
Reinstatement of Expired License	21 NCAC 58A .0505	Amend
Continuing Education Requirement	21 NCAC 58A .1702	Amend
Instructional Delivery Methods	21 NCAC 58C .0311	Amend
Application and Criteria for Original Approval	21 NCAC 58C .0603	Amend
Request for Examinations and Video Recordings	21 NCAC 58C .0605	Amend
Denial or Withdrawal of Approval	21 NCAC 58C .0608	Amend
Application and Criteria for Original Approval	21 NCAC 58E .0203	Amend
Denial or Withdrawal of Approval	21 NCAC 58E .0205	Amend
Request for a Video Recording	21 NCAC 58E .0206	Amend
Criteria for Elective Course Approval	21 NCAC 58E .0304	Amend
Request for a Video Recording	21 NCAC 58E .0308	Amend
Denial or Withdrawal of Approval	21 NCAC 58E .0412	Amend
Monitoring Attendance	21 NCAC 58E .0510	Amend
NC RESPIRATORY CARE BOARD		
Schedule of Civil Penalties	21 NCAC 61 .0201	Amend
Fees	21 NCAC 61 .0204	Amend
Background Investigation	21 NCAC 61 .0205	Adopt
License Number Display of License	21 NCAC 61 .0301	Amend
License with Provisional Endorsement	21 NCAC 61 .0303	Amend
License with Temporary Endorsement	21 NCAC 61 .0304	Amend
Civil Penalty Procedures	21 NCAC 61 .0310	Amend
Continuing Education Requirements for License	21 NCAC 61 .0401	Amend

**AGENDA
RULES REVIEW COMMISSION**

RULES REVIEW COMMISSION

February 19, 2004

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A .Board of Elections – 8 NCAC 9 .0106; .0108; .0109(DeLuca)
 - B .Board of Elections – 8 NCAC 10B .0103 (DeLuca)
 - C .DHHS/Division of Medical Assistance - 10A NCAC 21A .0201; .0602; .0603; .0606; .0607; .0608 (Bryan)
 - D. Criminal Justice Education & Training Standards Commission - 12 NCAC 9G .0405 (Bryan)
 - E .Commission for Health Services – 15A NCAC 18A .2508; .2511; .2529; .2543 (Bryan)
 - F. Examiners for Speech and Language Pathologists & Audiologists – 21 NCAC 64 .0212; .0213 (DeLuca)
- IV. Review of Rules (Log Report #206)
- V. Commission Business
- VI. Next meeting: March 18, 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>
<u>ALCOHOLIC BEVERAGE CONTROL COMMISSION</u>				
Ice 2 K t/a Sports Dimensions, Inc. v. ABC Commission	02 ABC 0683	Gray	11/25/03	
Carolina Sports Arena LLC T/A NC Sports Arena v ABC Comm.	02 ABC 1491	Conner	09/11/03	
ABC v. Fast Fare Inc, T/A Fast Fare NC 576	02 ABC 1882	Gray	09/22/03	
Ki Young Kim v. Ann H. Johnson, ABC Commission in Raleigh	03 ABC 0177	Mann	06/17/03	
ABC Commission v. Pantana Bob's, Inc. T/A Pantana Bob's	03 ABC 0233	Mann	10/03/03	
C&C Entertainment, Inc. d/b/a Carolina Live	03 ABC 1037	Lassiter	09/30/03	
<u>AGRICULTURE</u>				
Phoenix Ski Corp. v. Dept. of Ag. & Cons. Svcs. & Dept. of Admin. & Carolina Cable Lift, LLC.	02 DAG 0560	Lewis	06/30/03	18:03 NCR 217
<u>CRIME CONTROL AND PUBLIC SAFETY</u>				
Myrtle J. Price v. Crime Victims Comp. Comm, Dept. of Crime Control & Public Safety, Victims Compensation Services Division	03 CPS 0173	Wade	06/27/03	
Regis A Urik v DOCCPS, Div. of Victim Comp. Services	03 CPS 0707	Gray	10/21/03	
Fredrica Wood-Jones v DOCC&PS, Div of Victim Comp. & Svcs.	03 CPS 0804	Gray	10/06/03	
Michael L Pompey v. Crime Control & Public Safety, Div. of Victim Compensation Services	03 CPS 0828	Gray	09/03/03	
Tricia Diane Gerke v. Victim's Compensation Commission	03 CPS 1413	Gray	10/06/03	
<u>HEALTH AND HUMAN SERVICES</u>				
A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions .				
Yelton's Healthcare v DHHS, Div of Fac. Svcs, Group Care Lic Sec	00 DHR 0249	Gray	01/16/04	
Guilford Co Comm Action Program Inc v. DHHS	00 DHR 0984	Gray	09/08/03	
Mary Edge v DHHR, Div of Child Development	01 DHR 0720	Gray	09/23/03	
Richard Hart & Jeannette Hart, Little People Day Car, ID 3355048	01 DHR 1464	Wade	11/14/03	
v. Div of Child Dev Health & Human Services	01 DHR 1464	Wade	11/14/03	
Sunshine Schools, Inc. ID No. 9255424 v. DHHS, Div. of Child Dev.	02 DHR 0708	Wade	11/24/03	18:14 NCR 1209
Robbie Cummings v. DHHS	02 DHR 0815	Conner	06/09/03	
Lee Co. Dept of Social Services v. DHHS	02 DHR 1021	Elkins	12/01/03	18:14 NCR 1212
Linda Ann Tyson v. Div. of Facility Services, Health Care Personnel Registry Section	02 DHR 1103	Lassiter	05/12/03	
Ricky Roberts for Angela Roberts v. DHHS, Div. of Med. Assistance	02 DHR 1138	Lassiter	04/25/03	18:01 NCR 52
Wanda J. Vanhook v. DHHS, Div. of Med. Assistance	02 DHR 1459	Gray	04/24/03	
Elaine B Shelton v. DHHS, Div. of Facility Services	02 DHR 1489	Conner	05/28/03	
Juli A Murphy, Murphy's Munchkin Land Daycare ID 54000197 v. Div. of Child Development	02 DHR 1555	Lassiter	09/05/03	
Jones Hill Day Care, Ola M Jones v. (CACPP) Child & Adult Care Food Program	02 DHR 1601	Lassiter	05/16/03	
Michelle's Lullaby Day Care, Jerri Howell v. Div. of Child Development	02 DHR 1672	Wade	06/10/03	
June Locklear				
Bibby's Group Home, Billy McEachern v. Mental Health Licensure and	02 DHR 1749	Gray	12/08/03	
Joanne F Ranta v. DHHS, Div. of Facility Services	02 DHR 1752	Mann	05/15/03	

CONTESTED CASE DECISIONS

Gregory Tabron v. DHHS, Div. of Facility Services	02 DHR 1789	Elkins	05/16/03	
Oncology Svcs Corp & Mountainside Holdings LLC v. DHHS, Div of Fac Svcs, Cert of Need Section & Scotland Mem Hospital, Inc.	02 DHR 1983	Wade	08/13/03	18:06 NCR 439
Doretha Leonard v. DHHS, Div. of Medical Assistance	02 DHR 2183	Lassiter	06/13/03	
Jonathan Louis Jefferson, a minor by & through his parents, Cynthia & Louie Jefferson v. DHHS< Div. of Medical Assistance	02 DHR 2186	Lassiter	10/08/03	
Orlando Stephen Murphy v. DHHS, Div. of Fac Svcs, Health Care Personnel Registry Section	02 DHR 2206	Wade	11/04/03	
Tanile Woodberry, By & Through Her Attorney-in-Fact, Linda Monroe v. DHHS, Division of Medical Assistance	02 DHR 2212	Chess	11/06/03	18:15 NCR 1353
Veronica Walker, Ph.D v. DHHS, Div. of Facility Services	02 DHR 2246	Chess	06/20/03	
Gloria Howard v. DHHS	02 DHR 2256	Gray	09/04/03	
Latrese Sherell Harris v. Nurse Aide Registry	02 DHR 2290	Chess	06/16/03	
Wanda S Hudson v. Wake County Public School System	02 DHR 2305	Wade	09/22/03	
Lawyers Glen Retirement Living Ctr, Charlotte Elliotte v DHHS, Div of Facility Svcs, Mecklenburg Co Dept of Social Services	02 DHR 2319	Chess	10/22/03	
James E Hill v. DHHS, Div. of Facility Services	03 DHR 0028	Wade	05/30/03	
Duffie G Hunt v. Medicaid	03 DHR 0085	Conner	06/06/03	
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 Mary Margaret Davis v Dept of Public Instruction 02 EDC 0155 Gray 12/19/03
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 Lester Hill v. Person Co. Health Dept., DENR 00 EHR 1392 Gray 05/29/03
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 Rosa & Eddie Brame v. DENR 02 EHR 0319 Wade 06/27/03
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 Gerald Max Toney and Lynn N. Toney v. DENR (McDowell Co.) 02 EHR 0887 Mann 05/28/03
 Forest Sound Homeowners Assoc, James P Hynes, Pres. V. DENR, Div. of Coastal Management 02 EHR 1078 Wade 06/09/03
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 Raphael J Scharf & wife Guylene Scharf v. DENR 02 EHR 1155 Gray 11/24/03
 Former Center Mart, Joe Fred Ledbetter v. DENR, Div. of Waste Mgmt. 02 EHR 1302 Conner 05/29/03
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 Lee Roy Smyre v. DENR, Div. of Water Quality 02 EHR 1509 Wade 09/05/03
 Murphy's All Land Dev Inc d/b/a Emerald Cove Town homes at Wells Lake v. DENR 02 EHR 1735 Conner 07/22/03
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 Shawna J Talley v. Teachers' & St. Emp. Comp. Maj. Med. Plan 02 INS 1257 Conner 08/06/03 18:05 NCR 405
 Bertha Reeves by her husband Laconya Reeves v. Teachers' & St. Emp. Comp Maj. Med. Plan 02 INS 1285 Chess 08/26/03
 Carol W Walker v. Teachers' & State Emp. Comp Major Medical Plan 02 INS 1306 Conner 12/19/03 18:15 NCR 1356
 Larry Pendry on behalf of Charles Elledge v Teachers' & St. Emp. Comp. Major Medical Plan 03 INS 0280 Chess 09/11/03
 JEL Company, Leonard Jackson v. DOI & Diane G Miller, Asst Atty. 03 INS 0811 Mann 08/28/03
 Lula F Bowman, Laura A Bowman v. Teachers' & St. Emp. Comp. Maj. Med. Plan 03 INS 0975 Wade 10/22/03
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Maranda Sharpe v. Department of Transportation	03 OSP 0412	Chess	06/03/03		
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STATE OF NORTH CAROLINA

COUNTY OF SURRY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
03 DHR 1405

DAVID L. HAYDEN, SR
MARGARET R. HAYDEN
Petitioner,

v.

N.C. DEPARTMENT OF HEALTH AND HUMAN SERVICES
Respondent.

DECISION

THIS MATTER came on for hearing before Fred G. Morrison Jr., Senior Administrative Law Judge, on November 17, 2003, in Thomasville, North Carolina. The Petitioners, David & Margaret Hayden, appeared pro se. The Respondent was represented by Ms. Jane Rankin Thompson, Assistant Attorney General.

ISSUE

Did the Respondent properly revoke Petitioner’s family foster home license based on a finding by the Surry County Department of Social Services that Petitioners had neglected children in their care?

FINDINGS OF FACT

1. The Petitioners, David & Margaret Hayden, were licensed in 2000 as foster parents by the Surry County Department of Social Services in order to provide foster care for a child, Jessyka, from Arizona.

2. On January 6, 2003, the Haydens reported to the Surry County Department of Social Services (DSS) that their seven year old granddaughter, Channon, and nine year old grandson, David, had been sexually abused by the 11 year old daughter of the live-in girlfriend of their father. Mrs. Hayden wanted criminal action taken against the 11 year old(Nikki). Surry DSS also considered the information as an indication of possible inadequate supervision of Channon and David by the Haydens because the children lived with them and they had allowed overnight visits with the children’s father and his girlfriend when Nikki was present.

3. Teresa Cook, child protective services investigator with Surry DSS, was assigned the case and initiated her investigation on January 8, 2003. She followed all steps for an investigation mandated by the Respondent’s Division of Social Services.

4. The Hayden household in January 2003 consisted of Mr. & Mrs. Hayden, their four grandchildren, Lisa (13), Marissa (11), David III (9), and Channon (7), their adopted son Matthew (15), and the foster child Jessyka (16). Both the Haydens are retired, but Mrs. Hayden is a preacher.

5. In the course of interviewing the children on January 8, 2003, Ms. Cook learned that Nikki had sexually abused Channon and tried to touch David, but he hit her. Channon then stated she had also been abused by her uncle, Matthew Hayden, so the investigation was expanded to include these allegations.

6. The Haydens were interviewed on January 8, 2003, at the Mt. Airy Police Department. They admitted that they had been told previously about Nikki, but thought she was with her father when the children later visited. They first denied that their adopted son, Matthew, could have sexually abused Channon, but then discussed a number of his problems including stealing, watching an X-rated video, and making a bottle bomb with cologne in it, burning David’s leg. Mrs. Hayden was away on a family trip with her husband and was unaware of the burn until the school called her grown daughter who was babysitting the children.

7. Matthew was also interviewed on January 8, 2003, and admitted watching an X-rated video with David and rubbing Channon’s private parts with his penis and his hand. He had wanted to have sex with her, but she was too little. He said that this behavior had started about two or three years ago, that he knew it was wrong, but could not stop himself.

8. At this point Surry DSS took immediate custody of Matthew because the Haydens stated they did not want him in their home any longer, and DSS could not assure the safety of the other children with him present. Appropriate reports to law enforcement were made concerning Nikki and Matthew, and a delinquency petition was filed against Matthew. Jessyka was returned

to the custody of Arizona Social Services. She reportedly told Ms. Cook that she had told Mrs. Hayden about Matthew and Channon, but Mrs. Hayden did not believe Channon's statements.

9. On January 10, 2003, in another conversation with Teresa Cook, Mrs. Hayden stated that in hindsight she should have recognized a problem with Matthew because she was sexually abused as a child. She stated she had seen Matthew up at night standing in front of Channon's room, and Channon began to wet the bed and have nightmares. She heard Channon tell Matthew to get away from her room at night. Six to nine months previously, David had told her that he did not want to be alone with Matthew or sleep in the same room with him, and in fact she had been sleeping on the sofa to be near him. She heard David say, "get this faggot out of the room," referring to Matthew. The Haydens agreed to obtain counseling for the children and have Channon seen by Dr. Sinal at Baptist Hospital. No visits would take place at the home of the children's father if Nikki was present.

10. On March 21, 2003, Matthew was adjudicated delinquent for attempted first degree rape of Channon Hayden. He remains in Surry DSS custody and is presently in a residential treatment program for sexual offenders.

11. On April 7, 2003, Channon was seen at Baptist Hospital for a physical examination. Cindy Stewart, a hospital social worker working with Dr. Sinal, interviewed Channon, David, and the Haydens as part of the child medical evaluation. Both children again revealed sexual abuse of Channon by Matthew. The Haydens initially stated they did not know anything had happened between Matthew and Channon until the DSS investigation. Mrs. Hayden later stated she had begun to have a "feeling" that Matthew was sexually abusing Channon about two or three years ago. She admitted hearing about the abuse second hand from Jessyka, but did not believe it. She also revealed that prior to the DSS investigation, Channon had become sexually active with other neighborhood children.

12. Surry DSS staffed this case in May 2003, and substantiated neglect for lack of appropriate supervision of David and Channon by the Petitioners. As a result of this substantiation, Respondent sent Petitioners a Notice of Administrative Action, dated May 30, 2003, proposing to revoke their foster home license pursuant to agency rules which provide that a license may be revoked when an authorized agency finds a foster parent has abused or neglected a child.

13. Surry DSS recognizes that the Haydens adequately met all of Matthew's needs, except for providing the level of supervision that may have reduced or prevented his sexual offenses. DSS would like to see Matthew's adoption intact, and his eventual reunion with his family. To that end, DSS has entered into a Family Services Case Plan and Visitation Plan with the Haydens, urging parental contact by phone or letter, and Court approved unsupervised visits.

14. Mr. Hayden testified that they did not want to be foster parents again, but wanted the neglect substantiation expunged from the Respondent's records.

15. David Hayden, III, testified that he did not tell his grandparents what Matthew was doing to Channon because Matthew had threatened him, but he did ask one of his sisters for a camera so he could show her what was happening.

CONCLUSIONS OF LAW

1. The Respondent has shown by substantial evidence that Surry County Department of Social Services appropriately conducted the protective services investigation involving the Petitioners' home after receiving their report. Corrective measures have been taken and efforts are underway through an agreed upon Case and Visitation Plan to reunite Matthew and the Haydens.

2. The action of the Respondent in revoking Petitioner's family foster home license was appropriate under the circumstances of this particular case. Petitioners have no plans to seek renewal of their foster parent license.

DECISION

The Department of Health and Human Services will make the final decision in this contested case. It is hereby decided that the agency's decision to revoke the Petitioners' family foster home license should be upheld.

ORDER

It is hereby ordered that the agency serve a copy of the final decision on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6714, in accordance with North Carolina General Statute 150B-36(b).

NOTICE

The decision of the Administrative Law Judge in this contested case will be reviewed by the agency making the final decision

CONTESTED CASE DECISIONS

according to the standards found in G.S. 150B036(b)(b1) and (b2). The agency making the final decision is required to give each party an opportunity to file exceptions to the decision of the Administrative Law Judge and to present written argument to those in the agency who will make the final decision. G.S. 150B-36(a).

The agency that will make the final decision in this contested case is the North Carolina Department of Health and Human Services.

This the 19th day of December, 2003.

Fred G. Morrison Jr.
Senior Administrative Law Judge