

NORTH CAROLINA

REGISTER

IN THIS ISSUE



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Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
6714 Mail Service Center
Raleigh, NC 27699-6714
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
Camille Winston, Deputy Director
Molly Masich, Director of APA Services
Dana Sholes, Publication Coordinator
Linda Dupree, Editorial Assistant
Julie Brincefield, Editorial Assistant

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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
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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	
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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 2005 – December 2005

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
19:13	01/03/05	12/08/04	01/18/05	03/04/05	03/21/05	05/01/05	05/06	09/30/05
19:14	01/18/05	12/22/04	02/02/05	03/21/05	04/20/05	06/01/05	05/06	10/15/05
19:15	02/01/05	01/10/05	02/16/05	04/04/05	04/20/05	06/01/05	05/06	10/29/05
19:16	02/15/05	01/25/05	03/02/05	04/18/05	04/20/05	06/01/05	05/06	11/12/05
19:17	03/01/05	02/08/05	03/16/05	05/02/05	05/20/05	07/01/05	05/06	11/26/05
19:18	03/15/05	02/22/05	03/30/05	05/16/05	05/20/05	07/01/05	05/06	12/10/05
19:19	04/01/05	03/10/05	04/16/05	05/31/05	06/20/05	08/01/05	05/06	12/27/05
19:20	04/15/05	03/24/05	04/30/05	06/14/05	06/20/05	08/01/05	05/06	01/10/06
19:21	05/02/05	04/11/05	05/17/05	07/01/05	07/20/05	09/01/05	05/06	01/27/06
19:22	05/16/05	04/25/05	05/31/05	07/15/05	07/20/05	09/01/05	05/06	02/10/06
19:23	06/01/05	05/10/05	06/16/05	08/01/05	08/22/05	10/01/05	05/06	02/26/06
19:24	06/15/05	05/24/05	06/30/05	08/15/05	08/22/05	10/01/05	05/06	03/12/06
20:01	07/01/05	06/10/05	07/16/05	08/30/05	09/20/05	11/01/05	05/06	03/28/06
20:02	07/15/05	06/23/05	07/30/05	09/13/05	09/20/05	11/01/05	05/06	04/11/06
20:03	08/01/05	07/11/05	08/16/05	09/30/05	10/20/05	12/01/05	05/06	04/28/06
20:04	08/15/05	07/25/05	08/30/05	10/14/05	10/20/05	12/01/05	05/06	05/12/06
20:05	09/01/05	08/11/05	09/16/05	10/31/05	11/21/05	01/01/06	05/06	05/29/06
20:06	09/15/05	08/25/05	09/30/05	11/14/05	11/21/05	01/01/06	05/06	06/12/06
20:07	10/03/05	09/12/05	10/18/05	12/02/05	12/20/05	02/01/06	05/06	06/30/06
20:08	10/17/05	09/26/05	11/01/05	12/16/05	12/20/05	02/01/06	05/06	07/14/06
20:09	11/01/05	10/11/05	11/16/05	01/03/06	01/20/06	03/01/06	05/06	07/29/06
20:10	11/15/05	10/24/05	11/30/05	01/17/06	01/20/06	03/01/06	05/06	08/12/06
20:11	12/01/05	11/07/05	12/16/05	01/30/06	02/20/06	04/01/06	05/06	08/28/06
20:12	12/15/05	11/22/05	12/30/05	02/13/06	02/20/06	04/01/06	05/06	09/11/06

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.

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**

Southeast Gateway Ventures, LLC

Pursuant to N.C.G.S. § 130A-310.34, Southeast Gateway Ventures, 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 Forsyth County, North Carolina. The Property consists of 46.45 acres and is located at 1100, 1122 and 1315 S. Main Street, 1019, 1116 and 1100 S. Marshall Street, 24 and 30 W. Salem Avenue, 212 Stafford Street, and 1198, 1405 and 1480 S. Broad Street. Environmental contamination exists on the Property in soil, groundwater and surface water. Southeast Gateway Ventures, LLC has committed itself to make no use of the Brownfields Property other than for a mixed-use development featuring commercial, residential, institutional, recreational and open space uses with associated impervious surface parking areas; impose various land use restrictions; and:

- 1) remediate underground storage tank ("UST") contamination at 1100 S. Main Street, 1100 South Marshall Street and 30 West Salem Street under the oversight of DENR's UST Section; and
- 2) to the extent DENR requires, cover with clean fill or conduct additional soil sampling in areas of the Property lacking impervious ground cover and proposed for benches, picnic tables, recreation and sports sites, and other gathering sites.

Additional soil sampling shall also be conducted in the areas ultimately proposed for outdoor playgrounds and athletic/recreational fields at the site of the school planned for 1480 S. Broad Street.

The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Southeast Gateway Ventures, 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 North Carolina Room of the Forsyth County Central Library, 660 West Fifth Street, Winston-Salem, NC 27101 by contacting Jerry Carroll at (336) 727-2264 ext. 9; or at 401 Oberlin Rd., Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-2801, 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
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

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

Blue Devil Ventures, LLC

Pursuant to N.C.G.S. § 130A-310.34, Blue Devil Ventures, 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 Durham, Durham County, North Carolina. The Property consists of 9.13 acres and is located at 601, 605, 700, 701 & 710 West Main Street, and 605 & 609 West Morgan Street. Blue Devil Ventures, LLC has committed itself to mixed residential and commercial redevelopment of the Property.

The property is bounded to the north by West Morgan Street, across which is the first phase of Blue Devil Ventures, LLC's West Village project, completed in 2000 from other historic Liggett Group structures and consisting of mixed commercial/residential properties. To the south of the Property lie Southern Railroad Company tracks; to the east a parking lot also owned by West Village and tracks of the Norfolk & Western Railway Company; and to the west South Duke Street, across which lies commercial properties, including Brightleaf Square. The status of on-site environmental contamination will be known after Blue Devil Ventures, LLC purchases the Property, which is expected to occur if and when the Brownfields Agreement associated with this project goes into effect, and samples its groundwater and soil to DENR's satisfaction.

The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed provisional Brownfields Agreement between DENR and Blue Devil Ventures, LLC which in turn includes (a) a map showing the location of the Property, (b) the above-stated description of the intended future use of the Property, and (c) proposed investigation and remediation; and (2) a proposed provisional Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the reference section at the main location of the Durham County Public Library, 300 N. Roxboro St, Durham, NC 27701, telephone number (919) 560-0100, or by contacting Jennifer Malloy at the Durham Public Library's Administration offices, telephone number (919) 560-0163; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-2801, ext. 336, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents. 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
Brownfields Program Manager
Division of Waste Management
NC Department of Environment and Natural Resources
401 Oberlin Road, Suite 150
Raleigh, North Carolina 27605

If Blue Devil Ventures, LLC samples the Property to DENR's satisfaction and a superseding Brownfields Agreement and Notice of Brownfields Property are agreed upon, another Notice of Intent to Redevelop a Brownfields Property will be filed and another Summary of Notice of Intent to Redevelop a Brownfields Property published, followed by an additional public comment period. Though the unsampled state of the Property prevents the current Notice of Intent to Redevelop a Brownfields Property from including an element required by N.C.G.S. § 130A-310.34 (a), i.e., a description of the contaminants involved and their concentrations in the media of the Property, any superseding Brownfields Agreement and Notice of Brownfields Property agreed upon will include that element and may modify the remediation to be performed by Blue Devil Ventures, LLC.

**NARROW THERAPEUTIC INDEX DRUGS DESIGNATED
BY THE NORTH CAROLINA SECRETARY
OF HUMAN RESOURCES**

Pursuant to N.C.G.S. G.S. 90-85.27(4a), this is a revised publication from the North Carolina Board of Pharmacy of narrow therapeutic index drugs designated by the North Carolina Secretary of Human Resources upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board:

Carbamazepine:	all oral dosage forms
Cyclosporine:	all oral dosage forms
Digoxin:	all oral dosage forms
Ethosuximide	
Levothyroxine sodium tablets	
Lithium (including all salts):	all oral dosage forms
Phenytoin (including all salts):	all oral dosage forms
Procainamide	
Theophylline (including all salts):	all oral dosage forms
Warfarin sodium tablets	

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 2 – DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to amend the rules cited as 02 NCAC 52A .0111; 52D .0101.

Proposed Effective Date: June 1, 2005

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than February 2, 2005, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action:

02 NCAC 52A .0111 – To delete incorporation by reference of obsolete program for eradication of pseudorabies and to adopt current Federal program.

02 NCAC 52D .0101 – To update adoption by reference of Federal standards for the meat and poultry inspection program.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objections(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Written comments may be submitted to: David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919)733-7125 – x249, fax (919)716-0105, email david.mcleod@ncmail.net.

Comment period ends: March 21, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 52 - VETERINARY DIVISION

**SUBCHAPTER 52A - RULES AND REGULATIONS
ADOPTED BY REFERENCE**

SECTION .0100 - ADOPTIONS BY REFERENCE

02 NCAC 52A .0111 PSEUDORABIES PROGRAM

~~The North Carolina Pseudorabies Program, as promulgated by the Swine Diseases Committee, is hereby adopted by reference in accordance with G.S. 150B-14(e). The document entitled Pseudorabies Eradication Program Standards, published by the United States Department of Agriculture, is incorporated by reference, including subsequent amendments and editions. Copies of this document may be obtained from the website of the United States Department of Agriculture at <http://www.aphis.usda.gov/vs/nahps/pseudorabies/prv-prgm-std.pdf>.~~

Authority G.S. 106-307.3 through 106-307.5.

SUBCHAPTER 52D - MEAT AND POULTRY INSPECTION

SECTION .0100 - STANDARDS: OFFICIAL MARK

**02 NCAC 52D .0101 CERTAIN STANDARDS
ADOPTED: EXCEPTIONS**

The Rules, Regulations, Definitions and Standards of the United States Department of Agriculture governing meat and meat products inspection, poultry products inspection, voluntary inspection of poultry and humane methods for slaughtering animals, ~~Subchapters A, B, C, and D, Title 9, Part 301 et. seq., Code of Federal Regulations, Parts 300 through 500,~~ are hereby incorporated by reference, including subsequent amendments and editions, subject to the following exceptions:

- (1) ~~Conformity of Federal Regulations to North Carolina Authority is Assumed.~~ To conform federal regulations to North Carolina Authority, authority, references in the federal regulations to the "Secretary of Agriculture," the "United States Department of Agriculture," the "Food Safety and Inspection Service," its "Administrator" and "Officer in Charge" shall be deemed to refer to the corresponding North

Carolina authority, the "Commissioner of Agriculture," the "North Carolina Department of Agriculture and Consumer Services," the "Meat and Poultry Inspection Service" and its "Director for Meat and Poultry Inspection Service" and the "Area Supervisors," Supervisors," respectively. References to "interstate commerce" shall be deemed to refer to "intrastate commerce" within North Carolina.

- (2) Statutory references to the "Federal Meat Inspection Act" shall be deemed to refer to the corresponding provisions of the "North Carolina Meat Inspection Law," Article 49B and Article 49C of Chapter 106 of the North Carolina General Statutes.
- (3) Statutory references to the "Federal Poultry Products Inspection Act" shall be deemed to refer to the corresponding provisions of the "North Carolina Poultry Products Inspection Act," Article 49D of G.S. 106.
- (4) References to federal marks of inspection, forms, overtime rates and charges shall be deemed to refer to the corresponding North Carolina marks of inspection, forms, and overtime rates and charges. These rates are established by the Commissioner pursuant to G.S. 106-549.69 to cover the cost of providing the service. Standards of the Federal Food, Drug and Cosmetic Act incorporated in the federal regulations are applicable to these articles.

Copies of the above are available for inspection in the ~~Office~~ office of the Director of the State Meat and Poultry Inspection Service and may be obtained at ~~a cost of one hundred and eighteen dollars (\$118.00) per copy by contacting the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, no cost from the United States Government Printing Office website at~~ http://www.access.gpo.gov/nara/cfr/waisidx_04/9cfrv2_04.html#301.

Authority G.S. 106-549.21; 106-549.22; 106-549.28.

TITLE 15A – DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

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

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: February 3, 2005

Time: 7:00 p.m.

Location: Courthouse, 100 S. Wright Street, Burgaw, NC

Reason for Proposed Action: *The proposed amendment would make all deer and bear hunting north of the Bear Garden Road, on Holly Shelter Game Land by permit only.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may object by writing to Dr. David Cobb, 1701 Mail Service Center, Raleigh, NC 27699-1701.*

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

Comment period ends: March 26, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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

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 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;
 - (D) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15.
- (f) 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.
- (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.
- (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.
- (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.
- (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 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.
- (8) Brunswick County Game Land in Brunswick County: Permit Only Area
 - (9) Buckridge Game Land in Tyrrell 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) 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.
 - (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.
 - (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.
 - (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.
 - (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (23) Currituck Banks Game Land in Currituck County
 (A) Six Days per Week Area
 (B) Permanent waterfowl blinds in Currituck Sound 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 shall be used to attach a tree stand or blind to a tree.
- (24) Dare Game Land in Dare County

- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last day of the 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.
- (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.
- (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.
- (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.
- (28) Goose Creek Game Land in Beaufort and Pamlico counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) On posted waterfowl impoundments waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the duck hunting seasons. After November 1, on the Pamlico Point, Campbell Creek, Hunting Creek and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the duck seasons, Saturdays of the duck seasons, and on Thanksgiving and New Year's Day.
 - (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (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.
- (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.
- (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.
 - (F) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season on the Long Shoal River Tract of Gull Rock Game Land.
- (32) Holly Shelter Game Land in Pender County
 - (A) Three Days per Week Area Area, except that the area of Holly Shelter Game Land, east of the Shaw Highway, south of NC Hwy 53, west of NC Hwy 50 and north of the Bear Garden Road, is open to gun deer hunting and bear hunting by Special Permit only.
 - (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.
- (E) On that portion of Holly Shelter Game Land east of the Shaw Highway, south of NC Hwy 53, west of NC Hwy 50 and north of the Bear Garden road, gun deer hunting and bear hunting is by Special Permit only.
- (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.
- (34) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (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.
- (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.
- (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.
- (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.
- (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 the last six days of the applicable Deer with Visible Antlers Season.
 (C) Horseback riding, including all equine species, is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (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.
- (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 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 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.
- (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.
- (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.
- (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.
- (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.
 (C) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
 (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 Day Per Week Area
 (B) Swimming lakes is prohibited.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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.
- (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

None

**SECTION .1500 - ADMISSION REQUIREMENTS:
EXAMINATIONS**

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

**21 NCAC 46 .1508 PREREQUISITES FOR DISEASE
STATE MANAGEMENT EXAMINATION**

~~In order to apply for the disease state management examination
administered by the Board, a pharmacist must be a North
Carolina licensed pharmacist.~~

Authority G.S. 90-85.6; 90-85.34.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

**CHAPTER 46 – NORTH CAROLINA BOARD OF
PHARMACY**

*Notice is hereby given in accordance with G.S. 150B-21.2 that
the Board of Pharmacy intends to repeal the rule cited as 21
NCAC 46 .1508 with changes from the proposed text noticed in
the Register, Volume 19, Issue 04.*

Proposed Effective Date: June 1, 2005

Reason for Proposed Action: *To delete the rule setting out
prerequisites for the disease state management examination
because the Board no longer administers the examination.*

**Procedure by which a person can object to the agency on a
proposed rule:** *Persons may submit objections regarding the
proposed rule change to David R. Work, NC Board of
Pharmacy, 6015 Farrington Road, Suite 201, Chapel Hill, NC
27517.*

Written comments may be submitted to: *David R. Work, NC
Board of Pharmacy, 6015 Farrington Road, Suite 201, Chapel
Hill, NC 27517.*

Comment period ends: March 21, 2005

**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)

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 58 – REAL ESTATE COMMISSION

*Notice is hereby given in accordance with G.S. 150B-21.2 that
the Real Estate Commission intends to amend the rules cited as
21 NCAC 58A .0101, .0104, .0106-.0107, .0109-.0110, .0502,
.0504, .0506, .1702, .1807; 58C .0205, .0207, .0603-.0604,
.0607-.0608; 58E .0302, .0310, .0406-.0407.*

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: February 9, 2005

Time: 10:00 a.m.

Location: *County Commissioner's Office, 301 West Market
Street, Greensboro, NC*

Reason for Proposed Action: *To clarify the current rules in
light of suggestions from the public, licensees, and the
Commission's staff.*

**Procedure by which a person can object to the agency on a
proposed rule:** *Any person who objects or who has comment
about the proposed rule changes may submit written comments
to rule-making coordinator Pamela Millward at the address
listed below.*

Written comments may be submitted to: *Pamela Millward,
NCREC, 1313 Navaho Drive, Raleigh, NC 27609, phone
(919)875-3700, fax (919)981-5023.*

Comment period ends: March 21, 2005

**Procedure for Subjecting a Proposed Rule to Legislative
Review:** If an objection is not resolved prior to the adoption of
the rule, 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 day following the day the Commission approves the rule. 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 58A - REAL ESTATE BROKERS AND SALESMEN

SECTION .0100 - GENERAL BROKERAGE

21 NCAC 58A .0101 PROOF OF LICENSURE

(a) The annual license renewal pocket card issued by the Commission to each licensee shall be retained by the licensee as evidence of licensure. Each licensee shall carry his or her pocket card on his or her person at all times while engaging in real estate brokerage and shall produce the card as proof of licensure whenever requested.

(b) The principal qualifying broker of a firm shall retain the firm's renewal pocket card at the firm and shall produce it upon request as proof of firm licensure as required by Rule .0502.

(c) Every licensed real estate business entity or firm shall prominently display its license certificate or facsimile thereof in each office maintained by the entity or firm. A broker-in-charge shall also prominently display his or her license certificate in the office where he or she is broker-in-charge.

(d) Every licensee shall include his or her license number in agency contracts and disclosures as provided in Rule .0104 of this Section.

Authority G.S. 93A-3(c).

21 NCAC 58A .0104 AGENCY AGREEMENTS AND DISCLOSURE

(a) Every agreement for brokerage services in a real estate transaction and every agreement for services connected with the management of a property owners association shall be in writing. Every agreement for brokerage services between a broker and an owner of the property to be the subject of a transaction must be in writing from the time of its formation. Every agreement for brokerage services between a broker and a buyer or tenant shall be express and shall be reduced to writing not later than the time one of the parties makes an offer to purchase, sell, rent, lease, or exchange real estate to another. However, every agreement between a broker and a buyer or tenant which seeks to bind the buyer or tenant for a period of time or to restrict the buyer's or tenant's right to work with other agents or without an agent shall be in writing from its formation. A broker or salesperson shall not continue to represent a buyer or tenant without a written agreement when such agreement is required by this Rule. Every written agreement for brokerage services of any kind in a real estate transaction shall provide for

its existence for a definite period of ~~time~~ time, shall include the licensee's license number, and shall provide for its termination without prior notice at the expiration of that period, except that an agency agreement between a landlord and broker to procure tenants or receive rents for the landlord's property may allow for automatic renewal so long as the landlord may terminate with notice at the end of any contract period and any subsequent renewals. For the purposes of this rule, an agreement between licensees to cooperate or share compensation shall not be considered an agreement for brokerage services and, except as required by Rule .1807 of this Subchapter, need not be memorialized in writing.

(b) Every listing agreement, written buyer agency agreement or other written agreement for brokerage services in a real estate ~~sales~~-transaction shall contain the following provision: The broker shall conduct all ~~his~~ brokerage activities in regard to this agreement without respect to the race, color, religion, sex, national origin, handicap or familial status of any ~~buyer, prospective buyer, seller or prospective seller.~~ party or prospective party to the agreement. The provision shall be set forth in a clear and conspicuous manner which shall distinguish it from other provisions of the agreement. For the purposes of this Rule, the term, familial status, shall be defined as it is in G.S. 41A-3(1b).

(c) In every real estate sales transaction, a broker or salesperson shall, at first substantial contact directly with a prospective buyer or seller, provide the prospective buyer or seller with a copy of the publication "Working with Real Estate Agents," set forth the broker or salesperson's name and license number thereon, ~~review it the publication with him or her,~~ the buyer or seller, and determine whether the agent will act as the agent of the buyer or seller in the transaction. If the first substantial contact with a prospective buyer or seller occurs by telephone or other electronic means of communication where it is not practical to provide the "Working with Real Estate Agents" publication, the broker or salesperson shall at the earliest opportunity thereafter, but in no event later than three days from the date of first substantial contact, mail or otherwise transmit a copy of the publication to the prospective buyer or seller and review it with him or her at the earliest practicable opportunity thereafter. For the purposes of this Rule, "first substantial contact" shall include contacts between a broker or salesperson and a consumer where the consumer or broker or salesperson begins to act as though an agency relationship exists and the consumer begins to disclose to the broker or salesperson personal or confidential information.

(d) A real estate broker or salesperson representing one party in a transaction shall not undertake to represent another party in the transaction without the written authority of each party. Such written authority must be obtained upon the formation of the relationship except when a buyer or tenant is represented by a broker without a written agreement in conformity with the requirements of Paragraph (a) of this Rule. Under such circumstances, the written authority for dual agency must be reduced to writing not later than the time that one of the parties represented by the broker or salesperson makes an offer to purchase, sell, rent, lease, or exchange real estate to another party.

(e) In every real estate sales transaction, a broker or salesperson working directly with a prospective buyer as a seller's agent or

subagent shall disclose in writing to the prospective buyer at the first substantial contact with the prospective buyer that the broker or salesperson represents the interests of the seller. The written disclosure shall include the broker or salesperson's license number. If the first substantial contact occurs by telephone or by means of other electronic communication where it is not practical to provide written disclosure, the broker or salesperson shall immediately disclose by similar means whom he represents and shall immediately mail or otherwise transmit a copy of the written disclosure to the buyer. In no event shall the broker or salesperson mail or transmit a copy of the written disclosure to the buyer later than three days from the date of first substantial contact with the buyer.

(f) In every real estate sales transaction, a broker or salesperson representing a buyer shall, at the initial contact with the seller or seller's agent, disclose to the seller or seller's agent that the broker or salesperson represents the buyer's interests. In addition, in every real estate sales transaction other than auctions, the broker or salesperson shall, no later than the time of delivery of an offer to the seller or seller's agent, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the buyer's offer to ~~purchase~~ purchase and shall include the broker or salesperson's license number.

(g) The provisions of Paragraphs (c), (d) and (e) of this Rule shall not apply to real estate licensees representing sellers in auction sales transactions.

(h) A broker or salesperson representing a buyer in an auction sale transaction shall, no later than the time of execution of a written agreement memorializing the buyer's contract to purchase, provide the seller or seller's agent with a written confirmation disclosing that he represents the interests of the buyer. The written confirmation may be made in the written agreement.

(i) A firm which represents more than one party in the same real estate transaction is a dual agent and, through the brokers and salespersons associated with the firm, shall disclose its dual agency to the parties.

(j) When a firm represents both the buyer and seller in the same real estate transaction, the firm may, with the prior express approval of its buyer and seller clients, designate one or more individual agents associated with the firm to represent only the interests of the seller and one or more other individual brokers and salespersons associated with the firm to represent only the interests of the buyer in the transaction. The authority for designated agency must be reduced to writing not later than the time that the parties are required to reduce their dual agency agreement to writing in accordance with Paragraph (d) of this Rule. An individual broker or salesperson shall not be so designated and shall not undertake to represent only the interests of one party if the broker or salesperson has actually received confidential information concerning the other party in connection with the transaction. A broker-in-charge shall not act as a designated agent for a party in a real estate sales transaction when a salesperson under his or her supervision will act as a designated agent for another party with a competing interest.

(k) When a firm acting as a dual agent designates an individual broker or salesperson to represent the seller, the broker or

salesperson so designated shall represent only the interest of the seller and shall not, without the seller's permission, disclose to the buyer or a broker or salesperson designated to represent the buyer:

- (1) that the seller may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the seller's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the seller which the seller has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(l) When a firm acting as a dual agent designates an individual broker or salesperson to represent the buyer, the broker or salesperson so designated shall represent only the interest of the buyer and shall not, without the buyer's permission, disclose to the seller or a broker or salesperson designated to represent the seller:

- (1) that the buyer may agree to a price, terms, or any conditions of sale other than those established by the seller;
- (2) the buyer's motivation for engaging in the transaction unless disclosure is otherwise required by statute or rule; and
- (3) any information about the buyer which the buyer has identified as confidential unless disclosure of the information is otherwise required by statute or rule.

(m) A broker or salesperson designated to represent a buyer or seller in accordance with Paragraph (j) of this Rule shall disclose the identity of all of the brokers and salespersons so designated to both the buyer and the seller. The disclosure shall take place no later than the presentation of the first offer to purchase or sell.

(n) When an individual broker or salesperson represents both the buyer and seller in the same real estate sales transaction pursuant to a written agreement authorizing dual agency, the parties may provide in the written agreement that the broker or salesperson shall not disclose the following information about one party to the other without permission from the party about whom the information pertains:

- (1) that a party may agree to a price, terms or any conditions of sale other than those offered;
- (2) the motivation of a party for engaging in the transaction, unless disclosure is otherwise required by statute or rule; and
- (3) any information about a party which that party has identified as confidential, unless disclosure is otherwise required by statute or rule.

Authority G.S. 41A-3(1b); 41A-4(a); 93A-3(c); 93A-9.

21 NCAC 58A .0106 DELIVERY OF INSTRUMENTS

(a) Except as provided in Paragraph (b) of this Rule, every broker or salesperson shall immediately, but in no event later than five days from the date of execution, deliver to the parties thereto copies of any required written agency agreement, contract, offer, lease, or option affecting real property.

(b) A broker or salesperson may be relieved of his or her duty under Paragraph (a) of this Rule to deliver copies of leases or rental agreements to the property owner, if the broker:

- (1) obtains the express written authority of the property owner to enter into and retain copies of leases or rental agreements on behalf of the property owner;
- (2) executes the lease or rental agreement on a pre-printed form, the material terms of which may not be changed by the broker without prior approval by the property owner except as may be required by law;
- (3) promptly provides a copy of the lease or rental agreement to the property owner upon reasonable request; and
- (4) delivers to the property owner within 45 days following the date of execution of the lease or rental agreement, an accounting which identifies the leased property and which sets forth the names of the tenants, the rental rates and rents collected.

Authority G.S. 93A-3(c).

21 NCAC 58A .0107 HANDLING AND ACCOUNTING OF FUNDS

(a) Except as provided herein, all monies received by a licensee acting in his or her fiduciary capacity shall be deposited in a trust or escrow account maintained by a broker not later than three banking days following receipt of such monies except that earnest money deposits paid by means other than currency which are received on offers to purchase real estate and tenant security deposits paid by means other than currency which are received in connection with real estate leases shall be deposited in a trust or escrow account not later than three banking days following acceptance of such offer to purchase or lease; the date of acceptance of such offer to purchase or lease shall be set forth in the purchase or lease agreement. All monies received by a salesperson shall be delivered immediately to the broker by whom he or she is employed, except that all monies received by nonresident commercial licensees shall be delivered as required by Rule .1808 of this Subchapter. A licensee may accept custody of a check or other negotiable instrument made payable to the seller of real property as option money only for the purpose of delivering the instrument to the optionor-seller. While the instrument is in the custody of the licensee, the licensee shall either deliver it to the seller-optionor or return it to the buyer-optionee according to the instructions of the buyer-optionee. The licensee shall safeguard the instrument and shall be responsible to the parties on the instrument for its prompt and safe delivery. In no event shall a licensee retain such an instrument for more than three business days after the acceptance of the option contract.

(b) In the event monies received by a licensee while acting in a fiduciary capacity are deposited in a trust or escrow account which bears interest, the broker having custody over such monies shall first secure from all parties having an interest in the monies written authorization for the deposit of the monies in an interest-bearing account. Such authorization shall specify how

and to whom the interest will be disbursed, and, if contained in an offer, contract, lease, or other transaction instrument, such authorization shall be set forth in a conspicuous manner which shall distinguish it from other provisions of the instrument.

(c) Closing statements shall be furnished to the buyer and the seller in the transaction at the closing or not more than five days after closing.

(d) Trust or escrow accounts shall be so designated by the bank or savings and loan association in which the account is located, and all deposit tickets and checks drawn on said account as well as the monthly bank statement for the account shall bear the words "Trust Account" or "Escrow Account."

(e) A licensee shall maintain and retain records sufficient to identify the ownership of all funds belonging to others. Such records shall be sufficient to show proper deposit of such funds in a trust or escrow account and to verify the accuracy and proper use of the trust or escrow account. The required records shall include:

- (1) bank statements;
- (2) canceled checks which shall be referenced to the corresponding journal entry or check stub entries and to the corresponding sales transaction ledger sheets or for rental transactions, the corresponding property or owner ledger sheets. Checks shall conspicuously identify the payee and shall bear a notation identifying the purpose of the disbursement. When a check is used to disburse funds for more than one sales transaction, owner, or property, the check shall bear a notation identifying each sales transaction, owner, or property for which disbursement is made, including the amount disbursed for each, and the corresponding sales transaction, property, or owner ledger entries. When necessary, the check notation may refer to the required information recorded on a supplemental disbursement worksheet which shall be cross-referenced to the corresponding check. In lieu of retaining canceled checks, a licensee may retain digitally imaged copies of the canceled checks provided that such images are legible reproductions of the front and back of the original instruments with ~~no more than four instruments per page~~ and no smaller images than ~~2.25 x 5.0~~ 1.1875 x 3.0 inches, inches and provided that the licensee's bank retains the original checks or a "substitute check" as described in 12 C.F.R. 229.51 on file for a period of at least ~~five~~ six years and makes them available to the licensee and the Commission upon request;

(3) deposit tickets. For a sales transaction, the deposit ticket shall identify the purpose and remitter of the funds deposited, the property, the parties involved, and a reference to the corresponding sales transaction ledger entry. For a rental transaction, the deposit ticket shall

- identify the purpose and remitter of the funds deposited, the tenant, and the corresponding property or owner ledger entry. For deposits of funds belonging to or collected on behalf of a property owner association, the deposit ticket shall identify the property or property interest for which the payment is made, the property or interest owner, the remitter, and the purpose of the payment. When a single deposit ticket is used to deposit funds collected for more than one sales transaction, property owner, or property, the required information shall be recorded on the ticket for each sales transaction, owner, or property, or the ticket may refer to the same information recorded on a supplemental deposit worksheet which shall be cross-referenced to the corresponding deposit ticket;
- (4) a payment record sheet for each property or interest for which funds are collected and deposited into a property owner association trust account as required by Paragraph (i) of this Rule. Payment record sheets shall identify the amount, date, remitter, and purpose of payments received, the amount and nature of the obligation for which payments are made, and the amount of any balance due or delinquency;
- (5) a separate ledger sheet for each sales transaction and for each property or owner of property managed by the broker identifying the property, the parties to the transaction, the amount, date, and purpose of the deposits and from whom received, the amount, date, check number, and purpose of disbursements and to whom paid, and the running balance of funds on deposit for the particular sales transaction or, in a rental transaction, the particular property or owner of property. Monies held as tenant security deposits in connection with rental transactions may be accounted for on a separate tenant security deposit ledger for each property or owner of property managed by the broker. For each security deposit the tenant security deposit ledger shall identify the remitter, the date the deposit was paid, the amount, the tenant, landlord, and subject property. For each disbursement of tenant security deposit monies, the ledger shall identify the check number, amount, payee, date, and purpose of the disbursement. The ledger shall also show a running balance. When tenant security deposit monies are accounted for on a separate ledger as provided herein, deposit tickets, canceled checks and supplemental worksheets shall reference the corresponding tenant security deposit ledger entries when appropriate;
- (6) a journal or check stubs identifying in chronological sequence each bank deposit and disbursement of monies to and from the trust or escrow account, including the amount and date of each deposit and a reference to the corresponding deposit ticket and any supplemental deposit worksheet, and the amount, date, check number, and purpose of disbursements and to whom paid. The journal or check stubs shall also show a running balance for all funds in the account;
- (7) copies of contracts, leases and management agreements;
- (8) closing statements and property management statements;
- (9) covenants, bylaws, minutes, management agreements and periodic statements relating to the management of a property owner association; and
- (10) invoices, bills, and contracts paid from the trust account, and any documents not otherwise described herein necessary and sufficient to verify and explain record entries.
- Records of all receipts and disbursements of trust or escrow monies shall be maintained in such a manner as to create an audit trail from deposit tickets and canceled checks to check stubs or journals and to the ledger sheets. Ledger sheets and journals or check stubs must be reconciled to the trust or escrow account bank statements on a monthly basis. To be sufficient, records of trust or escrow monies must include a worksheet for each such monthly reconciliation showing the ledger sheets, journals or check stubs, and bank statements to be in agreement and balance.
- (f) All trust or escrow account records shall be made available for inspection by the Commission or its authorized representatives in accordance with Rule 21 NCAC 58A .0108.
- (g) In the event of a dispute between the seller and buyer or landlord and tenant over the return or forfeiture of any deposit other than a residential tenant security deposit held by a licensee, the licensee shall retain said deposit in a trust or escrow account until the licensee has obtained a written release from the parties consenting to its disposition or until disbursement is ordered by a court of competent jurisdiction. If it appears to a broker holding a disputed deposit that a party has abandoned his or her claim, the broker may disburse the money to the other claiming parties according to their written agreement provided that the broker first makes a reasonable effort to notify the party who has apparently abandoned his or her claim and provides that party with an opportunity to renew his or her claim to the disputed funds. Tenant security deposit monies shall be disposed of in accordance with the requirements of G.S. 42-50 through 56 and G.S. 42A-18.
- (h) A broker may transfer earnest money deposits in his or her possession collected in connection with a sales transaction from his or her trust account to the closing attorney or other settlement agent not more than ten days prior to the anticipated settlement date. A licensee shall not disburse prior to settlement any earnest money in his or her possession for any other purpose without the written consent of the parties.

(i) The funds of a property owner association, when collected, maintained, disbursed or otherwise controlled by a licensee, are trust monies and shall be treated as such in the manner required by this Rule. Such funds must be deposited into and maintained in a trust or escrow account or accounts dedicated exclusively for funds belonging to a single property owners association and may not be commingled with funds belonging to other property owner associations or other persons or parties. A licensee who undertakes to act as manager of a property owner association or as the custodian of funds belonging to a property owner association shall provide the association with periodic statements which report the balance of association funds in the licensee's possession or control and which account for the funds the licensee has received and disbursed on behalf of the association. Such statements must be made in accordance with the licensee's agreement with the association, but in no event shall the statements be made less frequently than every 90 days.

(j) Every licensee shall safeguard the money or property of others coming into his or her possession in a manner consistent with the requirements of the Real Estate License Law and the rules adopted by the Commission. A licensee shall not convert the money or property of others to his or her own use, apply such money or property to a purpose other than that for which it was paid or entrusted to him or her, or permit or assist any other person in the conversion or misapplication of such money or property.

(k) In addition to the records required by Paragraph (e) of this Rule, a licensee acting as agent for the landlord of a residential property used for vacation rentals shall create and maintain a subsidiary ledger sheet for each property or owner of such properties onto which all funds collected and disbursed are identified in categories by purpose. On a monthly basis, the licensee shall reconcile the subsidiary ledger sheets to the corresponding property or property owner ledger sheet.

(l) In lieu of maintaining a subsidiary ledger sheet, the licensee may maintain an accounts payable ledger sheet for each owner or property and each vendor to whom trust monies are due for monies collected on behalf of the owner or property identifying the date of receipt of the trust monies, from whom the monies were received, rental dates, and the corresponding property or owner ledger sheet entry including the amount to be disbursed for each and the purpose of the disbursement. The licensee may also maintain an accounts payable ledger sheet in the format described in Paragraph (k) of this Rule for vacation rental tenant security deposit monies and vacation rental advance payments.

Authority G.S. 93A-3(c); 93A-9.

21 NCAC 58A .0109 BROKERAGE FEES AND COMPENSATION

(a) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration of more than nominal value from a vendor or a supplier of goods and services for an expenditure made on behalf of the licensee's principal in a real estate transaction without the written consent of the licensee's principal.

(b) A licensee shall not receive, either directly or indirectly, any commission, rebate or other valuable consideration of more than nominal value for services which the licensee recommends,

procures, or arranges relating to a real estate transaction for any party, without full disclosure to such party; provided, however, that nothing in this Rule shall be construed to permit a licensee to accept any fee, kickback or other valuable consideration that is prohibited by the Real Estate Settlement Procedures Act of 1974 (12 USC 2601 et. seq.) or any rules and regulations promulgated by the United States Department of Housing and Urban Development pursuant to such Act.

(c) The Commission shall not act as a board of arbitration and shall not compel parties to settle disputes concerning such matters as the rate of commissions, the division of commissions, pay of salespersons, and similar matters.

(d) Except as provided in (e) of this rule, a licensee shall not undertake in any manner, any arrangement, contract, plan or other course of conduct, to compensate or share compensation with unlicensed persons or entities for any acts performed in North Carolina for which licensure by the Commission is required.

(e) A broker may pay or promise to pay consideration to a travel agent in return for procuring a tenant for a vacation rental as defined by the Vacation Rental Act if:

- (1) the travel agent only introduces the tenant to the broker, but does not otherwise engage in any activity which would require a real estate license;
- (2) the introduction by the travel agent is made in the regular course of the travel agent's business; and
- (3) the travel agent has not solicited, handled or received any monies in connection with the vacation rental.

For the purpose of this Rule, a travel agent is any person or entity who is primarily engaged in the business of acting as an intermediary between persons who purchase air, land, and ocean travel services and the providers of such services. A travel agent is also any other person or entity who is permitted to handle and sell tickets for air travel by the Airlines Reporting Corporation (ARC). Payments authorized hereunder shall be made only after the conclusion of the vacation rental tenancy. Prior to the creation of a binding vacation rental agreement, the broker shall provide a tenant introduced by a travel agent a written statement advising him or her to rely only upon the agreement and the broker's representations about the transaction. The broker shall keep for a period of three years records of a payment made to a travel agent including records identifying the tenant, the travel agent and their addresses, the property and dates of the tenancy, and the amount paid.

Authority G.S. 93A-3(c).

21 NCAC 58A .0110 BROKER-IN-CHARGE

(a) Every real estate firm shall designate a broker to serve as the broker-in-charge at its principal office and a broker to serve as broker-in-charge at any branch office. No broker shall be broker-in-charge of more than one office or branch office. If a firm shares office space with one or more other firms, one broker may serve as broker-in-charge of each firm at that location. No office or branch office of a firm shall have more than one designated broker-in-charge. A broker who is a sole

proprietor shall designate himself or herself as a broker-in-charge if the broker engages in any transaction where the broker is required to deposit and maintain monies belonging to others in a trust account, engages in advertising or promoting his or her services as a broker in any manner, or has one or more brokers or salespersons affiliated with him or her in the real estate business. Each broker-in-charge shall make written notification of his or her status as broker-in-charge to the Commission on a form prescribed by the Commission within 10 days following the broker's designation as broker-in-charge. The broker-in-charge shall assume the responsibility at his or her office for:

- (1) the retention and display of current license renewal pocket cards by all brokers and salespersons employed at the office for which he or she is broker-in-charge; the proper display of licenses at such office in accordance with Rule .0101 of this Section; and assuring that each licensee employed at the office has complied with Rules .0503, .0504, and .0506 of this Subchapter;
 - (2) the proper notification to the Commission of any change of business address or trade name of the firm and the registration of any assumed business name adopted by the firm for its use;
 - (3) the proper conduct of advertising by or in the name of the firm at such office;
 - (4) the proper maintenance at such office of the trust or escrow account of the firm and the records pertaining thereto;
 - (5) the proper retention and maintenance of records relating to transactions conducted by or on behalf of the firm at such office, including those required to be retained pursuant to Rule .0108 of this Section;
 - (6) the proper supervision of salespersons associated with or engaged on behalf of the firm at such office in accordance with the requirements of Rule .0506 of this Subchapter;
 - (7) the verification to the Commission of the experience of any salesperson at such office who may be applying for licensure as a broker; and
 - (8) the proper supervision of all brokers and salespersons employed at the office for which he or she is broker-in-charge with respect to adherence to agency agreement and disclosure requirements.
- (b) When used in this Rule, the term:
- (1) "Branch Office" means any office in addition to the principal office of a broker which is operated in connection with the broker's real estate business; and
 - (2) "Office" means any place of business where acts are performed for which a real estate license is required.
- (c) A broker-in-charge must continually maintain his or her license on active status.
- (d) Each broker-in-charge shall notify the Commission in writing of any change in his or her status as broker-in-charge

within 10 days following the change. Upon written request of a salesperson within five years after termination of his or her association with a broker-in-charge, the broker-in-charge shall provide the salesperson, on a form prescribed by the Commission, an accurate written statement regarding the number and type of properties listed, sold, bought, leased, or rented for others by the salesperson while under the supervision of the broker-in-charge.

(e) A licensed real estate firm shall not be required to designate a broker-in-charge if it:

- (1) has been organized for the sole purpose of receiving compensation for brokerage services furnished by its ~~principal~~ principal qualifying broker through another firm or broker;
- (2) is designated a Subchapter S corporation by the United States Internal Revenue Service;
- (3) has no principal or branch office; and
- (4) has no person associated with it other than its ~~principal~~ principal qualifying broker.

(f) Except as provided herein every broker-in-charge designated before October 1, 2000 shall complete the Commission's broker-in-charge course not later than October 1, 2005 in order to remain broker-in-charge on that date and thereafter. Except as provided herein, every broker-in-charge designated after October 1, 2000 shall complete the broker-in-charge course within 120 days following designation in order to remain broker-in-charge thereafter. Every broker who has completed the broker-in-charge course shall take the course on a recurring basis at intervals not to exceed five years between courses in order to remain eligible to be designated broker-in-charge of the principal or branch office of any real estate firm. If a broker who is designated broker-in-charge fails to complete the broker-in-charge course within the prescribed time period, the broker-in-charge status of that broker shall be immediately terminated, and the broker must complete the broker-in-charge course before he or she may again be designated as broker-in-charge. A broker-in-charge residing outside of North Carolina who is the broker-in-charge of a principal or branch office not located in North Carolina shall not be required to complete the broker-in-charge course.

(g) A nonresident commercial real estate broker licensed under the provisions of Section .1800 of this Subchapter shall not act as or serve in the capacity of a broker-in-charge of a firm or office in North Carolina.

Authority G.S. 93A-2; 93A-3(c); 93A-4; 93A-9.

SECTION .0500 - LICENSING

21 NCAC 58A .0502 BUSINESS ENTITIES

(a) Every business entity other than a sole proprietorship shall apply for and obtain from the Commission a firm license prior to engaging in business as a real estate broker. An entity that changes its business form shall be required to submit a new application immediately upon making the change and to obtain a new license. Incomplete applications shall not be acted upon by the Commission. Application forms for partnerships, corporations, limited liability companies, associations and other business entities required to be licensed as brokers shall be

available upon request to the Commission and shall require the applicant to set forth:

- (1) the name of the entity;
- (2) the name under which the entity will do business;
- (3) the type of business entity;
- (4) the address of its principal office;
- (5) the entity's NC Secretary of State Identification Number if required to be registered with the Office of the NC Secretary of State;
- (6) the name, real estate license number and signature of the proposed ~~principal~~ principal qualifying broker for the proposed firm;
- (7) the address of and name of the proposed broker-in-charge for each office where brokerage activities will be conducted, along with a completed broker-in-charge declaration form for each proposed broker-in-charge;
- (8) any past criminal conviction of and any pending criminal charge against any principal in the company or any proposed broker-in-charge;
- (9) any past revocation, suspension or denial of a business or professional license of any principal in the company or any proposed broker-in-charge;
- (10) if a general partnership, a full description of the applicant entity, including a copy of its written partnership agreement or if no written agreement exists, a written description of the rights and duties of the several partners;
- (11) if a business entity other than a corporation, limited liability company or partnership, a full description of the organization of the applicant entity, including a copy of its organizational documents evidencing its authority to engage in real estate brokerage;
- (12) if a foreign business entity, a certificate of authority to transact business in North Carolina and an executed consent to service of process and pleadings; and
- (13) any other information required by this Rule.

The Commission also may require the applicant to declare in the license application that the applicant's organizational documents authorize the firm to engage in the real estate business and to submit organizational documents, addresses of affiliated persons and similar information. For purposes of this Paragraph, the term principal shall mean any person or entity owning 10 percent or more of the business entity, or who is an officer, director, manager, member, partner or who holds any other comparable position.

(b) After filing a written application with the Commission and upon a showing that at least one principal of said business entity holds a broker license on active status and in good standing and will serve as ~~principal~~ principal qualifying broker of the entity, the entity shall be licensed provided it appears that the applicant entity employs and is directed by personnel possessed of the requisite truthfulness, honesty, and integrity. The ~~principal~~ principal qualifying

broker of a partnership of any kind must be a general partner of the partnership; the ~~principal~~ principal qualifying broker of a limited liability company must be a manager of the company; and the ~~principal~~ principal qualifying broker of a corporation must be an officer of the corporation. A licensed business entity may serve as the ~~principal~~ principal qualifying broker of another licensed business entity if the ~~principal~~ principal qualifying broker-entity has as its ~~principal~~ principal qualifying broker a natural person who is ~~himself~~-licensed as a broker. The natural person who is ~~principal~~ principal qualifying broker shall assure the performance of the ~~principal~~ principal qualifying broker's duties with regard to both entities.

(c) The licensing of a business entity shall not be construed to extend to the licensing of its partners, managers, members, directors, officers, employees or other persons acting for the entity in their individual capacities regardless of whether they are engaged in furthering the business of the licensed entity.

(d) The ~~principal~~ principal qualifying broker of a business entity shall assume responsibility for:

- (1) designating and assuring that there is at all times a broker-in-charge for each office and branch office of the entity at which real estate brokerage activities are conducted;
- (2) renewing the real estate broker license of the entity;
- (3) retaining the firm's renewal pocket card at the firm and producing it as proof of firm licensure upon request and maintaining a photocopy of the firm license certificate and pocket card at each branch office thereof;
- (4) notifying the Commission of any change of business address or trade name of the entity and the registration of any assumed business name adopted by the entity for its use;
- (5) notifying the Commission in writing of any change of his or her status as ~~principal~~ principal qualifying broker within ten days following the change;
- (6) securing and preserving the transaction and trust account records of the firm whenever there is a change of broker-in-charge at the firm or any office thereof and notifying the Commission if the trust account records are ~~out of balance~~ out of balance or have not been reconciled as required by Rule .0107 of this Chapter;
- (7) retaining and preserving the transaction and trust account records of the firm upon termination of his or her status as ~~principal~~ principal qualifying broker until a new ~~principal~~ principal qualifying broker has been designated with the Commission or, if no new ~~principal~~ principal qualifying broker is designated, for the period of time for which said records are required to be retained by Rule .0108 of this Chapter; and
- (8) notifying the Commission if, upon the termination of his or her status as ~~principal~~ principal qualifying broker, the firm's transaction and trust account records cannot be retained or preserved or if the trust account records are

~~out of balance~~ out of balance or have not been reconciled as required by Rule .0107(e) of this Chapter.

(e) Every licensed business entity and every entity applying for licensure shall conform to all the requirements imposed upon it by the North Carolina General Statutes for its continued existence and authority to do business in North Carolina. Failure to conform to such requirements shall be grounds for disciplinary action or denial of the entity's application for licensure. Upon receipt of notice from an entity or agency of this state that a licensed entity has ceased to exist or that its authority to engage in business in this state has been terminated by operation of law, the Commission shall cancel the license of the entity.

Authority G.S. 93A-3(c); 93A-4(a),(b),(d).

21 NCAC 58A .0504 ACTIVE AND INACTIVE LICENSE STATUS

(a) Except for licenses that have expired or that have been revoked, suspended or surrendered, all licenses issued by the Commission shall be designated as being either on active status or inactive status. The holder of a license on active status may engage in any activity requiring a real estate license and may be compensated for the provision of any lawful real estate brokerage service. The holder of a license on inactive status may not engage in any activity requiring a real estate license, including the referral for compensation of a prospective seller, buyer, landlord or tenant to another real estate licensee or any other party. A licensee holding a license on inactive status must renew such license and pay the prescribed license renewal fee in order to continue to hold such license. The Commission may take disciplinary action against a licensee holding a license on inactive status for any violation of G.S. 93A or any rule promulgated by the Commission, including the offense of engaging in an activity for which a license is required while a license is on inactive status.

(b) Except as provided by Rule .1804 of this Subchapter, a salesperson's license shall, upon initial licensure, be assigned to inactive status. The license of a broker or firm shall be assigned to active status. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker or salesperson may change the status of his or her license from active to inactive status by submitting a written request to the Commission. Except for salespersons licensed under Section .1800 of this Subchapter, a salesperson's license shall be assigned by the Commission to inactive status when the salesperson is not under the active, personal supervision of a broker-in-charge. A firm's license shall be assigned by the Commission to inactive status when the firm does not have a principal qualifying broker. Except for persons licensed under the provisions of Section .1800 of this Subchapter, a broker or salesperson shall also be assigned to inactive status if, upon the second renewal of his or her license following initial licensure, or upon any subsequent renewal, he or she has not satisfied the continuing education requirement described in Rule .1702 of this Subchapter.

(c) A salesperson with an inactive license who desires to have such license placed on active status must comply with the procedures prescribed in Rule .0506 of this Section.

(d) A broker with an inactive license who desires to have such license placed on active status shall file with the Commission a request for license activation on a form prescribed by the Commission containing identifying information about the broker, a statement that the broker has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signature of the broker. Upon the mailing or delivery of this form, the broker may engage in real estate brokerage activities requiring a license; however, if the broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the broker shall immediately terminate his or her real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the broker is notified that he or she is not eligible for license activation due to a continuing education deficiency, the broker must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(e) A firm with an inactive license which desires to have its license placed on active status shall file with the Commission a request for license activation on a form prescribed by the Commission containing identifying information about the firm and its principal qualifying broker. If the principal qualifying broker has an inactive license, he or she must satisfy the requirements of Paragraph (d) of this Rule. Upon the mailing or delivery of the completed form by the principal qualifying broker, the firm may engage in real estate brokerage activities requiring a license; however, if the firm's principal qualifying broker does not receive from the Commission a written acknowledgment of the license activation within 30 days of the date shown on the form, the firm shall immediately terminate its real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the principal qualifying broker is notified that the firm is not eligible for license activation due to a continuing education deficiency on the part of the principal qualifying broker, the firm must terminate all real estate brokerage activities until such time as the continuing education deficiency is satisfied and a new request for license activation is submitted to the Commission.

(f) A person licensed as a broker or salesperson under Section .1800 of this Subchapter shall maintain his or her license on active status at all times as required by Rule .1804 of this Subchapter.

Authority G.S. 93A-3(c); 93A-4(d); 93A-4A; 93A-6; 93A-9.

21 NCAC 58A .0506 SALESPERSON TO BE SUPERVISED BY BROKER

(a) This Rule shall apply to all real estate salespersons except those salespersons licensed under the provisions of Section .1800 of this Subchapter.

(b) A salesperson may engage in or hold himself or herself out as engaging in activities requiring a real estate license only while his or her license is on active status and he or she is supervised

by the broker-in-charge of the real estate firm or office where the salesperson is associated. A salesperson may be supervised by only one broker-in-charge at a time.

(c) Upon a salesperson's association with a real estate broker or brokerage firm, the salesperson and the broker-in-charge of the office where the salesperson will be engaged in the real estate business shall immediately file with the Commission a salesperson supervision notification on a form prescribed by the Commission containing identifying information about the salesperson and the broker-in-charge, a statement from the broker-in-charge certifying that he or she will supervise the salesperson in the performance of all acts for which a license is required, the date that the broker-in-charge assumes responsibility for such supervision, and the signatures of the salesperson and broker-in-charge. If the salesperson is on inactive status at the time of associating with a broker or brokerage firm, the salesperson and broker-in-charge shall also file, along with the salesperson supervision notification, the salesperson's request for license activation on a form prescribed by the Commission containing identifying information about the salesperson, the salesperson's statement that he or she has satisfied the continuing education requirements prescribed by Rule .1703 of this Subchapter, the date of the request, and the signatures of the salesperson and the salesperson's proposed broker-in-charge. Upon the mailing or delivery of the required form(s), the salesperson may engage in real estate brokerage activities requiring a license under the supervision of the broker-in-charge; however, if the salesperson and broker-in-charge do not receive from the Commission a written acknowledgment of the salesperson supervision notification and, if appropriate, the request for license activation, within 30 days of the date shown on the form, the broker-in-charge shall immediately terminate the salesperson's real estate brokerage activities pending receipt of the written acknowledgment from the Commission. If the salesperson and broker-in-charge are notified that the salesperson is not eligible for license activation due to a continuing education deficiency, the broker-in-charge shall cause the salesperson to immediately cease all activities requiring a real estate license until such time as the continuing education deficiency is satisfied and a new salesperson supervision notification and request for license activation is submitted to the Commission.

(d) A broker-in-charge who certifies to the Commission that he or she will supervise a licensed salesperson shall actively and personally directly supervise the salesperson in a manner which reasonably assures that the salesperson performs all acts for which a real estate license is required in accordance with the Real Estate License Law and Commission rules. A supervising broker who fails to supervise a salesperson as prescribed in this Rule may be subject to disciplinary action by the Commission.

(e) Upon the termination of the supervisory relationship between a salesperson and his or her broker-in-charge, the salesperson and the broker-in-charge shall provide written notification of the date of termination to the Commission not later than 10 days following said termination.

Authority G.S. 93A-2(b); 93A-3; 93A-9.

SECTION .1700 – MANDATORY CONTINUING EDUCATION

21 NCAC 58A .1702 CONTINUING EDUCATION REQUIREMENT

(a) ~~Except as provided in A.1708 and A.1711, in~~ order to renew a broker or salesperson license on active status, the person requesting renewal of a license shall, upon the second renewal of such license following initial licensure, and upon each subsequent annual renewal, have completed, within one year preceding license expiration, eight classroom hours of real estate continuing education in courses approved by the Commission as provided in Subchapter 58E. Four of the required eight classroom hours must be obtained each license period by completing a mandatory update course developed annually by the Commission. The remaining four hours must be obtained by completing one or more Commission-approved elective courses described in Rule .0305 of Subchapter 58E. The licensee bears the responsibility for providing, upon request of the Commission, evidence of continuing education course completion satisfactory to the Commission. A licensed salesperson who applies for a broker license after the first renewal of his or her salesperson license must have completed the current mandatory update course and one approved elective course during the license period in which the broker license application is filed.

(b) No continuing education shall be required to renew a broker or salesperson license on inactive status; however, to change a license from inactive status to active status, the licensee must satisfy the continuing education requirement described in Rule .1703 of this Section.

(c) No continuing education shall be required for a licensee who is a member of the U.S. Congress or the North Carolina General Assembly in order to renew his or her license on active status.

(d) The terms "active status" and "inactive status" are defined in Rule .0504 of this Subchapter. For continuing education purposes, the term "initial licensure" shall include the first time that a license of a particular type is issued to a person, ~~and~~ the reinstatement of a revoked or surrendered license, ~~and any~~ or a license expired for more than six months.

Authority G.S. 93A-3(c); 93A-4A.

SECTION .1800 - LIMITED NONRESIDENT COMMERCIAL LICENSING

21 NCAC 58A .1807 AFFILIATION WITH RESIDENT BROKER

(a) No person licensed under this Section shall enter North Carolina to perform any act or service for which licensure as a real broker or salesperson is required unless he or she has first entered into a brokerage cooperation agreement and declaration of affiliation with an individual who is a resident in North Carolina licensed as a North Carolina real estate broker.

(b) A brokerage cooperation agreement as contemplated by this Rule shall be in writing and signed by the resident North Carolina broker and the non-resident commercial licensee. It shall contain:

- (1) the material terms of the agreement between the signatory licenses;
- (2) a description of the agency relationships, if any, which are created by the agreement among the nonresident commercial licensee, the resident North Carolina broker, and the parties each represents;
- (3) a description of the property or the identity of the parties and other information sufficient to identify the transaction which is the subject of the affiliation agreement; and
- (4) a definite expiration date.

(c) A declaration of affiliation shall be written and on the form prescribed by the Commission and shall identify the nonresident commercial licensee and the affiliated resident North Carolina licensee. It shall also contain a description of the duties and obligations of each as required by the North Carolina Real Estate License Law and rules duly adopted by the Commission. The declaration of affiliation may be a part of the brokerage cooperation agreement or separate from it.

(d) A nonresident commercial licensee may affiliate with more than one resident North Carolina broker at any time. However, a nonresident commercial licensee may be affiliated with only one resident North Carolina broker in a single transaction.

(e) A resident North Carolina broker who enters into a brokerage cooperation agreement and declaration of affiliation with a nonresident commercial licensee shall:

- (1) verify that the nonresident commercial licensee is licensed in North Carolina;
- (2) actively and personally supervise the nonresident commercial licensee in a manner which reasonably insures that the nonresident commercial licensee complies with the North Carolina Real Estate License Law and rules adopted by the Commission; ~~and~~
- (3) promptly notify the Commission if the nonresident commercial licensee violates the Real Estate License Law or rules adopted by the Commission; ~~and~~
- (4) insure that records are retained in accordance with the requirements of the Real Estate License Law and rules adopted by the ~~Commission.~~ Commission; and
- (5) maintain his or her license on active status continuously for the duration of the brokerage cooperation agreement and the declaration of affiliation.

(f) The nonresident commercial licensee and the affiliated resident North Carolina broker shall each retain in his or her records a copy of brokerage cooperation agreements and declarations of affiliation from the time of their creation and for at least three years following their expiration. Such records shall be made available for inspection and reproduction by the Commission or its authorized representatives without prior notice.

Authority G.S. 93A-4; 93A-9.

SUBCHAPTER 58C - REAL ESTATE

PRELICENSING EDUCATION

SECTION .0200 - PRIVATE REAL ESTATE SCHOOLS

21 NCAC 58C .0205 ADDITIONAL COURSE OFFERINGS

A school that is also a Commission-approved sponsor of continuing education courses under Section .0100 or Section .0300 of Subchapter 58E may offer such continuing education courses in accordance with Commission rules governing such courses and sponsors. Schools may also offer courses in addition to those described in Section .0300 of this Subchapter or Sections .0100 and .0300 of Subchapter 58E provided that references to such courses are not made or published in a manner which implies that such courses are sanctioned by the Commission. However, if licensure as a private business or trade school under G.S. 115D-90 is required in order for the school to offer such additional ~~courses~~, courses that are not approved by the Commission, then the school must obtain such license prior to offering such additional courses.

Authority G.S. 93A-4(a),(d); 93A-33.

21 NCAC 58C .0207 FACILITIES AND EQUIPMENT

(a) All school facilities and equipment shall be in compliance with all applicable local, state and federal laws and regulations regarding ~~safety, health, safety and sanitation, welfare, including the Americans with Disabilities Act and other laws relating to accessibility standards for places of public accommodation.~~ Schools shall furnish the Commission with inspection reports from appropriate local building, health and fire inspectors upon request of the Commission.

(b) Classrooms shall be of sufficient size to accommodate comfortably all students enrolled in a course, shall have adequate light, heat, cooling and ventilation and shall be free of distractions which would disrupt class sessions.

(c) Classrooms shall contain, at a minimum, an overhead projector and student desks or worktables sufficient to accommodate all students enrolled in a course.

Authority G.S. 93A-4(a),(d); 93A-33.

SECTION .0600 – PRE-LICENSING INSTRUCTORS

21 NCAC 58C .0603 APPLICATION AND CRITERIA FOR ORIGINAL APPROVAL

(a) An individual seeking original approval as a pre-licensing course instructor shall make application on a form provided by the Commission. An applicant who is not a resident of North Carolina shall also file with the application a consent to service of process and pleadings. No application fee shall be required. All required information regarding the applicant's qualifications shall be submitted.

(b) An instructor applicant shall demonstrate that he or she possesses good moral character and the following qualifications or other qualifications found by the Commission to be equivalent to the following qualifications: A current North Carolina real estate broker license; a current continuing education record;

three years active full-time experience in general real estate brokerage, including substantial experience in real estate sales, within the previous seven years; 120 classroom hours of real estate education excluding company or franchise in-service sales training; and 60 semester hours of college-level education at an institution accredited by a nationally recognized college accrediting body. The Commission shall consider teaching experience at the secondary or post-secondary level in lieu of a portion of the brokerage experience requirement.

(c) In addition to the qualification requirements stated in Paragraph (b) of this Rule, an applicant shall also demonstrate completion of the Commission's new instructor seminar within three years prior to the date of application and shall submit a one-hour video recording which depicts the applicant teaching a real estate pre-licensing course topic and which demonstrates that the applicant possesses the basic teaching skills described in Rule .0604 of this Section. The new instructor seminar requirement may be waived upon a finding by the Commission that the applicant possesses comparable instructor training, three years full-time experience teaching real estate pre-licensing courses in another state within the previous five years, or other equivalent qualifications. The video recording shall comply with the requirements specified in Rule .0605(c) of this Section. An applicant who is a Commission-approved continuing education update course instructor under Subchapter E, Section .0200 of this Chapter or who holds the Distinguished Real Estate Instructor (DREI) designation granted by the Real Estate Educators Association or an equivalent real estate instructor certification shall be exempt from the requirement to demonstrate satisfactory teaching skills by submission of a digital video disc (DVD) or videotape. An applicant who is qualified under Paragraph (b) of this Rule but who has not satisfied these additional requirements at the time of application shall be approved and granted a six-month grace period to complete these requirements. The approval of any instructor who is granted such six-month period to complete the requirements shall automatically expire on the last day of the period if the instructor has failed to fully satisfy his or her qualification deficiencies and the period has not been extended by the Commission. The Commission may extend the six-month period for up to three additional months when the Commission requires more than 30 days to review and act on a submitted video recording, when the expiration date of the period occurs during a course being taught by the instructor, or when the Commission determines that such extension is otherwise warranted by exceptional circumstances which are outside the instructor's control or when failure to extend the grace period could result in harm or substantial inconvenience to students, licensees, or other innocent persons. An individual applying for instructor approval ~~shall be allowed the authorized six-month period to satisfy the requirements stated in this Paragraph only once; who within the previous three years was allowed the six-month grace period to satisfy the requirements stated in this paragraph, but did not fully satisfy such requirements within the allowed grace period, shall not be allowed the grace period.~~

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

21 NCAC 58C .0604 INSTRUCTOR PERFORMANCE

(a) Instructors shall conduct courses in accordance with the Commission's rules and course syllabi. Instructors shall conduct themselves in a professional and courteous manner when performing their instructional duties and shall conduct their classes in a manner that demonstrates a thorough knowledge of the subject matter being taught and mastery of the following basic teaching skills:

- (1) The ability to communicate effectively through speech, including the ability to speak clearly at an appropriate rate of speed and with appropriate voice inflection, grammar and vocabulary.
- (2) The ability to present an effective visual image to a class, including appropriate appearance and physical mannerisms.
- (3) The ability to present instruction in a thorough, accurate, logical, orderly and understandable manner, to utilize illustrative examples as appropriate, and to respond appropriately to questions from students.
- (4) The ability to effectively utilize varied instructional techniques in addition to straight lecture, such as class discussion, role playing or other techniques.
- (5) The ability to effectively utilize instructional aids, such as an overhead projector, to enhance learning.
- (6) The ability to maintain an appropriate learning environment and effective control of a class.
- (7) The ability to interact with adult students in a positive manner that encourages students to learn, that demonstrates an understanding of varied student backgrounds, that avoids offending the sensibilities of students, and that avoids personal criticism of any other person, agency or organization.

(b) Instructors shall utilize pre-licensing course examinations that will assure compliance with the course completion standards prescribed in Rule .0304 of this Section. Instructors shall take appropriate steps to protect the security of course examinations and shall not allow students to retain copies of final course examinations.

(c) Instructors shall not obtain or use, or attempt to obtain or use, in any manner or form, North Carolina real estate licensing examination questions.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

21 NCAC 58C .0607 EXPIRATION, RENEWAL, AND REINSTATEMENT OF APPROVAL

(a) Commission approval of pre-licensing instructors shall expire on the third December 31 following issuance of approval, except as otherwise provided in Rule .0603(c) of this Section.

(b) In order to assure continuous approval, approved instructors must file applications for renewal of approval on a form prescribed by the Commission on or before December 1 immediately preceding expiration of their approval. To qualify for renewal of approval, instructors must demonstrate that they continue to satisfy the criteria for original approval set forth in

Rule .0603(b) of this Section and that they have attended, during the immediately preceding approval period, at least three separate real estate instructor educational programs of at least six hours each. When considering an application for renewal of instructor approval, the Commission may recognize experience in teaching real estate pre-licensing courses, Commission-approved continuing education courses or comparable courses in lieu of the real estate brokerage experience requirement set forth in Rule .0603(b) of this Section.

(c) In order to reinstate an expired pre-licensing instructor approval, the former instructor must file an application provided by the Commission, must satisfy the criteria for original approval set forth in Rule .0603(b) of this Section, and must demonstrate that he or she has attended at least three separate real estate instructor educational programs of at least six hours each during the previous three years. If an applicant's prior approval has been expired for more than three years, the applicant also must satisfy the criteria for original approval set forth in Rule .0603(c) of this Section. A reinstatement applicant who satisfies the criteria set forth in Rule .0603(b) of this Section but who does not satisfy the criteria set forth in Rule .0603(c) of this Section or who has not attended the aforementioned three real estate instructor educational programs within the previous three years shall be reinstated and granted a six-month grace period to satisfy all remaining requirements. The grace period shall operate in the same manner as the grace period described in Rule 0603(c) of this Section. Any instructor educational programs attended during the grace period to satisfy the reinstatement requirement may not also be credited toward the instructor educational program attendance requirement described in Paragraph (b) of this Rule when the instructor subsequently applies for renewal of his or her approval.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

21 NCAC 58C .0608 DENIAL OR WITHDRAWAL OF APPROVAL

(a) The Commission may deny or withdraw approval of any pre-licensing course instructor upon finding that:

- (1) the instructor or instructor applicant has failed to meet the criteria for approval described in Rule .0603 of this Section or the criteria for renewal of approval described in Rule .0607 of this Section at the time of application or at any time during an approval period or has refused or failed to comply with any other provisions of this Subchapter;
- (2) the instructor has made any false statements or presented any false, incomplete, or incorrect information in connection with an application for approval or renewal of approval;
- (3) the instructor has failed to submit any report, course examination or video recording the instructor is required to submit to the Commission;
- (4) the instructor has provided false, incomplete, or incorrect information in connection with any report the instructor or a pre-licensing

school is required to submit to the Commission;

- (5) the instructor has failed to demonstrate, during the teaching of pre-licensing courses, those effective teaching skills described in Rule .0604 of this Section;
- (6) the instructor has compiled a licensing examination performance record for first-time examination candidates which is below 70 percent passing for the previous annual reporting period; ~~or~~
- (7) the instructor has been disciplined by the Commission or any other occupational licensing agency in North Carolina or another ~~jurisdiction~~ jurisdiction; or
- (8) the instructor has obtained or used, or attempted to obtain or use, in any manner or form, North Carolina real estate license examination questions.

(b) If a licensee who is an approved pre-licensing course instructor engages in any dishonest, fraudulent or improper conduct in connection with the licensee's activities as an instructor, the licensee shall be subject to disciplinary action pursuant to G.S. 93A-6.

Authority G.S. 93A-4(a),(d); 93A-33; 93A-34.

SUBCHAPTER 58E - REAL ESTATE CONTINUING EDUCATION

SECTION .0300 - ELECTIVE COURSES

21 NCAC 58E .0302 ELECTIVE COURSE COMPONENT

(a) To renew a license on active status, a real estate broker or salesperson must complete, within one year preceding license expiration and in addition to satisfying the continuing education mandatory update course requirement described in Rule .0102 of this Subchapter, four classroom hours of instruction in one or more Commission-approved elective courses.

(b) Approval of an elective course includes approval of the sponsor and instructor(s) as well as the course itself. Such approval authorizes the sponsor to conduct the approved course using the instructor(s) who have been found by the Commission to satisfy the instructor requirements set forth in Rule .0306 of this Section. The sponsor may conduct the course at any location as frequently as is desired during the approval period, provided, however, the sponsor may not conduct any session of an approved course for real estate continuing education purposes between June 11 and June 30, inclusive, of any approval period.

(c) The sponsor of an approved "distance education" elective course, as defined in Rule .0310 of this Subchapter, shall not permit students to register for any such course between June 11 and June 30, inclusive, of any approval period. The sponsor of any such distance education course shall require students registering for any such course to complete the course within 30 days of the date of registration for the course or the date the student is provided the course materials and permitted to begin work, whichever is the later date, provided that the deadline for

course completion in any approval period shall not be later than ~~June 15~~ June 10 of that approval period. The sponsor shall advise all students registering for a distance education course, prior to accepting payment of any course fees, of the deadlines for course completion.

Authority G.S. 93A-3(c); 93A-4A.

21 NCAC 58E .0310 DISTANCE EDUCATION COURSES

(a) As used in this Chapter, the term "distance education" shall be understood to refer to educational programs in which instruction is accomplished through the use of media whereby teacher and student are separated by distance and sometimes by time. An entity requesting approval of a distance education course must, in addition to satisfying all other requirements for elective course approval specified in this Section, demonstrate that the proposed distance education course satisfies the following criteria:

- (1) The course shall be designed to assure that students actively participate in the instructional process while completing the course by utilizing techniques that require substantial student interaction with the instructor, other students or a computer program. The course design must not permit students to merely sit passively and observe instruction or read instructional materials. If the nature of the subject matter is such that the learning objectives for the course cannot be reasonably accomplished without some direct interaction between the instructor and students, then the course design must provide for such interaction.
- (2) A course that does not provide the opportunity for continuous audio and visual communication between the instructor and all students during the course presentation shall utilize testing and remedial processes appropriate to assure student mastery of the subject material.
- (3) A course that involves students completing the course on a self-paced study basis shall be designed so that the time required for a student of average ability to complete the course will be at least four hours, and the sponsor shall utilize a system that assures that students have actually performed all tasks designed to assure student participation and mastery of the subject material. The number of equivalent classroom hours assigned by the course sponsor or developer to the course must be supported by appropriate studies or field tests, and the applicant must submit a description of such studies or field tests with the course application.
- (4) The proposed instructional delivery methods shall be appropriate to enable effective accomplishment of the proposed learning

objectives and the scope and depth of the instructional materials must also be consistent with the proposed learning objectives.

- (5) The sponsor shall provide appropriate technical support to enable students to satisfactorily complete the course.
 - (6) An instructor shall be reasonably available to respond in a timely manner to student questions about the subject matter of the course and to direct students to additional sources of information. Instructors shall have appropriate training in the proper use of the instructional delivery method utilized in the course, including the use of computer hardware and software or other equipment and systems.
 - (7) The sponsor shall provide students an orientation or information package which contains all information required by the Commission to be provided to students and all necessary information about the course, including but not limited to information about course fees and refund policies, course subject matter and learning objectives, procedures and requirements for satisfactory course completion, any special requirements with regard to computer hardware and software or other equipment, and instructor and technical support.
 - (8) The sponsor shall utilize procedures that provide reasonable assurance that the student receiving continuing education credit for completing the course actually performed all the work required to complete the course. For courses that involve independent study by students, such procedures must include, at a minimum, a direct contact with the student, initiated by the sponsor and directed to the student's home or business, using the telephone or electronic mail and a signed statement or an electronic mail declaration by the student certifying that he or she personally completed all course work. ~~Signed student~~ Student course completion statements and records of student contacts shall be retained by the sponsor along with all other course records the sponsor is required to maintain.
- (b) An entity seeking approval of a computer-based distance education course must submit a complete copy of the course on the medium that is to be utilized and, if requested, must make available, at a date and time satisfactory to the Commission and at the sponsor's expense, all hardware and software necessary for the Commission to review the submitted course. In the case of an internet-based course, the Commission must be provided access to the course via the internet at a date and time satisfactory to the Commission and shall not be charged any fee for such access.

Authority G.S. 93A-3(c); 93A-4A.

SECTION .0400 - GENERAL SPONSOR REQUIREMENTS

21 NCAC 58E .0406 COURSE COMPLETION REPORTING

(a) Course sponsors must prepare and submit to the Commission reports verifying completion of a continuing education course for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705 and who desires continuing education credit for the course. Such reports shall include students' names, students' license numbers, course date, sponsor and course codes and course information presented in the format prescribed by the Commission, and sponsors will be held accountable for the completeness and accuracy of all information in such reports. Such reports shall be transmitted electronically via the Internet, internet, provided on a computer disk, or provided in some other manner acceptable to the Commission that permits the Commission to electronically post the information on course completion to the Commission's computer records. Sponsors must submit these reports to the Commission in a manner that will assure receipt by the Commission within fifteen calendar days following the course, but in no case later than June 15 of any approval period for courses conducted during that approval period, provided that the last reporting date shall be June 20 of any approval period for distance education courses where students registered for the courses between June 1 and June 10, inclusive of that approval period.

(b) At the request of the Commission, course sponsors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of each approved continuing education course on a form provided by the Commission. Sponsors must submit the completed evaluation forms to the Commission with the reports verifying completion of a continuing education course.

(c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course according to the criteria in 21 NCAC 58A .1705 a course completion certificate on a form provided by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course, but in no case later than June 15 for any course completed prior to that date. The certificate is to be retained by the licensee as his or her proof of having completed the course.

(d) When a licensee in attendance at a continuing education course does not comply with the student participation standards, the course sponsor shall advise the Commission of this matter in writing at the time reports verifying completion of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Commission's attendance or student participation standards shall not provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

(e) Notwithstanding the provisions of Paragraphs (a) and (c) of this Rule, approved course sponsors who are national professional trade organizations and who conduct Commission-approved continuing education elective courses out of state shall

not be obligated to submit reports verifying completion of continuing education courses on a computer disk or by electronic means, provided that such sponsors submit to the Commission a roster which includes the names and license numbers of North Carolina licensees who completed the course in compliance with the criteria in 21 NCAC 58A .1705 and who desire continuing education credit for the course. A separate roster must be submitted for each class session and must be accompanied by a five dollar (\$5.00) per student fee, payable to the North Carolina Real Estate Commission. Rosters must be submitted in a manner which assures receipt by the Commission within 15 calendar days following the course, but not later than the last course reporting dates for an approval period specified in Paragraph (a) of this Rule. Such sponsors may also provide each licensee who completes an approved course in compliance with the criteria in 21 NCAC 58A .1705 a sponsor-developed course completion certificate in place of a certificate on a form provided by the Commission. Sponsors must provide the certificates to licensees within fifteen calendar days following the course.

Authority G.S. 93A-3(c); 93A-4A.

21 NCAC 58E .0407 PER STUDENT FEE

Following completion of any approved continuing education update or elective course, the sponsor must submit pay to the Commission, Commission, by credit or debit card acceptable to the Commission, along with the reports required to be submitted by Rule .0406 of this Section a fee in the amount of five dollars (\$5.00) for each licensee who satisfactorily completes the course according to the criteria in 21 NCAC 58A .1705. This fee must accompany the reports required to be submitted by Rule .0406 of this Section. This fee is not required if the sponsor is a community college, junior college, college or university located in North Carolina and accredited by the Southern Association of Colleges and Schools, or is an agency of federal, state or local government. This fee may be paid by check payable to the North Carolina Real Estate Commission.

Authority G.S. 93A-3(c); 93A-4A.

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 01K .0801-.0805.

Proposed Effective Date: June 1, 2005

Public Hearing:

Date: February 2, 2005

Time: 10:00 a.m.

Location: Office of State Personnel Conference Room, 3rd Floor, Administration Building, 116 West Jones Street, Raleigh, NC

Reason for Proposed Action: To establish rules to allow the Office of State Personnel to develop guidelines for establishing agency mentoring programs. The program is intended to

enhance an employee's career development by partnering the employee with an experienced employee who will coach, teach, and guide the employee's career path.

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

Written comments may be submitted to: Peggy Oliver, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919)733-7108, fax (919)715-9750.

Comment period ends: March 21, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, 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 day following the day the Commission approves the rule. 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 01K - PERSONNEL TRAINING

SECTION .0800 - MENTORING PROGRAM

25 NCAC 01K .0801 MENTORING PROGRAM ADMINISTRATION

(a) The State of North Carolina shall provide mentorship programs for state employees. Each state agency may elect to establish a Mentoring Program.

(b) The program shall be based in the Office of State Personnel with each agency being responsible for the establishment and management of a mentoring program to meet its organizational needs.

(c) If the agency elects to establish a Mentoring Program, a copy of the agency's Mentoring Program and its guidelines shall be submitted to the Office of State Personnel.

Authority G.S. 126-4.

25 NCAC 01K .0802 MENTORING PROGRAM PURPOSE

The Mentoring Program is intended to enhance an employee's career development by partnering the employee with an experienced employee who will coach, teach, and guide the employee's career path.

Authority G.S. 126-4.

25 NCAC 01K .0803 MENTORING PROGRAM CURRICULUM

The curriculum for the Mentoring Program shall be based upon the agency's guidelines.

Authority G.S. 126-4.

25 NCAC 01K .0804 MENTORING PROGRAM PARTICIPATION

(a) The selection process for participants in the Mentoring Program shall be based upon fair, consistent, and equitable criteria and documented in the agency's guidelines.

(b) The Mentoring Program shall be open to all employees without any form of discrimination in terms of participation because of race, color, religion, sex, national origin, age, and disability.

Authority G.S. 126-4.

25 NCAC 01K .0805 FUNDING FOR MENTORING PROGRAM

The agency shall provide sufficient resources for operation of its Mentoring Program.

Authority G.S. 126-4.

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 – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *DHHS/Division of Facility Services*

Rule Citation: *10A NCAC 14C .1602, .1901-.1902, .2101, .2103, .2202-.2203, .2701-.2705, .3703, .3802*

Effective Date: *January 1, 2005*

Date Approved by the Rules Review Commission: *December 16, 2004*

Reason for Action:

10A NCAC 14C .1602 – *One of the subject matters contained in the 2005 State Medical Facilities Plan (SFMP) is Cardiac Catheterization and Cardiac Angioplasty Equipment. This Rule must be amended under temporary action to ensure that the information required of CON applicants related to this subject matter is consistent with the SFMP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.*

10A NCAC 14C .1901 – *One of the subject matters contained in the 2005 SFMP is Radiation Therapy Equipment. This Rule must be amended under temporary action to ensure that the definitions pertaining to rules found in 10A NCAC 14C .1900, that relate to this subject matter are consistent with the SFMP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.*

10A NCAC 14C .1902 – *One of the subject matters contained in the 2005 SMFP is Radiation Therapy Equipment. This Rule must be amended under temporary action to ensure that the information required of CON applicants in reference to this subject matter is consistent with the SMFP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.*

10A NCAC 14C .2101 – *One of the subject matters contained in the 2005 SMFP is Surgical Services and Operation Rooms. This rule must be amended under temporary action to ensure that the definitions pertaining to rules found in 10A NCAC 14C .2100, that relate to this subject matter are consistent with the SMFP. This rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.*

10A NCAC 14C .2103 – *One of the subject matters contained in the 2005 SMFP is Surgical Services and Operating Rooms. This Rule must be amended under temporary action to ensure that the required performance standards that have to be met by CON applicants in reference to this subject matter are consistent with the SMFP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.*

10A NCAC 14C .2202 – *One of the subject matters contained in the 2005 SMFP is End Stage Renal Disease Dialysis Services.*

This Rule must be amended under temporary action to ensure that the information required of CON applicants in reference to this subject matter is consistent with the SMFP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.

10A NCAC 14C .2203 – *One of this subject matters contained in the 2005 SMFP is End Stage Renal Disease Dialysis Services. This Rule must be amended under temporary action to ensure that the required performance standards that have to be met by CON applicants in reference to this subject matter are consistent with the SMFP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.*

10A NCAC 14C .2701 – *One of the subject matters contained in the 2005 SMFP is Magnetic Resonance Imaging (MRI) Scanners. This Rule must be amended under temporary action to ensure that the definitions pertaining to rules found in 10A NCAC 14C .2700 that relate to this subject matter are consistent with the SMFP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.*

10A NCAC 14C .2702 – *One of the subject matters contained in the 2005 SMFP is Magnetic Resonance Imaging (MFR) Scanners. This Rule must be amended under temporary action to ensure that the information required of CON applicants in reference to this subject matter is consistent with the SMFP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.*

10A NCAC 14C .2703 – *One of the subject matters contained in the 2005 SMFP is Magnetic Resonance Imaging (MRI) Scanners. This Rule must be amended under temporary action to ensure that the required performance standards that have to be met by CON applicants in reference to this subject matter are consistent with the SMFP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.*

10A NCAC 14C .2704 – *One of the subject matters contained in the 2005 SMFP is Magnetic Resonance Imaging (MRI) Scanners. This Rule must be amended under temporary action to ensure the required support services to be provided by CON applicants, as it relates to this subject matter, are in place and consistent with the SMFP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.*

10A NCAC 14C .2705 – *One of the subject matters contained in the 2005 SMFP is Magnetic Resonance Imaging (MRI) Scanners. This Rule must be amended under temporary action to ensure that the staff and staff training required to be met by CON applicants in reference to this subject matter is consistent with the SMFP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.*

10A NCAC 14C .3703 – One of the subject matters contained in the 2005 SMFP is Positron Emission Topography (PET) Scanners. This Rule is amended under temporary action to ensure that the required performance standards that have to be met by CON applicants in reference to this subject matter are consistent with the SMFP. This Rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.

10A NCAC 14C .3802 – One of the subject matters contained in the 2005 SMFP is Acute Care Beds. This Rule must be amended by temporary action to ensure that the information required of CON applicants in reference to this subject matter is consistent with the SMFP. This rule must be amended under temporary action to coincide with the Plan effective date of January 1, 2005.

CHAPTER 14 - DIRECTOR, DIVISION OF FACILITY SERVICES

SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATIONS

SECTION .1600 – CRITERIA AND STANDARDS FOR CARDIAC CATHETERIZATION EQUIPMENT AND CARDIAC ANGIOPLASTY EQUIPMENT

10A NCAC 14C .1602 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes to acquire cardiac catheterization or cardiac angioplasty equipment shall use the acute care facility/medical equipment application form.

(b) The applicant shall provide the following additional information based on the population residing within the applicant's proposed cardiac catheterization service area:

- (1) the projected annual number of cardiac catheterization procedures, by CPT or ICD-9-CM codes, ~~by classification of~~ classified by adult diagnostic, adult therapeutic and pediatric cardiac catheterization procedure, to be performed in ~~each cardiac catheterization room for each of the first 12 calendar quarters~~ the facility during each of the first three years of operation following completion of the proposed project, including the methodology and assumptions used for these projections;
- (2) documentation of the applicant's experience in treating cardiovascular patients at the facility during the past 12 months, including:
 - (A) the number of patients receiving stress tests;
 - (B) the number of patients receiving intravenous thrombolytic therapies;
 - (C) the number of patients presenting in the Emergency Room or admitted to the hospital with suspected or diagnosed acute myocardial infarction;

- (D) the number of patients referred to other facilities for cardiac catheterization procedures or open heart surgery procedures, by type of procedure; and
 - (E) the number of diagnostic and therapeutic cardiac catheterization procedures performed during the twelve month period reflected in the most recent licensure form on file with the Division of Facility Services;
- (3) the number of cardiac catheterization patients, classified by adult diagnostic, adult therapeutic and pediatric, from the proposed cardiac catheterization service area ~~who are projected to have a cardiac catheterization procedure that the applicant proposes to serve~~ by patient's county of residence in each of the first ~~12 quarters~~ three years of operation, including the methodology and assumptions used for these projections;
 - (4) ~~the number of patients from the proposed primary cardiac catheterization service area who are projected to have a cardiac catheterization procedure by patients' county of residence in each of the first 12 quarters of operation, including the methodology and assumptions used for these projections;~~
 - (5)(4) documentation of the applicant's projected sources of patient referrals that are located in the proposed cardiac catheterization service area, including letters from the referral sources that demonstrate their intent to refer patients to the applicant for cardiac catheterization procedures;
 - (6)(5) evidence of the applicant's capability to communicate with emergency transportation agencies and with an established comprehensive cardiac services program;
 - (7)(6) the number and composition of cardiac catheterization teams available to the applicant;
 - (8)(7) documentation of the applicant's in-service training or continuing education programs for cardiac catheterization team members;
 - (9)(8) a written agreement with a comprehensive cardiac services program that specifies the arrangements for referral and transfer of patients seen by the applicant and that includes a process to alleviate the need for duplication in cardiac catheterization procedures;
 - (10)(9) a written description of patient selection criteria including referral arrangements for high-risk patients;
 - (11)(10) a copy of the contractual arrangements for the acquisition of the proposed cardiac catheterization equipment or cardiac angioplasty equipment, including itemization of the cost of the equipment; and

(12)(11) documentation that the cardiac catheterization equipment and cardiac angioplasty equipment and the procedures for operation of the equipment are designed and developed based on the American College of Cardiology/American Heart Association Guidelines for Cardiac Catheterization Laboratories (1991) report.

History Note: Authority G.S. 131E-177(1); 131E-183; Eff. January 1, 1987; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. November 1, 1996; February 1, 1994; Temporary Amendment Eff. January 1, 2005.

SECTION .1900 – CRITERIA AND STANDARDS FOR RADIATION THERAPY EQUIPMENT

10A NCAC 14C .1901 DEFINITIONS

These definitions shall apply to all rules in this Section:

- (1) "Approved linear accelerator" means a linear accelerator which was not operational prior to the beginning of the review period.
- (2) "Complex Radiation treatment" is equal to 1.0 ESTV and means: treatment on three or more sites on the body; use of special techniques such as tangential fields with wedges, rotational or arc techniques; or use of custom blocking.
- (3) "Equivalent Simple Treatment Visit [ESTV]" means one basic unit of radiation therapy which normally requires up to fifteen (15) minutes for the uncomplicated set-up and treatment of a patient on a megavoltage teletherapy unit including the time necessary for portal filming.
- (4) "Existing linear accelerator" means a linear accelerator in operation prior to the beginning of the review period.
- (5) "Intermediate Radiation treatment" means treatment on two separate sites on the body, three or more fields to a single treatment site or use of multiple blocking and is equal to 1.0 ESTV.
- (6) "Linear accelerator" means MRT equipment which is used to deliver a beam of electrons or photons in the treatment of cancer patients.
- (7) "Linear accelerator service area" means a single or multi-county area as used in the development of the need determination in the applicable State Medical Facilities Plan.
- (8) "Megavoltage unit" means MRT equipment which provides a form of teletherapy that involves the delivery of energy greater than, or equivalent to, one million volts by the emission of x-rays, gamma rays, electrons, or other radiation.

- (9) "Megavoltage radiation therapy (MRT)" means the use of ionizing radiation in excess of one million electron volts in the treatment of cancer.
- (10) "MRT equipment" means a machine or energy source used to provide megavoltage radiation therapy including linear accelerators and other particle accelerators.
- (11) "Radiation therapy equipment" means medical equipment which is used to provide radiation therapy services.
- (12) "Radiation therapy services" means those services which involve the delivery of controlled and monitored doses of radiation to a defined volume of tumor bearing tissue within a patient. Radiation may be delivered to the tumor region by the use of radioactive implants or by beams of ionizing radiation or it may be delivered to the tumor region systemically.
- (13) "Radiation therapy service area" means a single or multi-county area as used in the development of the need determination in the applicable State Medical Facilities Plan.
- (14) "Simple Radiation treatment" means treatment on a single site on the body, single treatment field or parallel opposed fields with no more than simple blocks and is equal to 1 ESTV.
- (15) "Simulator" means a machine that reproduces the geometric relationships of the MRT equipment to the patient.
- (16) "Special technique" means radiation therapy treatments that may require increased time for each patient visit including:
 - (a) total body irradiation (photons or electrons) which equals 2.5 ESTVs;
 - (b) hemi-body irradiation which equals 2.0 ESTVs;
 - (c) intraoperative radiation therapy which equals 10.0 ESTVs;
 - (d) ~~particle-neutron and proton radiation therapy~~ which equals 2.0 ESTVs;
 - (e) ~~weekly radiation therapy management, conformal, which equals 1.5 ESTVs;~~
 - (e) intensity modulated radiation treatment (IMRT) which equals 2.0 ESTVs;
 - (f) limb salvage irradiation at lengthened SSD which equals 1.0 ESTV;
 - (g) additional field check radiographs which equals .50 ESTV;
 - (h) stereotactic radiosurgery treatment management with linear accelerator or gamma knife which equals 3.0 ESTVs; and
 - (i) pediatric patient under anesthesia which equals ~~1.2~~ 1.5 ESTVs.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Temporary Amendment January 1, 1999;
Temporary Eff. January 1, 1999 expired October 12, 1999;
Temporary Amendment Eff. January 1, 2000;
Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. January 1, 2005.

10A NCAC 14C .1902 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to acquire radiation therapy equipment shall use the Acute Care Facility/Medical Equipment application form.
- (b) An applicant proposing to acquire radiation therapy equipment shall also provide the following additional information:
- (1) a list of all the radiation therapy equipment to be acquired and documentation of the capabilities and capacities of each item of equipment;
 - (2) documentation of the purchase price and fair market value of each piece of radiation therapy equipment, each simulator, and any other related equipment proposed to be acquired;
 - (3) the projected number of patient treatments by county and by simple, intermediate and complex treatments to be performed on each piece of radiation therapy equipment for each of the first eight calendar quarters three years of operation following the completion of the proposed project and documentation of all assumptions by which utilization is projected;
 - (4) documentation that the proposed radiation therapy equipment shall be operational at least seven hours per day, five days a week;
 - (5) documentation that no more than one simulator is available for every two linear accelerators in the applicant's facility, except that an applicant that has only one linear accelerator may have one simulator;
 - (6) documentation that the services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies; and
 - (7) the projected number of patients that will be treated for cure and the number of patients that will be treated for palliation on each linear accelerator on an annual basis by county in each of the first three years of operation following completion of the proposed project.

History Note: Authority G.S. 131E-177(1); 131E-183; Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Eff. January 4, 1994;
Amended Eff. November 1, 1996;
Temporary Amendment Eff. January 1, 1999;
Temporary Eff. January 1, 1999 Expired on October 12, 1999;
Temporary Amendment Eff. January 1, 2000;
Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. January 1, 2005.

SECTION .2100 – CRITERIA AND STANDARDS FOR SURGICAL SERVICES AND OPERATING ROOMS

10A NCAC 14C .2101 DEFINITIONS

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

- ~~(1)~~ "Ambulatory surgical case" means an individual who receives one or more ambulatory surgical procedures in an operating room during a single operative encounter.
- ~~(2)~~ "Ambulatory surgical service area" means a single or multi county area as used in the development of the ambulatory surgical facility need determination in the applicable State Medical Facilities Plan.
- ~~(3)~~ "Ambulatory surgical services" means those surgical services provided to patients as part of an ambulatory surgical program within a licensed ambulatory surgical facility or a general acute care hospital licensed under G.S. 131E, Article 5, Part A.
- ~~(4)~~(1) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1b).
- ~~(5)~~(2) "Operating room" means an inpatient operating room, an outpatient or ambulatory surgical operating room, a shared operating room, or an endoscopy procedure room in a licensed health service facility.
- ~~(6)~~(3) "Ambulatory surgical program" means a program as defined in G.S. 131E-176(1c).
- ~~(7)~~ "Ambulatory surgical procedure" means a procedure performed in an operating room which requires local, regional or general anesthesia and a period of post operative observation of less than 24 hours.
- ~~(8)~~(4) "Existing operating rooms" means those operating rooms in ambulatory surgical facilities and hospitals which were reported in the License Application for Ambulatory Surgical Facilities and Programs and in Part III of Hospital Licensure Renewal Application Form submitted to the Licensure Section of the Division of Facility Services and which were

- licensed and certified prior to the beginning of the review period.
- (9)(5) "Approved operating rooms" means those operating rooms that were approved for a certificate of need by the Certificate of Need Section prior to the date on which the applicant's proposed project was submitted to the Agency but that have not been licensed and certified.
- (10)(6) "Multispecialty ambulatory surgical program" means a program as defined in G.S. 131E-176(15a).
- (11)(7) "Outpatient or ambulatory surgical operating room" means an operating room used solely for the performance of ~~ambulatory surgical procedures.~~ procedures which require local, regional or general anesthesia and a period of post-operative observation of less than 24 hours.
- (8) "Service area" means the Operating Room Service Area as defined in the applicable State Medical Facilities Plan.
- (12)(9) "Shared operating room" means an operating room that is used for the performance of both ambulatory and inpatient surgical procedures.
- (13)(10) "Specialty area" means an area of medical practice in which there is an approved medical specialty certificate issued by a member board of the American Board of Medical Specialties and includes, but is not limited to the following: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, urology, orthopedics, and oral surgery.
- (14)(11) "Specialty ambulatory surgical program" means a program as defined in G.S. 131E-176(24c).
- (15) "Practical utilization" is ~~4.3 surgical cases per day for an outpatient or ambulatory surgical operating room, 3.5 surgical cases per day for a shared operating room, 2.7 surgical cases per day for an inpatient operating room, and 4.3 cases per day for an endoscopy procedure room.~~
- (12) "Surgical case" means an individual who receives one or more surgical procedures in an operating room during a single operative encounter.

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

Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. January 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. January 1, 2005.

10A NCAC 14C .2103 PERFORMANCE STANDARDS

- (a) In projecting ~~utilization for existing, approved, proposed and expanded surgical programs, a program utilization.~~ the existing, approved and proposed operating rooms shall be considered to be open available for use five days per week and 52 weeks a year.
- (b) A proposal to establish a new ambulatory surgical facility, to increase the number of operating rooms (excluding dedicated C-section operating rooms), to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless the applicant documents that the average number of surgical cases per operating room to be performed in ~~the applicant's facility~~ each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room, 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, 4.3-7.2 cases per day for each endoscopy procedure room, and 3.2 surgical cases per day for each shared operating room during the fourth quarter of the third year of operation following completion of the project.
- (c) A proposal to develop an additional operating room to be used as a dedicated C-section operating room shall not be approved unless the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room (excluding dedicated C-section operating rooms), 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room and 3.2 surgical cases per day for each shared operating room during the third year of operation following completion of the project.
- (e)(d) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing ambulatory surgery program in the ~~ambulatory surgical~~ service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently operating at ~~4.3~~ 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, ~~4.3-7.2~~ cases per day for each endoscopy procedure room, and ~~3.5~~ 3.2 surgical cases per day for each shared operating room.
- (d)(e) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical

program shall provide documentation to show that each existing and approved ambulatory surgery program in the ~~ambulatory surgical~~ service area that performs ambulatory surgery in the same specialty areas as proposed in the application is reasonably projected to be operating at ~~4.3~~ 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, ~~4.3-7.2~~ cases per day for each endoscopy procedure room, and ~~3.5~~ 3.2 surgical cases per day for each shared surgical operating room prior to the completion of the proposed project. ~~The applicant shall document the assumptions and provide data supporting the methodology used for the projections.~~

(f) The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.

History Note: Authority G.S. 131E-177; 131E-183(b); Eff. November 1, 1990; Amended Eff. March 1, 1993; Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Amended Eff. January 4, 1994; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. January 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. January 1, 2005.

**SECTION .2200 – CRITERIA AND STANDARDS FOR
END-STAGE RENAL DISEASE SERVICES**

10A NCAC 14C .2202 INFORMATION REQUIRED OF APPLICANT

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

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

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

- (1) A-For new facilities, a letter of intent to sign a written agreement or a signed written agreement with an acute care hospital that specifies the relationship with the dialysis facility and describes the services that the hospital will provide to patients of the dialysis facility. The agreement must comply with 42 C.F.R., Section 405.2100.
- (2) A-For new facilities, a letter of intent to sign a written agreement or a written agreement with a transplantation center describing the relationship with the dialysis facility and the specific services that the transplantation center will provide to patients of the dialysis facility. The agreements must include the following:
 - (A) timeframe for initial assessment and evaluation of patients for transplantation,
 - (B) composition of the assessment/evaluation team at the transplant center,
 - (C) method for periodic re-evaluation,
 - (D) criteria by which a patient will be evaluated and periodically re-evaluated for transplantation, and
 - (E) signatures of the duly authorized persons representing the facilities and the agency providing the services.
- (3) ~~Documentation that the water supply will comply with 42 C.F.R., Section 405.2100.~~
- (4)(3) Documentation of standing service from a power company and back-up capabilities.
- (5)(4) The-For new facilities, the location of the site on which the services are to be operated. If such site is neither owned by nor under option to the applicant, the applicant must provide a written commitment to pursue acquiring the site if and when the approval is granted, must specify a secondary site on which the services could be operated should acquisition efforts relative to the primary site ultimately fail, and must demonstrate that the primary and secondary sites are available for acquisition.
- (6)(5) Documentation that the services will be provided in conformity with applicable laws and regulations pertaining to staffing, fire safety equipment, physical environment, water supply, and other relevant health and safety requirements.
- (7)(6) The projected patient origin for the services. All assumptions, including the methodology by which patient origin is projected, must be stated.
- (8)(7) For new facilities, documentation that at least 80 percent of the anticipated patient population resides within 30 miles of the proposed facility.
- (8) A commitment that the applicant shall admit and provide dialysis services to patients who

have no insurance or other source of payment, but for whom payment for dialysis services will be made by another healthcare provider in an amount equal to the Medicare reimbursement rate for such services.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Eff. March 1, 1989; Temporary Amendment Eff. January 1, 2003; Amended Eff. August 1, 2004; Temporary Amendment Eff. January 1, 2005.

10A NCAC 14C .2203 PERFORMANCE STANDARDS

- (a) An applicant proposing to establish a new End Stage Renal Disease facility shall document the need for at least 10 stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the facility.
- (b) An applicant proposing to increase the number of dialysis stations in an existing End Stage Renal Disease facility shall document the need for the additional stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the additional ~~stations.~~ stations with the exception that the performance standard shall be waived for a need in the State Medical Facilities Plan that is based on an adjusted need determination.
- (c) An applicant shall provide all assumptions, including the specific methodology by which patient utilization is projected.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. January 1, 2002; Temporary Adoption Eff. January 1, 2003; Eff. April 1, 2003; Temporary Amendment Eff. January 1, 2005.

SECTION .2700 - CRITERIA AND STANDARDS FOR MAGNETIC RESONANCE IMAGING SCANNER

10A NCAC 14C .2701 DEFINITIONS

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

- (1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
- (2) "Capacity of fixed MRI scanner" means 100% of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a fixed MRI scanner is 6,864 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 66 hours per week, 52 weeks per year.
- (3) "Capacity of mobile MRI scanner" means 100% of the procedure volume that the MRI scanner is capable of completing in a year,

given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a mobile MRI scanner is 4,160 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 40 hours per week, 52 weeks per year.

- (2)(4) "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.
- (5) "Fixed MRI scanner" means an MRI scanner that is not a mobile MRI scanner.
- (3)(6) "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.
- (4)(7) "Magnetic resonance imaging scanner" (MRI Scanner) is defined in ~~G.S. 131E-176(14e), G.S. 131E-176(14e), and includes dedicated fixed breast MRI scanners.~~
- (8) "Mobile MRI region" means either the eastern part of the State which includes the counties in Health Service Areas IV, V and VI, or the western part of the State which includes the counties in Health Service Areas I, II, and III. The counties in each Health Service Area are identified in Appendix A of the State Medical Facilities Plan.
- (5)(9) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved at least weekly to provide services at two or more host facilities.
- (6)(10) "MRI procedure" means a single discrete MRI study of one patient.
- (7)(11) "MRI service area" means the Magnetic Resonance Imaging Planning Areas, as defined in the applicable State Medical Facilities Plan, except for proposed new mobile MRI scanners for which the service area is a mobile MRI region.
- (8)(12) "MRI study" means one or more scans relative to a single diagnosis or symptom.
- (13) "Pediatric MRI patient" means a patient requiring an MRI scan who is under the age of 12 years or who is a special needs patient and is under the age of 21 years.
- (14) "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50% or

more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).

- (15) "Special Needs patient" means a patient who has cerebral palsy, encephalomyelopathy, central nervous system injuries, genetic and metabolic disorders, autism, and mental retardation.
- (16) "Temporary MRI scanner" means a MRI scanner that the Certificate of Need Section has approved to be temporarily located in North Carolina at a facility that holds a certificate of need for a new fixed MRI scanner, but which is not operational because the project is not yet complete.
- (17) "Weighted MRI procedures" means MRI procedures which are adjusted to account for the length of time to complete the procedure, based on the following weights: one outpatient MRI procedure without contrast or sedation is valued at 1.0 weighted MRI procedure, one outpatient MRI procedure with contrast or sedation is valued at 1.4 weighted MRI procedures, one inpatient MRI procedure without contrast or sedation is valued at 1.4 weighted MRI procedures; and one inpatient MRI procedure with contrast or sedation is valued at 1.8 weighted MRI procedures.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Temporary Amendment Eff. January 1, 2001; Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001; Temporary Amendment Eff. January 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002; Temporary Amendment Eff. January 1, 2003; Amended Eff. August 1, 2004; April 1, 2003; Temporary Amendment Eff. January 1, 2005.

10A NCAC 14C .2702 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant proposing to acquire an MRI scanner, including a mobile MRI scanner, shall use the Acute Care Facility/Medical Equipment application form.
- (b) Except for proposals to acquire mobile MRI scanners that serve two or more host facilities, both the applicant and the person billing the patients for the MRI service shall be named as co-applicants in the application form.
- (c) An applicant proposing to acquire a magnetic resonance imaging scanner, including a mobile MRI scanner, shall provide the following information:
 - (1) documentation that the proposed fixed MRI scanner shall be available and staffed for use at least 66 hours per week, with the exception of a mobile MRI scanner; week;
 - (2) documentation that the proposed mobile MRI scanner shall be available and staffed for use at least 40 hours per week;
 - (2) ~~projections of the annual number of procedures to be performed for each of the first three years of operation after completion of the project;~~
 - (3) the average charge to the patient, regardless of who bills the patient, for each of the 20 most frequent MRI procedures to be performed for each of the first three years of operation after completion of the project and a description of items included in the charge; if the professional fee is included in the charge, provide the dollar amount for the professional fee;
 - (4) if the proposed MRI service will be provided pursuant to a service agreement, the dollar amount of the service contract fee billed by the applicant to the contracting party for each of the first three years of operation; ~~and~~
 - (5) letters from physicians indicating their intent to refer patients to the proposed magnetic resonance imaging scanner; scanner and their estimate of the number of patients proposed to be referred per year;
 - (6) for each location at which the service will be provided, projections of the annual number of weighted MRI procedures to be performed for each of the four types of weighted MRI procedures, as identified in the SMFP, for each of the first three years of operation after completion of the project;
 - (7) a detailed description of the methodology used to project the number of weighted MRI procedures to be performed;
 - (8) documentation to support each assumption used in projecting the number of procedures to be performed;
 - (9) for each existing fixed or mobile MRI scanner owned by the applicant or a related entity and operated in North Carolina in the month the application is submitted, the vendor, tesla strength, serial number or vehicle identification number, CON project

identification number, physical location for fixed MRI scanners, and host sites for mobile MRI scanners;

- (10) for each approved fixed or mobile MRI scanner to be owned by the applicant or a related entity and approved to be operated in North Carolina, the proposed vendor, proposed tesla strength, CON project identification number, physical location for fixed MRI scanners, and host sites for mobile MRI scanners;

- (11) if proposing to acquire a mobile MRI scanner, an explanation of the basis for selection of the proposed host sites if the host sites are not located in MRI service areas that lack a fixed MRI scanner.

(d) An applicant proposing to acquire a mobile MRI scanner shall provide copies of letters of intent from, and proposed contracts with, all of the proposed host facilities of the new MRI scanner.

(e) An applicant proposing to acquire a dedicated fixed breast MRI scanner shall:

- (1) provide a copy of a contract or working agreement with a radiologist or practice group that has experience interpreting images and is trained to interpret images produced by an MRI scanner configured exclusively for mammographic studies;
- (2) document that the applicant performed mammograms without interruption in the provision of the service during the last year; and
- (3) document that the applicant's existing mammography equipment is in compliance with the U.S. Food and Drug Administration Mammography Quality Standards Act.

(f) An applicant proposing to acquire a dedicated fixed pediatric MRI scanner shall:

- (1) provide a copy of a contract or working agreement with two pediatric radiologists qualified as described in 10A NCAC 14C .2705(f)(1);
- (2) provide a copy of the facility's emergency plan for pediatric and special needs patients that outline all emergency procedures including acute care transfers and a copy of a contract with an ambulance service for transportation during any emergencies;
- (3) commit that the proposed MRI scanner shall be used exclusively to perform procedures on pediatric MRI patients;
- (4) provide a description of the scope of the research studies that shall be conducted to develop protocols related to MRI scanning of pediatric MRI patients; which includes special needs patients, and
- (5) commit to prepare an annual report, to be submitted to the Medical Facilities Planning Section and the Certificate of Need Section,

which shall include the protocols for scanning pediatric MRI patients and the annual volume of weighted MRI procedures performed, by type.

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

Eff. February 1, 1994;

Temporary Amendment Eff. January 1, 2003; January 1, 2002;

Amended Eff. August 1, 2004; April 1, 2003;

Temporary Amendment Eff. January 1, 2005.

10A NCAC 14C .2703 PERFORMANCE STANDARDS

(a) An applicant proposing to acquire a mobile magnetic resonance imaging (MRI) scanner shall:

- (1) ~~if an applicant operates an existing mobile MRI scanner in the Health Service Area(s), demonstrate that at least 2900 MRI procedures were performed in the last year on each of its existing mobile MRI scanners operating in the Health Service Area(s), (e.g., HSA I), in which the proposed mobile MRI scanner will be located~~ demonstrate that each existing mobile MRI scanner which the applicant or a related entity owns and operates in the mobile MRI region in which the proposed equipment will be located, except temporary MRI scanners, performed 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has data. [Note: This is not the average number of weighted MRI procedures performed on all of the applicant's mobile MRI scanners.];
- (2) demonstrate annual utilization in the third year of operation is reasonably projected to be at least ~~2900~~ 3328 weighted MRI procedures on each of ~~its~~ the existing, approved and proposed mobile MRI scanners owned by the applicant or a related entity to be operated in the Health Service Area(s), (e.g., HSA I), mobile MRI region in which the proposed equipment will be located. [Note: This is not the average number of weighted MRI procedures performed on all of the applicant's mobile MRI scanners.];
- (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(b) An applicant proposing to acquire a fixed magnetic resonance imaging (MRI) scanner ~~for which the need determination in the State Medical Facilities Plan was based on the utilization of fixed MRI scanners, scanner, except for fixed MRI scanners described in Paragraphs (c) and (d) of this Rule,~~ shall:

- (1) ~~if an applicant operates an existing MRI scanner in the proposed MRI service area, demonstrate that its existing MRI scanners,~~

- except mobile MRI scanners, operating in the proposed MRI service area in which the proposed MRI scanner will be located performed an average of at least 2900 MRI procedures per scanner in the last year; demonstrate that the existing fixed MRI scanners which the applicant or a related entity owns and locates in the proposed MRI service area performed an average of 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has data;
- (2) demonstrate that each existing mobile MRI scanner which the applicant or a related entity owns and operates in the proposed mobile MRI region, except temporary MRI scanners, performed 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has data. [Note: This is not the average number of weighted MRI procedures performed on all of the applicant's mobile MRI scanners.];
- (2)(3) demonstrate annual utilization in the third year of operation is reasonably projected to be an average of 2900 procedures per scanner for all existing, approved and proposed MRI scanners or mobile MRI scanners to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and; demonstrate that the average annual utilization of the existing, approved and proposed fixed MRI scanners which the applicant or a related entity owns and locates in the proposed MRI service area are reasonably expected to perform the following number of weighted MRI procedures, whichever is applicable, in the third year of operation following completion of the proposed project:
- (A) 1,716 weighted MRI procedures in MRI service areas in which the SMFP shows no fixed MRI scanners are located.
- (B) 3,775 weighted MRI procedures in MRI service areas in which the SMFP shows one fixed MRI scanner is located.
- (C) 4,118 weighted MRI procedures in MRI service areas in which the SMFP shows two fixed MRI scanners are located.
- (D) 4,462 weighted MRI procedures in MRI service areas in which the SMFP shows three fixed MRI scanners are located, or
- (E) 4,805 weighted MRI procedures in MRI service areas in which the SMFP shows four or more fixed MRI scanners are located;
- (4) demonstrate that annual utilization of each existing, approved and proposed mobile MRI scanner which the applicant or a related entity owns and locates in the proposed MRI service area is reasonably expected to perform 3,328 weighted MRI procedures in the third year of operation following completion of the proposed project. [Note: This is not the average number of weighted MRI procedures to be performed on all of the applicant's mobile MRI scanners.];
- (4)(5) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (e) An applicant proposing to acquire a magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on utilization of mobile MRI scanners, shall:
- (1) if the applicant does not own or lease an MRI scanner or have an approved MRI scanner, demonstrate annual utilization in the third year of operation is reasonably projected to be at least 2080 MRI procedures per year for the proposed MRI scanner;
- (2) if the applicant already owns or leases an MRI scanner or has an approved MRI scanner, demonstrate annual utilization is reasonably projected to be an average of 2900 MRI procedures per scanner for all existing, approved and proposed MRI scanners or mobile MRI scanners to be operated by the applicant in the MRI service area(s) in which the proposed equipment will be located; and
- (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (d)(c) An applicant proposing to acquire a fixed magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on the absence of an existing or approved fixed MRI scanner in the MRI service area an approved petition for an adjustment to the need determination shall:
- (1) demonstrate annual utilization of the proposed MRI scanner in the third year of operation is reasonably projected to be at least 2080 1,716 weighted MRI procedures per year; and
- (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.
- (e)(d) An applicant proposing to acquire a dedicated fixed pediatric MRI scanner shall:
- (1) demonstrate annual utilization of the proposed MRI scanner in the third year of operation is reasonably projected to be at least 2746 weighted MRI procedures (i.e., 80 percent of one procedure per hour, 66 hours per week, 52 weeks per year; and
- (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 1999; Temporary Eff. January 1, 1999 Expired on October 12, 1999; Temporary Amendment Eff. January 1, 2000; Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000; Temporary Amendment Eff. January 1, 2001; Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001; Temporary Amendment Eff. January 1, 2002; Amended Eff. August 1, 2002; Temporary Amendment Eff. January 1, 2002 amends and replaces the permanent rule effective, August 1, 2002; Temporary Amendment Eff. January 1, 2003; Amended Eff. August 1, 2004; April 1, 2003; Temporary Amendment Eff. January 1, 2005.

10A NCAC 14C .2704 SUPPORT SERVICES

~~(a) An applicant proposing to acquire a magnetic resonance imaging scanner, including a mobile MRI scanner, shall make available through written affiliation or referral agreements the following services:~~

- ~~(1) anesthesiology;~~
- ~~(2) radiology;~~
- ~~(3) oncology;~~
- ~~(4) neurology;~~
- ~~(5) internal medicine;~~
- ~~(6) orthopedics;~~
- ~~(7) neurosurgery;~~
- ~~(8) pathology; and~~
- ~~(9) surgery.~~

~~(b)~~(a) An applicant proposing to acquire a mobile MRI scanner shall provide referral agreements between each host site and at least one other provider of MRI services in the proposed MRI service area to document the availability of MRI services if patients require them when the mobile unit is not in service at that host site.

(b) An applicant proposing to acquire a dedicated fixed pediatric MRI scanner shall provide a written policy regarding pediatric sedation which outlines the criteria for sedating a pediatric patient, including the special needs patients, and identifies the staff that will administer and supervise the sedation process.

(c) An applicant proposing to acquire a dedicated fixed pediatric MRI scanner shall provide evidence of the availability of a pediatric code cart at the facility where the proposed pediatric MRI scanner will be located and a plan for emergency situations as described in 10A NCAC 14C .2702(f)(2).

(d) An applicant proposing to acquire a fixed or mobile MRI scanner shall obtain accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the American College of Radiology or a comparable accreditation authority, as determined by the Certificate of Need Section, for magnetic

resonance imaging within two years following operation of the proposed MRI scanner.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 2005.

10A NCAC 14C .2705 STAFFING AND STAFF TRAINING

(a) An applicant proposing to acquire an MRI scanner shall demonstrate that one diagnostic radiologist certified by the American Board of Radiologists shall be available to provide the proposed services who has had:

- (1) training in magnetic resonance imaging as an integral part of his or her residency training program; or
- (2) six months of supervised MRI experience under the direction of a certified diagnostic radiologist; or
- (3) at least six months of fellowship training, or its equivalent, in MRI; or
- (4) a combination of MRI experience and fellowship training equivalent to Subparagraph (a)(1), (2) or (3) of this Rule.

(b) An applicant proposing to acquire a dedicated fixed breast MRI scanner shall provide documentation that the radiologist is trained and has experience in interpreting images produced by an MRI scanner configured exclusively to perform mammographic studies.

~~(c) The~~An applicant proposing to acquire a MRI scanner shall provide evidence of the availability of two full-time MRI technologist-radiographers and that one of these technologists shall be present during the hours of operation of the MRI scanner.

(d) An applicant proposing to acquire an MRI scanner shall demonstrate that the following staff training is provided:

- (1) American Red Cross or American Heart Association certification in cardiopulmonary resuscitation (CPR) and basic cardiac life support; and
- (2) the availability of an organized program of staff education and training which is integral to the services program and ensures improvement in technique and the proper training of new personnel.

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

(f) An applicant proposing to acquire a dedicated fixed pediatric MRI scanner shall:

- (1) provide documentation of the availability of at least two radiologists, certified by the American Board of Radiology, with a pediatric fellowship or two years of specialized training in pediatrics;

- (2) provide evidence that the applicant will have at least one licensed physician on-site during the hours of operation of the proposed MRI scanner;
- (3) provide documentation that the applicant will employ at least two licensed registered nurses and that one of these nurses shall be present during the hours of operation of the proposed MRI scanner;
- (4) provide a description of a research group for the project including a radiologist, neurologist, pediatric sedation specialist and research coordinator;
- (5) provide documentation of the availability of the research group to conduct research studies on the proposed MRI scanner; and
- (6) provide letters from the proposed members of the research group indicating their qualifications, experience and willingness to participate on the research team.

(g) An applicant proposing to perform cardiac MRI procedures shall provide documentation of the availability of a radiologist, certified by the American Board of Radiology, with training and experience in interpreting images produced by an MRI scanner configured to perform cardiac MRI studies.

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1994; Temporary Amendment Eff. January 1, 2002; Amended Eff. April 1, 2003; Temporary Amendment Eff. January 1, 2005.

SECTION .3700 - CRITERIA AND STANDARDS FOR POSITRON EMISSION TOMOGRAPHY SCANNER

10A NCAC 14C .3703 PERFORMANCE STANDARDS

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

- (1) the proposed dedicated PET scanner, including a proposed mobile dedicated PET scanner, shall be utilized at an annual rate of at least ~~1,220~~ 3,200 PET procedures by the end of the third year following completion of the project;
- (2) if an applicant operates an existing dedicated PET scanner, its existing dedicated PET scanners, excluding those used exclusively for research, performed an average of ~~1,200~~ at least 3,200 PET procedures per PET scanner in the last year; and
- (3) its existing and approved dedicated PET scanners shall perform an average of at least ~~1,220~~ 3,200 PET procedures per PET scanner during the third year following completion of the project.

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

History Note: Authority G.S. 131E-177(1); 131E-183(b); Temporary Adoption Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. January 4, 1994; Temporary Amendment Eff. January 1, 2002; January 1, 2001; Amended Eff. August 1, 2002; Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002; Temporary Amendment Eff. January 1, 2003; Amended Eff. August 1, 2004; April 1, 2003; Temporary Amendment Eff. January 1, 2005.

SECTION .3800 - CRITERIA AND STANDARDS FOR ACUTE CARE BEDS

10A NCAC 14C .3802 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes to develop new acute care beds shall complete the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to develop new acute care beds shall submit the following information:

- (1) the number of acute care beds proposed to be licensed and operated following completion of the proposed project;
- (2) documentation that the proposed services shall be provided in conformance with all applicable facility, programmatic, and service specific licensure, certification, and JCAHO accreditation standards;
- (3) documentation that the proposed services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;
- (4) if adding new acute care beds to an existing facility, documentation of the number of inpatient days of care provided in the last operating year in the existing licensed acute care beds by medical diagnostic category, as classified by the Centers for Medicare and Medicaid Services according to the list set forth in the applicable State Medical Facilities Plan;
- (5) the projected number of inpatient days of care to be provided in the total number of licensed acute care beds in the facility, by county of residence, for each of the first three years following completion of the proposed project, including all assumptions, data and methodologies;
- (6) documentation that the applicant shall be able to communicate with emergency transportation agencies 24 hours per day, 7 days per week;

- (7) documentation that services in the emergency care department shall be provided 24 hours per day, 7 days per week, including a description of the scope of services to be provided during each shift and the physician and professional staffing that will be responsible for provision of those services;
- (8) copy of written administrative policies that prohibit the exclusion of services to any patient on the basis of age, race, sex, creed, religion, disability or the patient's ability to pay;
- (9) a written commitment to participate in and comply with conditions of participation in the Medicare and Medicaid programs;
- (10) documentation of the health care services provided by the applicant, and any facility in North Carolina owned or operated by the applicant's parent organization, in each of the last two operating years to Medicare patients, Medicaid patients, and patients who are not able to pay for their care;
- (11) documentation of strategies to be used and activities undertaken by the applicant to attract physicians and medical staff who will provide care to patients without regard to their ability to pay; and
- ~~(12) correspondence from physicians and other referral sources that documents their willingness to refer patients to the proposed services to be offered in the new acute care beds; and~~
- ~~(13)~~(12) documentation that the proposed new acute care beds shall be operated in a hospital that provides inpatient medical services to both surgical and non-surgical patients.

(c) An applicant proposing to develop new acute care beds in a new licensed hospital or on a new campus of an existing hospital shall also submit the following information:

- (1) the projected number of inpatient days of care to be provided in the licensed acute care beds in the new hospital or on the new campus, by major diagnostic category as recognized by the Centers for Medicare and Medicaid Services (CMS) according to the list set forth in the applicable State Medical Facilities Plan;
- (2) documentation that medical and surgical services shall be provided in the proposed acute care beds on a daily basis within at least five of the major diagnostic categories as recognized by the Centers for Medicare and Medicaid Services (CMS) according to the list set forth in the applicable State Medical Facilities Plan;
- (3) copies of written policies and procedures for the provision of care within the new acute care hospital or on the new campus, including but not limited to the following:

- (A) the admission and discharge of patients, including discharge planning,
- (B) transfer of patients to another hospital,
- (C) infection control, and
- (D) safety procedures;
- (4) documentation that the applicant owns or otherwise has control of the site on which the proposed acute care beds will be located; and
- (5) documentation that the proposed site is suitable for development of the facility with regard to water, sewage disposal, site development and zoning requirements; and provide the required procedures for obtaining zoning changes and a special use permit if site is currently not properly ~~zoned~~-zoned; and correspondence from physicians and other referral sources that documents their willingness to refer or admit patients to the proposed new hospital or new campus.

History Note: Authority G.S. 131E-177(1); 131E-183; Temporary Adoption Eff. January 1, 2004; Eff. August 1, 2004; Temporary Amendment Eff. January 1, 2005.

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Rule-making Agency: *Commission for Health Services*

Rule Citation: *10A NCAC 41D .0101-.0105*

Effective Date: *January 1, 2005*

Date Approved by the Rules Review Commission: *December 16, 2004*

Reason for Action:
10A NCAC 41D .0101-.0105 - Illegal methamphetamine laboratories have been found in numerous North Carolina counties, usually in private residences and motel rooms. These laboratories pose multiple dangers to public health and to the environment. It is necessary to adopt these rules in order to establish decontamination standards that will ensure that properties used as methamphetamine laboratories are rendered safe for habitation as required by legislation (G.S. 130A-284) enacted in the 2004 General Assembly.

CHAPTER 41 – HEALTH: EPIDEMIOLOGY

SUBCHAPTER 41D – METHAMPHETAMINE DECONTAMINATION

SECTION .0100 – DECONTAMINATION OF METHAMPHETAMINE SITES

10A NCAC 41D .0101 GENERAL

(a) The rules of this Subchapter implement the provisions of G.S. 130A-284 by establishing decontamination standards for property that has been used for the manufacture of methamphetamine. The contaminated property shall not be occupied prior to decontamination of the property in accordance with these Rules.

(b) A responsible party shall, prior to habitation of the property:

- (1) perform a pre-decontamination assessment to determine the level of contamination and scope of remediation;
- (2) decontaminate the property; and
- (3) document the activities of this Paragraph. The Division shall develop a template that can be used for this purpose.

(c) As used in this Subchapter the term "responsible party" means an owner, lessee, operator, or other person in control of a residence or place of business or any structure appurtenant to a residence or place of business who has knowledge that the property has been used for the manufacture of methamphetamine.

(d) When law enforcement officials have posted a notice on property signifying that the property had been used as a clandestine methamphetamine laboratory, the law enforcement officials shall immediately notify the local health department of the presence of the laboratory. The local health department shall immediately inform the property owner of record or ~~their~~ his agent that the property has been used as a methamphetamine laboratory, inform ~~them~~ him that the property must be vacated, and inform ~~them~~ him of the requirement placed upon a ~~reponsible~~ responsible party to remediate the property in accordance with these Rules prior to the property being reoccupied.

*History Note: Authority G.S. 130A-284;
Temporary Adoption Eff. January 1, 2005.*

10A NCAC 41D .0102 PRE-DECONTAMINATION ASSESSMENT

The responsible party shall conduct a pre-decontamination assessment in accordance with the following:

- (1) Contact hazardous materials (HAZMAT) team member(s) or law enforcement personnel and acquire a manifest of chemicals removed during HAZMAT cleanup to collect specific methamphetamine lab information including:
 - (a) the drugs manufactured;
 - (b) the chemicals found;
 - (c) the manufacture ("cook") recipes/methods used at the lab site;
 - (d) duration of lab operation;
 - (e) chemical equipment found; and
 - (f) the location of contaminated cooking and/or storage areas.
- (2) Determine whether the heating, ventilation, air conditioning (HVAC) system serves more than one unit or structure such as motels, apartments, row houses or multiple-family

dwellings to determine whether contamination entered other residences or rooms.

- (3) Assess the plumbing system for visible contamination such as chemical etching or staining and for the presence of chemical odors coming from the drain.
- (4) Conduct a visual assessment of the severity of contamination inside and outside of the structure where the lab was located:
 - (a) document any visible chemical ~~spills~~ spills;
 - (b) assess adjacent rooms, units, apartments or structures for contamination, e.g. chemical odors, staining, chemical spills; and
 - (c) determine whether disposal methods used by the "cooks" at/near the lab site (e.g., dumping, burning, burial, venting, ~~and/or~~ and drain disposal) caused contamination of soil, groundwater, on-site sewage disposal systems, or other environmental contamination.
- (5) Develop a plan for waste disposal in accordance with the rules and statutes administered by the North Carolina Department of Environment and Natural Resources, Division of Waste Management for materials removed from the structure and wastes produced during cleaning, including solid ~~waste, wastes, hazardous waste, wastes,~~ and household hazardous wastes.
- (6) Determine whether the severity and type of contamination creates a risk of explosion or fire and thereby requires disconnection of power sources to the structure until after decontamination is complete.
- (7) Determine the necessary personal protective equipment needed for cleanup workers.
- (8) Notify the local health director of potential contamination of septic systems, soil, or groundwater.
- (9) Notify the lead law enforcement agency for the site if lab remnants or other evidence of methamphetamine manufacturing is discovered that may have been overlooked during bulk decontamination.
- (10) Document and retain for three years findings of the pre-decontamination assessment and provide a copy to the local health department.

*History Note: Authority G.S. 130A-284;
Temporary Adoption Eff. January 1, 2005.*

10A NCAC 41D .0103 DECONTAMINATION

Decontamination shall be performed in accordance with the pre-decontamination assessment report prepared pursuant to Rule .0102 of this Subchapter. The responsible party shall document all activities related to the cleanup and retain this documentation

for three years. The cleanup shall include all of the following listed below:

- (1) Site ventilation shall include:
 - (a) not operating the HVAC system until cleanup is completed;
 - (b) venting the structure by opening doors and windows or using equipment such as fans, blowers ~~and/or~~ and negative air machines for a minimum of two days prior to cleaning and throughout the cleanup process; and
 - (c) preventing vented contaminants from entering air intakes of adjacent structures.
- (2) Any syringes or other drug paraphernalia that may be contaminated with blood or other bodily fluids shall be ~~properly~~ disposed of as ~~bio-hazardous~~ biohazardous waste in accordance with state and federal law.
- (3) Chemical remnants and spills shall be remediated as follows:
 - (a) neutralize acids ~~with weak basic solutions~~ and bases to a pH of 6 through 8;
 - (b) ~~neutralize bases with weak acidic solutions~~;
 - ~~(c)~~ (b) litmus (pH) paper shall be used to check for a neutral surface after neutralization;
 - ~~(d)~~ (c) absorb liquids with a non-reactive material and package for waste disposal; and
 - ~~(e)~~ (d) package solids for waste disposal.
- (4) Machine washable porous materials such as draperies, bed coverings, and clothing in rooms assessed as contaminated and rooms serviced by the same HVAC system as the room where methamphetamine was manufactured shall be washed two times with detergent and water or disposed of in accordance with the waste disposal plan. Non-machine washable porous materials, such as upholstered furniture and mattresses, in rooms assessed as contaminated and rooms serviced by the same HVAC system as the room where methamphetamine was manufactured shall be disposed of in accordance with the waste disposal plan. All carpeting in rooms serviced by the same HVAC system as the room where methamphetamine was manufactured and all carpet that is part of the same dwelling unit shall be disposed of in accordance with the waste disposal plan.
- (5) Plumbing and HVAC systems shall be remediated as follows:
 - (A) Plumbing fixtures that are visibly contaminated (chemical etching or staining or chemical odors present)

beyond normal household wear and tear shall be removed and ~~properly~~ disposed, and the attached plumbing shall be ~~aggressively~~ flushed; plumbing fixtures that are not removed shall be ~~thoroughly~~ cleaned; and

- (B) HVAC ~~Systems~~ systems shall have: all filters in the system replaced; supply diffusers and intake vents removed and cleaned; and the surfaces near system inlets and outlets cleaned. Any system that is constructed of non-porous material such as sheet metal or the equivalent shall be high efficiency particulate air (HEPA) vacuumed and washed two feet into the ductwork from the opening. Internally insulated ductwork shall be replaced two feet from the opening.
- (6) All appliances (such as refrigerators, stoves, hot plates, microwaves, toaster ovens, and coffee ~~makers, etc.~~ makers) used in the manufacture of methamphetamine or storage of associated chemicals shall be disposed in accordance with the waste disposal plan. Appliances that are not used in the manufacture of methamphetamine shall be ~~thoroughly~~ cleaned.
- (7) Ceilings, walls, floors and other non-porous materials in rooms where methamphetamine was manufactured, rooms serviced by the same HVAC system as the room where methamphetamine was manufactured, and in other rooms assessed as contaminated shall be scrubbed using a household detergent solution and rinsed with clear water. Scrub and move non-porous materials to an area that is free of contamination. Then scrub the ceiling first, then the walls and then the floors. This procedure shall be repeated two additional times using ~~a fresh detergent solution, with frequent changes of the rinse water.~~ solution and fresh rinse water with each cleaning of each surface (ceilings, walls, and floors). If a surface has visible contamination or staining, or if an odor emanates from a surface, that surface shall be rewashed, painted with a non-water based paint until the odor and visible contamination is no longer observable. If staining or odors persist the surface must be removed. After cleaning, room(s) used for the manufacture of methamphetamine shall have ceilings and walls painted with a non-water based paint. Resilient floor covering(s), such as sheet, laminate or tile vinyl, in the room(s) used for the manufacture of methamphetamine shall be removed and replaced or after

cleaning, covered in place with new floor coverings. Ceramic or stone tiled surfaces, (floors, countertops, walls, or other ceramic or stone tiled surfaces) in the room(s) used for the manufacture of methamphetamine shall be removed, re-glazed or have grout stained using an epoxy-based stain. Wooden materials (floors, walls, ceilings, cabinets, or other wooden materials) in the room(s) used for the manufacture of methamphetamine shall be removed or sealed with a non-water based coating.

- (8) After cleaning is complete, the property shall be aired out for at least three days to allow for remaining volatiles to disperse. Open all windows and use exhaust fans to circulate air out of the house. During this time, the property shall remain off limits unless it is necessary to make short visits to check on the site.
- (9) Outdoor cleanup shall be completed in accordance with applicable rules administered by the North Carolina Department of Environment and Natural Resources.

History Note: Authority G.S. 130A-284; Temporary Adoption Eff. January 1, 2005.

10A NCAC 41D .0104 POST-DECONTAMINATION

The responsible party shall notify the local health department upon completion of the decontamination process. The responsible party shall provide a copy of the pre-decontamination assessment and the decontamination activity documentation to the local health department. The local health department shall review the documentation to determine if the responsible party has documented activities addressing all requirements of the rules. The health department shall immediately notify the responsible party in writing if it determines that the documentation is incomplete. The local health department shall retain this documentation for three years.

History Note: Authority G.S. 130A-284; Temporary Adoption Eff. January 1, 2005.

10A NCAC 41D .0105 ENFORCEMENT

The local health department may inspect the property prior to, during or after decontamination to enforce the provisions of these Rules. The local health department may enforce the provisions of these Rules in accordance with Article 2 of G.S. 130A.

History Note: Authority G.S. 130A-284; Temporary Adoption Eff. January 1, 2005.

TITLE 12 –DEPARTMENT OF JUSTICE

Rule-making Agency: *Criminal Justice Education and Training Standards Commission*

Rule Citation: *12 NCAC 09E .0102, .0105*

Effective Date: *January 1, 2005*

Date Approved by the Rules Review Commission: *December 16, 2005*

Reason for Action:

12 NCAC 09E .0102, .0105 - Effective July 1, 2004, the General Assembly amended G.S. 17C-6(a)(2) and G.S. 17E-4(a) to require the Criminal Justice Education and Training Standards Commission to provide training on domestic violence issues, incidents, and investigations during course offerings of Basic Law Enforcement Training. In addition, the new legislation requires the Commission to establish in-service training on domestic violence for all law enforcement officers and to establish training and certification requirements for domestic violence instructors. Pursuant to the timeline in the legislation, these new training and certification requirements must be in place by March 1, 2005. This timeline does not give the Commission time to go through the permanent rulemaking process.

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09E - IN-SERVICE TRAINING PROGRAMS

SECTION .0100 - LAW ENFORCEMENT OFFICER'S IN-SERVICE TRAINING PROGRAM

12 NCAC 09E .0102 REQUIRED ANNUAL IN-SERVICE TRAINING TOPICS

The following topical areas are hereby established as minimum topics and hours to be included in the law enforcement officers' annual in-service training program:

- (1) Firearms Training and Qualification (8);
- (2) Legal Update (4);
- (3) Hazardous Materials (2);
- (4) Bloodborne Pathogens (2);
- (5) Juvenile Minority Sensitivity (2);
- (6) Ethical Awareness (2); and
- (7) ~~Department Topic of Choice (4).~~ Domestic Violence (4).

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; Temporary Amendment Eff. January 1, 2005.

12 NCAC 09E .0105 MINIMUM TRAINING SPECIFICATIONS: ANNUAL IN-SERVICE TRAINING

The following specifications shall be incorporated in each law enforcement agency's annual in-service training courses:

- (1) Firearms:
 - (a) Use of Force: review the authority to use deadly force [G.S. 15A-

- 401(d)(2)] including the relevant case law and materials.
- (b) Safety:
 - (i) range rules and regulations;
 - (ii) handling of a firearm;
 - (iii) malfunctions.
 - (c) Review of Basic Marksmanship Fundamentals:
 - (i) grip, stance, breath control and trigger squeeze;
 - (ii) sight and alignment/sight picture;
 - (iii) nomenclature.
 - (d) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the agency:

and may be obtained at cost from the Academy at the following address:
 North Carolina Justice Academy
 Post Office Drawer 99
 Salemburg, North Carolina 28385

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; November 1, 1998; Temporary Amendment Eff. January 1, 2005.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

Rule-making Agency: *North Carolina Medical Board*

Rule Citation: *21 NCAC 32U .0101*

Effective Date: *December 29, 2004*

Date Approved by the Rules Review Commission: *December 16, 2004*

SUBCHAPTER 32U – PHARMACISTS VACCINATIONS

SECTION .0100 – PHARMACISTS VACCINATIONS

21 NCAC 32U .0101 ADMINISTRATION OF VACCINES BY PHARMACISTS

(a) Purpose. The purpose of this section is to provide standards for pharmacists engaged in the administration of influenza vaccines as authorized in G.S. 90-85.3(r) of the North Carolina Pharmacy Practice Act.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
 - (A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
 - (B) the patient at the direction of a practitioner.
- (3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
- (4) "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.
- (5) "Board" means the North Carolina Board of Pharmacy.

Criminal Justice Standards Division
 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602;

- (2) Legal Update;
- (3) Hazardous Materials;
- (4) Bloodborne Pathogens;
- (5) Juvenile Minority Sensitivity;
- (6) Ethical Awareness;
- (7) ~~Department Topic of Choice: Departments may develop their own curriculum in accordance with Instructional Systems Design methodology. These lesson plans must be kept on file by each department for audit purposes. Additionally, the North Carolina Justice Academy shall develop two lesson plans annually for optional use and delivery by departments; and Domestic Violence; and~~
- (8) With the exceptions of Hazardous ~~Materials, Materials and~~ Bloodborne Pathogens, ~~and the Department Topic of Choice,~~ the In-Service Lesson Plans as published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the agency:

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 North Carolina Department of Justice
 114 West Edenton Street
 Old Education Building
 Post Office Drawer 149
 Raleigh, North Carolina 27602

- (6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.
- (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
- (8) "Medical Practice Act" means the North Carolina Medical Practice Act.
- (9) "Physician" means a currently licensed M.D. or D.O. in good standing with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.
- (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
- (11) "Vaccine" means a specially prepared antigen, which upon administration to a person ~~will~~ may result in immunity.
- (12) Written Protocol--A physician's order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
 - (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;
 - (B) the name of the individual pharmacist authorized to administer vaccines;
 - (C) the immunizations or vaccinations that may be administered by the pharmacist;
 - (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
 - (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
 - (F) locations at which the pharmacist may administer immunizations or vaccinations; and
 - (G) the requirement for annual review of the protocols by the physician and pharmacist.

(c) Policies and Procedures

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of influenza vaccines and the treatment of severe adverse events following administration.

- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
 - (3) The pharmacist or pharmacist's agent must give the appropriate influenza vaccine information to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to them, the information provided and has had their questions answered prior to administering the vaccine.
 - (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
 - (5) The pharmacist shall not administer influenza vaccines to patients under 18 years of age.
- (d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer influenza vaccines shall:
- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
 - (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
 - (3) maintain documentation of:
 - (A) completion of the initial course specified in subparagraph (2) of this Paragraph;
 - (B) 3 hours of continuing education every 2 years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
 - (C) current certification specified in subparagraph (1) of this Paragraph;
 - (D) original written physician protocol;
 - (E) annual review and revision of original written protocol with physician;
 - (F) any problems or complications reported; and
 - (G) items specified in Paragraph (g) of this Rule.

(e) ~~Supervising Physician responsibilities. Physicians who enter into a written protocol with a pharmacist to administer influenza vaccines shall enter into a written protocol with a supervising physician who agrees to meet the following requirements:~~

- (1) be responsible for the formulation or approval and periodic review of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically reviews the order or protocol and

- ~~(2) be easily accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide adequate back-up coverage; and~~
- ~~(3) review written protocol with pharmacist at least annually and revise if necessary; necessary; and~~
- ~~(4) receive, as appropriate, a periodic status report on the patient, including any problem or complication encountered.~~

~~(f) Supervision. Pharmacies involved in the administration of immunizations or vaccinations shall be under the supervision of a physician. Physician supervision shall be considered adequate if the delegating physician:~~

- ~~(1) is responsible for the formulation or approval of the physician's order, standing medical order, standing delegation order, or other order or protocol and periodically reviews the order or protocol and the services provided to a patient under the order or protocol;~~
- ~~(2) is geographically located so as to be easily accessible to the pharmacist administering the immunization or vaccination;~~
- ~~(3) receives, as appropriate, a periodic status report on the patient, including any problem or complication encountered; and~~
- ~~(4) is available through direct telecommunication for consultation, assistance, and direction.~~

~~(g)(f) Drugs. The following requirements pertain to drugs administered by a pharmacist:~~

- ~~(1) Drugs administered by a pharmacist under the provisions of this section shall be in the legal possession of:

 - ~~(A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or~~
 - ~~(B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;~~~~
- ~~(2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;~~
- ~~(3) Pharmacists while actively engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written~~

protocol and any other drugs listed in the written protocol to treat adverse reactions; and After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.

~~(h)(g) Record Keeping and Reporting~~

- ~~(1) A pharmacist who administers any influenza vaccine shall maintain the following information, readily retrievable, in the pharmacy records regarding each administration:

 - ~~(A) The name, address, and date of birth of the patient;~~
 - ~~(B) The date of the administration;~~
 - ~~(C) The administration site of injection (e.g., right arm, left leg, right upper arm);~~
 - ~~(D) route of administration of the vaccine;~~
 - ~~(E) The name, manufacturer, lot number, and expiration date of the vaccine;~~
 - ~~(F) Dose administered;~~
 - ~~(G) The name and address of the patient's primary health care provider, as identified by the patient; and~~
 - ~~(H) The name or identifiable initials of the administering pharmacist.~~~~
- ~~(2) A pharmacist who administers influenza vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.~~

~~(i)(h) Confidentiality.~~

- ~~(1) The pharmacist shall comply with the privacy provisions of the federal Health Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.~~
- ~~(2) The pharmacist shall comply with ~~Any any~~ other confidentiality provisions of federal or state laws.~~
- ~~(3) Violations of these rules by a pharmacist and/or supervising physician shall constitute grounds by the licensee's respective Board to initiate disciplinary action against that licensee's license.~~

History Note: Authority G.S. 90-85.3; Emergency Adoption Eff. September 10, 2004; Temporary Adoption Eff. December 29, 2004.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Wednesday, January 19, 2005, 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 Monday, January 17, 2005 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
Lee Settle
Dana E. Simpson
Dr. John Tart

RULES REVIEW COMMISSION MEETING DATES

	January 19, 2005	
February 17, 2005		March 17, 2005
April 21, 2005		May 19, 2005
June 16, 2005		July 21, 2005

RULES REVIEW COMMISSION DECEMBER 16, 2004 MINUTES

The Rules Review Commission met on Thursday, December 16, 2004, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jim Funderburk, Jennie Hayman, Thomas Hilliard, Jeffrey Gray, Robert Saunders, Lee Settle, Dana Simpson, and John Tart.

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

The following people attended:

John Hunter	Attorney/Nat. Assoc. of Tower Executives
Ivette Mercado-Bijikersma	Department of Labor
John Hoomani	Department of Labor
Lynette Johnson	Department of Labor
Kevin Beauregard	Department of Labor
Michael Thompson	Board of Registration for Foresters
Gene Cross	Department of Agriculture
David Patterson	Department of Agriculture
David McLeod	Department of Agriculture
Amy Bason	NC Medical Board
Lee Hoffman	DFS
Nancy Pate	DENR
Noah Huffstetler	Attorney
Dedra Alston	Division of Child Development
Cindy Kornegay	DHHS/DMH/DD/SAS
Julian Mann	OAH
Denise Stanford	Attorney/Pharmacy Board
Kris Horton	DHHS/DMA
Nancy Vincent	DHHS/DMA
Pat Jeter	DHHS/DMA
Penny DePas	Board of Podiatry Examiners

Todd Hemphill	Bode, Call, Stroupe
Robert Newton	Treasurer
Robert Kaylor	Kaylor Law Firm
Julia Lohman	Sheriffs' Education & Training Standards
Shena Evans	Sheriffs' Education & Training Standards
Mary Greg	DHHS/DPH
Marilyn Parker	DHHS/DPH
Sherry Giles	DHHS/DPH
Mercidee Benton	DHHS/DFS
Jack Forshey	Department of Labor
Glenn Cutler	Vital Records
Julie Brincefield	OAH
Dana Sholes	OAH
J. Robin Haden	Radiation Protection
J. Marion Eaddy, III	Radiation Protection

APPROVAL OF MINUTES

The meeting was called to order at 10:09 a.m. with Chairman Hayman presiding.

She reminded the Commissioners of their obligations under the governor's Executive Order #1 to refrain from taking part in consideration of any rules for which they have or may appear to have a conflict of interest. Commissioners Saunders and Gray recused themselves from consideration of the Department of Labor rules.

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the November 18, 2004 meeting. The minutes were approved with a typographical correction for the RRC name on page 2.

FOLLOW-UP MATTERS

The Commission approved the 2005 State Medical Facilities Plan. Attorneys Todd Hemphill and Noah Huffstetler addressed the Commission in opposition to the plan.

Commissioners Saunders and Gray did not take part in either the discussion or the vote on the Department of Labor rules.

13 NCAC 7F .0606: Department of Labor – The Commission extended the period of review to give the staff an opportunity to contact the FCC to get its position on whether the FCC statutes and regulations preempt the Department of Labor from adopting this rule.

13 NCAC 7F .0607: Department of Labor – The Commission approved the rewritten rule submitted by the agency. Ten letters were received requesting that this rule be subject to Legislative review.

13 NCAC 15 .0202: Department of Labor – The Commission approved the rewritten rule submitted by the agency contingent upon receiving technical changes. The technical changes were subsequently received.

15A NCAC 2Q .0102: Environmental Management Commission – No action was taken.

17 NCAC 6B .3503: Department of Revenue – The Commission approved the rewritten rule submitted by the agency.

25 NCAC 1L .0304; .0305: State Personnel Commission – The Commission approved the rewritten rules submitted by the agency.

LOG OF FILINGS

Chairman Hayman presided over the review of the log of permanent rules. All rules were approved unanimously with the following exceptions:

10A NCAC 22G .0106: DHHS/Medical Assistance – The Commission objected to the rule due to lack of statutory authority. There is no authority cited for the agency to incorporate an attachment to its own plan by reference. The information needs to be adopted as a rule to be effective. This objection applies to existing language in the rule.

13 NCAC 7F .0605: Department of Labor – Commissioner Gray did not vote on the Department of Labor rules. Commissioner Saunders seconded a motion to approve the rule but later realized he had recused himself earlier. He made a motion for the Commission to reconsider its approval. Commissioner Simpson then made a motion to approve the rule and Commissioner Saunders did not vote. The Commission approved this rule. However, ten letters were received requesting legislative review.

13 NCAC 15 .0429: Department of Labor – The Commission objected to the rule due to ambiguity. In (f)(9), it is not clear who must approve safety equipment, and, if it is the department, what the standards for approval are. This objection applies to existing language in the rule.

21 NCAC 29 .0702; .0703: Locksmith Licensing Board – These rules were withdrawn by the agency.

21 NCAC 46 .1414; .1814; .2502; .2702 -.2706; .3301: Board of Pharmacy – The Commission approved these rules contingent upon receiving technical changes. Technical changes were not received.

21 NCAC 46 .1602: Board of Pharmacy – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (c) it is unclear what standards the board will use to determine whether to exercise its discretion and “require an applicant ... who has not practiced pharmacy within the previous five years to obtain additional practical experience and continuing education.” If the standards used to make that determination are set outside rulemaking, there is no authority to do so. Likewise in the next sentence it is unclear what standards the board will use to determine whether to exercise its discretion and “restrict licenses granted pursuant to this paragraph.” And once it has exercised that discretion it is also unclear what standards the board will use to determine the period of time during which the license is restricted and what the restrictions will be. To the extent that the standards used to make these determinations are set outside rulemaking, there is no authority to do so.

21 NCAC 46 .1612: Boar of Pharmacy – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (c) it is unclear what standards the board will use to determine whether to exercise its discretion and “require an applicant ... for reinstatement to obtain additional practical experience and continuing education.” If the standards used to make that determination are set outside rulemaking, there is no authority to do so. Likewise in the next sentence it is unclear what standards the board will use to determine whether to exercise its discretion and “restrict licenses granted pursuant to G.S. 90-85.19.” And once it has exercised that discretion it is also unclear what standards the board will use to determine the period of time during which the license is restricted and what the restrictions will be. To the extent that the standards used to make these determinations are set outside rulemaking, there is no authority to do so.

TEMPORARY RULES

Chairman Hayman presided over the review of the log of temporary rules. All rules were approved unanimously.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca brought it to the Commission’s attention that the meeting room is not available on January 20, 2005 so he suggested that the meeting be rescheduled for January 19 or January 21. The Commission agreed to meet on January 19, 2005.

The meeting adjourned at 11:30 a.m.

The next meeting of the Commission is Wednesday, January 19, 2005 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

Commission Review/Permanent Rules
Log of Filings
November 23, 2004 through December 20, 2004

MENTAL HEALTH, COMMISSION OF

The rules in Chapter 26 concern Mental Health.

The rules in Subchapter 26E concern the manufacture, distribution, and dispensing of controlled substances including general provisions and registration (.0100); labeling, packaging, and record keeping (.0200); prescriptions (.0300); some miscellaneous provisions (.0400); and administrative functions, practices, and procedures (.0500).

<u>Definitions</u>	10A	NCAC	26E	.0102
Amend/*				
<u>Persons Required to Register</u>	10A	NCAC	26E	.0104
Amend/*				
<u>Separate Registration for Independent Activities</u>	10A	NCAC	26E	.0105
Amend/*				
<u>Training and Qualification Requirements for Dog Handlers</u>	10A	NCAC	26E	.0106
Adopt/*				
<u>Approval of Canine Certification Associations by the Department</u>	10A	NCAC	26E	.0107
Adopt/*				
<u>Exemption of Law Enforcement Officials</u>	10A	NCAC	26E	.0111
Amend/*				
<u>Application Forms: Contents: Signatures</u>	10A	NCAC	26E	.0113
Amend/*				

HOME INSPECTOR LICENSURE BOARD

The rules in Chapter 8 are the engineering and building codes including the State Building Code (.0200); approval of school maintenance electricians (.0400); qualification board-limited certificate (.0500); qualification board-probationary certificate (.0600); qualification board-standard certificate (.0700); disciplinary actions and other contested matters (.0800); manufactured housing board (.0900); NC Home Inspector Licensure Board (.1000); home inspector standards of practice and code of ethics (.1100); disciplinary actions (.1200); and home inspector continuing education (.1300).

<u>Definitions</u>	11	NCAC	08	.1101
Amend/*				
<u>Purpose and Scope</u>	11	NCAC	08	.1103
Amend/*				
<u>General Exclusions</u>	11	NCAC	08	.1105
Amend/*				
<u>Structural Components</u>	11	NCAC	08	.1106
Amend/*				
<u>Exterior</u>	11	NCAC	08	.1107
Amend/*				
<u>Roofing</u>	11	NCAC	08	.1108
Amend/*				
<u>Plumbing</u>	11	NCAC	08	.1109
Amend/*				
<u>Electrical</u>	11	NCAC	08	.1110
Amend/*				
<u>Heating</u>	11	NCAC	08	.1111
Amend/*				
<u>Air conditioning</u>	11	NCAC	08	.1112
Amend/*				
<u>Interiors</u>	11	NCAC	08	.1113
Amend/*				
<u>Insultion and Ventilation</u>	11	NCAC	08	.1114
Amend/*				
<u>Built-in Kitchen Appliances</u>	11	NCAC	08	.1115
Amend/*				

<u>Board Staff</u> Amend/*	11	NCAC	08	.1203
<u>Investigation</u> Amend/*	11	NCAC	08	.1204

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission.

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); transportation conformity (.1500); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); and transportation conformity (.2000).

<u>Purpose and Scope</u> Amend/*	15A	NCAC	02D	.0801
<u>Highway Projects</u> Repeal/*	15A	NCAC	02D	.0803

The rules in Subchapter 2Q are rules relating to applying for and obtaining air quality permits and include general information (.0100); fees (.0200); application requirements (.0300); acid rain program requirements (.0400); Title V requirements (.0500); transportation facility requirements (.0600); toxic air pollutant procedures (.0700); and exempt categories (.0800).

<u>Applications</u> Amend/*	15A	NCAC	02Q	.0603
<u>Final Action on Permit Applications</u> Amend/*	15A	NCAC	02Q	.0605
<u>Applicability</u> Amend/*	15A	NCAC	02Q	.0701
<u>Demonstrations</u> Amend/*	15A	NCAC	02Q	.0709
<u>Emission Rates Requiring a Permit</u> Amend/*	15A	NCAC	02Q	.0711

HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 18 are from the Commission for Health Services and cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D). The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100); sanitation of scallops (.0200) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); food and beverage vending machines (.1100); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500); restaurants meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); and primitive camps (.3500).

<u>Approval and Permitting of on-Site Waste Water Systems</u> Amend/*	15A	NCAC	18A	.1969
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**LIST OF APPROVED PERMANENT RULES
December 16, 2004 Meeting**

AGRICULTURE, BOARD OF

<u>Infant Formula Standards of Quality</u>	02	NCAC	09N	.0101
<u>Definitions</u>	02	NCAC	48A	.1701
<u>Regulated Areas</u>	02	NCAC	48A	.1703
<u>Importation Requirements: Goats</u>	02	NCAC	52B	.0208
<u>Importation Requirements: Sheep</u>	02	NCAC	52B	.0209

CHILD CARE COMMISSION

<u>Pre-service Requirements for Lead Teachers, Teachers and Assistants</u>	10A	NCAC	09	.0710
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HHS-MEDICAL ASSISTANCE

<u>Rate Setting Methods</u>	10A	NCAC	22G	.0102
<u>Reasonable and Non-Allowable Costs</u>	10A	NCAC	22G	.0103
<u>Cost Reporting Auditing</u>	10A	NCAC	22G	.0104
<u>Case-Mix Index Calculation</u>	10A	NCAC	22G	.0105
<u>Payment Assurance</u>	10A	NCAC	22G	.0107
<u>Reimbursement Methods for State-Operated Facilities</u>	10A	NCAC	22G	.0108
<u>Provider Assessment</u>	10A	NCAC	22G	.0109
<u>Definitions</u>	10A	NCAC	22G	.0110

MENTAL HEALTH, COMMISSION OF

<u>Documentation of Release</u>	10A	NCAC	26B	.0207
<u>Documentation of Disclosure</u>	10A	NCAC	26B	.0303

HEALTH SERVICES, COMMISSION FOR

<u>Reportable Diseases and Conditions</u>	10A	NCAC	41A	.0101
<u>Hospital Emergency Department Reporting</u>	10A	NCAC	41A	.0105
<u>Dosage & Age Requirements for Immunization</u>	10A	NCAC	41A	.0401

STATE REGISTRAR

<u>Routine Requests for Certified Copies</u>	10A	NCAC	41H	.0701
<u>Research Requests</u>	10A	NCAC	41H	.0702
<u>Fees for Corrections and Amendments</u>	10A	NCAC	41H	.0703
<u>Fees for Preparing New Certificate: Adoption and Legitimacy...</u>	10A	NCAC	41H	.0704
<u>Information Needed for Locating Records</u>	10A	NCAC	41H	.1301

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Suspension: Revocation: or Denial of Certification</u>	12	NCAC	10B	.0204
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<u>Minimum Standards for Justice Officers</u>	12	NCAC	10B	.0301
<u>Report of Separation</u>	12	NCAC	10B	.0405
<u>Lateral Transfer/Reinstatements</u>	12	NCAC	10B	.0406
<u>Evaluation for Training Waiver</u>	12	NCAC	10B	.0505
<u>Administration of Detention Officer Certification Course</u>	12	NCAC	10B	.0703
<u>Responsibilities: School Directors</u>	12	NCAC	10B	.0704
<u>Responsibilities: School Directors, Telecommunicator Certification</u>	12	NCAC	10B	.0709
<u>Admission of Trainees</u>	12	NCAC	10B	.0713
<u>Accreditation: Delivery/Detention Officer Certification C...</u>	12	NCAC	10B	.0802
<u>Cert: Instructors for Detention Officer Certification Course</u>	12	NCAC	10B	.0903
<u>Detention Officer Instructor Certification</u>	12	NCAC	10B	.0904
<u>Terms and Conditions of Detention Officer Instructor Cert...</u>	12	NCAC	10B	.0905
<u>Suspension: Revocation: Denial of Detention Officer Instructor</u>	12	NCAC	10B	.0911
<u>Cert: Instructors for Telecommunicator Certification Course</u>	12	NCAC	10B	.0913
<u>Telecommunicator Instructor Certification</u>	12	NCAC	10B	.0914
<u>Terms and Conditions of Telecommunicator Instructor Certification</u>	12	NCAC	10B	.0915
<u>Suspension: Revocation: Denial of Telecommunicator Instructor</u>	12	NCAC	10B	.0919

LABOR, DEPARTMENT OF

<u>Fall Protection</u>	13	NCAC	07F	.0605
<u>Hoists and Gin Poles</u>	13	NCAC	07F	.0607
<u>Existing Installations of Elevators, Escalators, Dumbwaiters</u>	13	NCAC	15	.0202

RADIATION PROTECTION COMMISSION

<u>Definitions</u>	15A	NCAC	11	.0104
<u>Type of Licenses: General and Specific</u>	15A	NCAC	11	.0306
<u>General Licenses: Other Than Source Material</u>	15A	NCAC	11	.0308
<u>General Licenses: Measuring Gauging: Controlling Devices</u>	15A	NCAC	11	.0309
<u>General Licenses: Install Generally Licensed Devices</u>	15A	NCAC	11	.0310
<u>Limitations</u>	15A	NCAC	11	.0510
<u>Personnel Monitoring</u>	15A	NCAC	11	.0512
<u>Records of Industrial Radiography</u>	15A	NCAC	11	.0523
<u>Interstitial: Intracavitary and Superficial Application</u>	15A	NCAC	11	.0702
<u>Definitions</u>	15A	NCAC	11	.1302
<u>Radiation Survey Instruments</u>	15A	NCAC	11	.1307
<u>Leak Testing of Sealed Sources</u>	15A	NCAC	11	.1308
<u>Design: Performance: and Certification Criteria</u>	15A	NCAC	11	.1311
<u>Labeling</u>	15A	NCAC	11	.1312
<u>Personnel Monitoring</u>	15A	NCAC	11	.1316
<u>Notification of Incidents: Abandonment: and Lost Sources</u>	15A	NCAC	11	.1324
<u>Energy Compensation Sources</u>	15A	NCAC	11	.1326
<u>Tritium Neutron Generator Target Sources</u>	15A	NCAC	11	.1327
<u>Monitoring of External and Internal Occupational Dose</u>	15A	NCAC	11	.1614
<u>Use of Process or Other Engineering Controls</u>	15A	NCAC	11	.1618
<u>Use of Other Controls to Restrict Internal Exposure</u>	15A	NCAC	11	.1619
<u>Use of Individual Respiratory Protection Equipment</u>	15A	NCAC	11	.1620

<u>Restrictions on the Use of Respiratory Protection Equipment</u>	15A	NCAC	11	.1621
 REVENUE, DEPARTMENT OF				
<u>Partnership Returns</u>	17	NCAC	06B	.3503
 TREASURER, DEPARTMENT OF STATE				
<u>Scope</u>	20	NCAC	02O	.0101
<u>Short-Term Disability</u>	20	NCAC	02O	.0102
<u>Long-Term Disability</u>	20	NCAC	02O	.0103
 FORESTERS, BOARD OF REGISTRATION FOR				
<u>Registration Fees</u>	21	NCAC	20	.0106
 LOCKSMITH LICENSING BOARD				
<u>Application Form</u>	21	NCAC	29	.0701
<u>Establishment of Moral and Ethical Character</u>	21	NCAC	29	.0704
<u>Definitions</u>	21	NCAC	29	.0801
<u>Requirements</u>	21	NCAC	29	.0802
<u>Determination of Credit</u>	21	NCAC	29	.0803
<u>Record Keeping</u>	21	NCAC	29	.0804
<u>Exceptions</u>	21	NCAC	29	.0805
<u>Non Compliance</u>	21	NCAC	29	.0806
 PHARMACY, BOARD OF				
<u>Application</u>	21	NCAC	46	.1501
<u>Labeling Requirements of Radiopharmaceuticals</u>	21	NCAC	46	.2705
<u>Prohibitions</u>	21	NCAC	46	.2706
 PODIATRY EXAMINERS, BOARD OF				
<u>Name and Purpose</u>	21	NCAC	52	.0101
<u>Annual Meeting: Election and Officers</u>	21	NCAC	52	.0103
<u>Application</u>	21	NCAC	52	.0201
<u>Annual Renewal of License</u>	21	NCAC	52	.0207
<u>Application for Examination</u>	21	NCAC	52	.0601
<u>Appl/Exam/Podiatrist Licensed/Other States Reciprocity</u>	21	NCAC	52	.0610
<u>Petition for Rulemaking Hearings</u>	21	NCAC	52	.0701
<u>Submission of Request for Ruling</u>	21	NCAC	52	.1002
 STATE PERSONNEL COMMISSION				
<u>Responsibilities: Managers and Supervisors</u>	25	NCAC	01L	.0304
<u>Responsibilities: Office of State Personnel</u>	25	NCAC	01L	.0305

AGENDA
RULES REVIEW COMMISSION
January 19, 2005, 10:00 A.M.

- I. Call to Order and Opening Remarks
- II. Review of minutes of last meeting
- III. Follow Up Matters
 - A. DHHS/Medical Assistance - 10A NCAC 22G .0106 (Bryan)
 - B. Department of Labor – 13 NCAC 7F .0606 (Bryan)
 - C. Department of Labor – 13 NCAC 15 .0429 (Bryan)
 - D. Environmental Management Commission – 15A NCAC 2Q .0102 (Bryan)
 - E. Board of Pharmacy – 21 NCAC 46 .1414; .1814; .2502; .2702 - .2706; .3301 (DeLuca)
 - F. Board of Pharmacy – 21 NCAC 46 .1602; .1612 (DeLuca)
- IV. Review of Rules (Log Report #217)
- V. Review of Temporary Rules (if any)
- VI. Commission Business
- VII. Next meeting: February 17, 2005

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 <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*

RULES DECLARED VOID

04 NCAC 02S .0212 CONSUMPTION: INTOXICATION BY PERMITTEE PROHIBITED
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge James L. Conner, II declared 04 NCAC 02S .0212(b) void as applied in NC Alcoholic Beverage Control Commission v. Midnight Sun Investments, Inc. t/a Tiki Cabaret (03 ABC 1732).

20 NCAC 02B .0508 FAILURE TO RESPOND
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Melissa Owens Lassiter declared 20 NCAC 02B .0508 void as applied in Burton L. Russell v. Department of State Treasurer, Retirement Systems Division (03 DST 1715).

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ABC COMMISSION</u>				
ABC Commission v. Pantry, Inc. T/A Pantry 355	03 ABC 1094	Gray	09/01/04	
ABC Commission v. Richard Martin Falls, Jr., T/A Falls Quick Stop	04 ABC 0341	Mann	07/16/04	
ABC Commission v. Nichos, Inc., T/A Mexican Store	04 ABC 0626	Gray	10/15/04	
ABC Commission v. Red Lion Manestream, Inc., T/A Red Lion Manestream	04 ABC 0695	Wade	07/20/04	
ABC Commission v. KOL, Inc, T/A Wards Grocery	04 ABC 0872	Wade	09/21/04	
ABC Commission v. Carlos Salas, T/A Boom Boom Room Night Club	04 ABC 0938	Chess	10/19/04	
<u>VICTIMS COMPENSATION</u>				
Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Compensation	03 CPS 2320	Conner	07/23/04	
Angelique M. Jones on behalf of a juvenile victim, her son, Jaquial Jones v. Victims Compensation Commission	03 CPS 2353	Conner	07/12/04	
Jean Stevens on Behalf of Amber Nichole Sewell v. Victim and Justice Services	04 CPS 0399	Chess	09/16/04	
Krista Chmiel v. Crime Victims Compensation Commission Case #CV-65-04-0020899	04 CPS 0992	Gray	09/31/04	
John Selden Clem v. State Highway Patrol, Trooper C.J. Owens	04 CPS 1705	Chess	11/17/04	
<u>DEPARTMENT OF AGRICULTURE</u>				
NC Spring Water Assoc, Inc., Wiley Fogleman (President) v. DOA, David McLeod and Table Rock Spring Water Co.	04 DAG 0110	Gray	07/21/04	
<u>DEPARTMENT OF ADMINISTRATION</u>				
Larry Yancey v. GACPD, DOA	04 DOA 0896	Morrison	07/28/04	
<u>HEALTH AND HUMAN SERVICES</u>				
Bejeer Smiles Child Care Learning Center, Inc. v. DHHS, Div of Child Development	98 DHR 0235	Gray	09/16/04	
Margaret Bollo v. DHHS, Broughton Hospital	03 DHR 0444	Gray	07/21/04	
Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS	03 DHR 0884	Lassiter	05/18/04	
Winter McCotter v. DHHS, Div. of Facility Services, Healthcare Personnel Registry Section	03 DHR 0905	Gray	10/20/04	
Blaine Ryan Walsh-Child, Bonnie L. Walsh-Mother v. DHHS, Div. of	03 DHR 1113	Gray	10/15/04	

CONTESTED CASE DECISIONS

Medical Assistance			
Olufermi Augustine Ohome v. DHHS, Div. of Facility Services	03 DHR 1062	Lassiter	05/24/04
Karen A. Anders v. DHHS, Div of Facility Services	03 DHR 1217	Gray	09/20/04
Charles Crawford Cox v. DHHS	03 DHR 1546	Lassiter	07/07/04
Bio-Medical Applications of North Carolina, Inc v. DHHS, Div of Facility Services, CON Section and Total Renal Care of NC, LLC	03 DHR 1553	Chess	06/02/04
Tomeeka K. Blount v. DHHS, Caswell Center	03 DHR 1728	Elkins	10/15/04
Lativia L. Gibbs v. DHHS, Div. of Child Development	03 DHR 1746	Smith	07/23/04
Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04
Jacqueline Haltiwanger v. DHHS, Div of Facility Services	03 DHR 1818	Conner	09/24/04
Loretta Kaye Dulakis v. DHHS, Div. of Facility Services	03 DHR 1848	Wade	08/20/04
Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA	03 DHR 2377	Conner	07/19/04
Tony Worley v. DHHS, Div of Facility Services	03 DHR 2427	Mann	12/07/04
Mooresville Hospital Management Assoc, Inc d/b/a Lake Norman Reg. Medical Center v. DHHS, Div of Facility Services, CON Section and Novant Health, Inc. (Lessor) and Forsyth Memorial Hospital (Lessee) d/b/a Forsyth Medical Center	03 DHR 2404	Conner	06/08/04
Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development	03 DHR 2445	Gray	06/15/04
Antonia Marie Collins v. DHHS, Div of Facility Services	03 DHR 2450	Mann	09/15/04
John Michael Thompson v. DHHS, DFS	04 DHR 0046	Lassiter	07/27/04
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June K. Foushee v. UNC Hospitals	04 UNC 0850	Morrison	11/23/04	
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CONTESTED CASE DECISIONS

Joyce Miller v. UNC Hospitals

04 UNC 0963

Morrison

11/23/04

1 Combined Cases

STATE OF NORTH CAROLINA
COUNTY OF FORSYTH

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
04 EHR 0996

Virginia I. Crews,)
)
 Petitioner,)
)
 v.)
)
 North Carolina Department of Environment and)
 Natural Resources,)
)
 Respondent.)

DECISION

This matter came on to be heard before Administrative Law Judge James L. Conner, II on October 27, 2004 in High Point, North Carolina.

APPEARANCES

For Petitioner: Virginia I. Crews, *pro se*

For Respondent: John P. Barkley
Assistant Attorney General
N.C. Department of Justice
9001 Mail Service Center
Raleigh, NC 27699-9001

EXHIBITS

Petitioner offered no exhibits. Respondent's Exhibits 1 and 2 were admitted.

ISSUE

Whether Forsyth County Health Department acted erroneously or exceeded its authority by requiring that the mobile home at issue in this case be sited differently on its lot than previously sited mobile homes of the same size and configuration.

FINDINGS OF FACT

1. This controversy arose upon the request of Petitioner that a site in her mobile home park be re-inspected by the Forsyth County Health Department for compliance with on-site wastewater laws and rules. Petitioner made this request because the mobile home formerly on the site had been removed, and a new one was being installed.
2. The purpose of the inspection was to check for the appropriate separation between the mobile home and its (and any neighboring) septic tank and well.
3. The previous mobile home had been located within one to one-and-a-half feet (measured from the drip line of the home) of the septic tank. However, its foundation blocks were located in excess of five feet from the system.
4. Petitioner proposed to put the new mobile home in the same location.
5. The inspector sent by the Health Department determined that the new mobile home would have to shifted from the previous location in order to assure that there existed a separation of five feet between the mobile home and the septic system.

6. The inspector determined the distance between the mobile home and the septic system by measuring from the drip line of the mobile home. This drip line is the portion of the home extending furthest from the center of the home-the edge of the roof from which water would drip in a rain event.

7. Petitioner's mobile home park has established locations for the homes therein, with permanent driveways and other amenities that are dependent upon the consistent location of the mobile homes. Petitioner and her family have taken care that the layout of the park is orderly, consistent, and symmetrical. Moving this home three-and-a-half to four feet from the established location on this site would disrupt all of these elements of the Petitioner's park.

8. The Health Department uses the dripline of mobile homes as the point from which to measure based upon both a regulation and an unwritten interpretation of that regulation by staff of the Department of Environment and Natural Resources. The regulation requires that staff measure from the foundation of a building to determine how close it is to a septic tank or other feature. The unwritten interpretation of this regulation is that the "foundation" of a mobile home is its dripline. No witness for the State could say that he had ever seen this interpretation written in any statute, regulation, or policy of the State or the local health department, nor that this interpretation had been promulgated using the proper process for creating regulations that are binding upon the public. In fact, the State's witnesses could not remember this interpretation being covered in any training.

9. "Foundation" is a term of common understanding and parlance. Neither the Forsyth County Health Department nor the North Carolina Department of Environment and Natural Resources has any specialized expertise that is of relevance in determining the meaning of this term. No witness for the State evinced any knowledge beyond the ordinary regarding the structure of mobile homes and their foundations.

10. "Foundation" is provided four definitions in the American Heritage Dictionary. Three of those definitions are inapplicable to buildings. The applicable definition reads: "the basis on which a thing stands; underlying support." American Heritage Dictionary (2d College Ed. 1983)(emphasis added).

11. Kenneth R. Crews, son of Petitioner, has extensive experience with mobile homes. He testified that the foundation of a mobile home is where the blocks that hold up the home are located. They are located significantly toward the center of the home and away from its edges. In fact, mobile homes are not permitted to have load bearing exterior walls. Therefore, the foundation of a mobile home cannot be located at the exterior edge of the home.

12. This mobile home lot and its septic system were first permitted and put into use in 1973, have been approved on several occasions by the Forsyth County Health Department, and were last approved (including the existing location of the home on the site) in 2002. The septic system has been carefully maintained and is functioning properly.

Based upon the foregoing findings of fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. The fact that enforcement of the on-site waste water rules as interpreted by staff would cause disruption to Petitioner's mobile home park is not a decisive factor in this case. Rather, the question is what the law requires.

2. A statute requires that a mobile home park obtain authorization from the local health department when connecting a mobile home to an existing septic system before the home may be connected and occupied. N.C. Gen. Stat. §130A-337(c) & (d). This is the reason for the request, inspection, and controversy in this case.

3. The regulation at the center of this controversy provides that

"Every sanitary sewage treatment and disposal system shall be located at least the minimum horizontal distance from the following:

* * *

(10) Any building foundation . . . 5 feet"

15A NCAC 18A .1950(a)(10).

4. The building foundation is the underlying support for the building and upon which it stands. For mobile homes, the foundation is the series of blocks installed under the main support girders or rails that are built into the mobile home. This series of

blocks stands upon the earth below and bears the weight of the home. The mobile home foundation is not located at the outer edges of the home.

5. Therefore, the Forsyth County Health Department improperly determined that the “foundation” of the mobile home at issue in this case was its drip line. The drip line has nothing to do with providing foundation to the home.

6. Since the foundation of this home was wrongly determined, it follows that the purported requirement imposed by the Forsyth County Health Department that the home be installed at a different location, based upon that interpretation, is invalid.

7. In addition, this system is grandfathered. “The provisions of this section shall not apply to properly functioning sewage treatment, collection, and disposal systems in use or for which a valid permit to install a system has been issued by July 1, 1977.” 15A NCAC 18A .1962. Since this system was installed and permitted in 1973, and is functioning properly, the setback provisions of 15A NCAC 18A .1950(a) cannot apply.

8. In summary, the action of the health department is invalid for two reasons. First, it wrongly determined that the mobile home’s foundation would be within five feet of the septic system, based upon an erroneous interpretation of the applicable regulation. Second, even if its interpretation of that regulation had been correct, this system is grandfathered and protected from the application of the setback requirement.

DECISION

The Forsyth County Health Department’s purported requirement that the mobile home at issue in this case be located at a different location on its lot than previous mobile homes of the same size and configuration had occupied is erroneous and exceeds its authority, and is therefore overturned. The Department shall immediately issue to Petitioner the authorization called for in N.C. Gen. Stat. §130A-337(c).

NOTICE

The Agency that will make the final decision in this contested case is the North Carolina Department of Environment and Natural Resources.

The Agency is required to give each party an opportunity to file exceptions to the decision and to present written arguments to those in the Agency who will make the final decision. N.C. Gen. Stat. § 150-36(a). The Agency is required by N.C. Gen. Stat. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties’ attorney of record and to the Office of Administrative Hearings.

In accordance with N.C. Gen. Stat. § 150B-36 the Agency shall adopt each finding of fact contained in the Administrative Law Judge’s decision unless the finding is clearly contrary to the preponderance of the admissible evidence. For each finding of fact not adopted by the agency, the agency shall set forth separately and in detail the reasons for not adopting the finding of fact and the evidence in the record relied upon by the agency in not adopting the finding of fact. For each new finding of fact made by the agency that is not contained in the Administrative Law Judge’s decision, the agency shall set forth separately and in detail the evidence in the record relied upon by the agency in making the finding of fact.

This the 10th day of December, 2004.

James L. Conner, II
Administrative Law Judge