

NORTH CAROLINA

REGISTER



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through February 8, 2005

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<http://ncoah.com/register/CI.pdf>

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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

NCAC TITLES		TITLE 21 LICENSING BOARDS	TITLE 24 INDEPENDENT AGENCIES
1	ADMINISTRATION	1 Acupuncture	1 Housing Finance
2	AGRICULTURE & CONSUMER SERVICES	2 Architecture	2 Agricultural Finance Authority
3	AUDITOR	3 Athletic Trainer Examiners	3 Safety & Health Review Board
4	COMMERCE	4 Auctioneers	4 Reserved
5	CORRECTION	6 Barber Examiners	5 State Health Plan Purchasing Alliance Board
6	COUNCIL OF STATE	8 Certified Public Accountant Examiners	
7	CULTURAL RESOURCES	10 Chiropractic Examiners	
8	ELECTIONS	11 Employee Assistance Professionals	
9	GOVERNOR	12 General Contractors	
10A	HEALTH AND HUMAN SERVICES	14 Cosmetic Art Examiners	
11	INSURANCE	16 Dental Examiners	
12	JUSTICE	17 Dietetics/Nutrition	
13	LABOR	18 Electrical Contractors	
14A	CRIME CONTROL & PUBLIC SAFETY	19 Electrolysis	
15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
16	PUBLIC EDUCATION	21 Geologists	
17	REVENUE	22 Hearing Aid Dealers and Fitters	
18	SECRETARY OF STATE	25 Interpreter/Transliterator	
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		53 Professional Counselors	
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		57 Real Estate Appraisal	
		58 Real Estate Commission	
		60 Refrigeration Examiners	
		61 Respiratory Care	
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		63 Social Work Certification	
		64 Speech & Language Pathologists & Audiologists	
		65 Therapeutic Recreation Certification	
		66 Veterinary Medical	
		68 Substance Abuse Professionals	
		69 Soil Scientists	

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

NORTH CAROLINA REGISTER
Publication Schedule for January 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.

**EXECUTIVE ORDER NO. 72
TERMINATION OF EXECUTIVE ORDERS 45 AND 71**

WHEREAS, Executive Order No. 45 was signed on February 16, 2003, providing for the waiver of rules and regulations which limited the hours of operators of certain commercial vehicles and lifting weight restrictions on certain vehicles; and,

WHEREAS, Executive Order No. 45 was issued along with a Proclamation of a State of Emergency by the Governor of the State of North Carolina as a result of a winter storm which produced sleet and freezing rain across the Piedmont and mountain regions of the State on February 17, 2003; and,

WHEREAS, Executive Order No. 71 was signed on January 19, 2005, declaring a State of Emergency as a result of snow and ice, which caused hazardous travel conditions in Wake County; and,

WHEREAS, both Executive Orders contained the provision that they would be effective until terminated in writing.

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

Executive Order 45, dated February 16, 2003, and Executive Order 71, dated January 19, 2005, are hereby terminated due to the cessation of their respective emergencies.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the great Seal of the State of North Carolina at the Capital in Raleigh, this the 27th day of January, 2005.

Michael F. Easley

ATTEST:

Elaine F. Marshall
Secretary of State

<p><i>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.</i></p>

U.S. Department of Justice

Civil Rights Division

JDR:RPL:MDS:maf
DJ 166-012-3
2004-5014

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

January 27, 2005

David A. Holec, Esq.
City Attorney
P.O. Box 7207
Greenville, NC 27835

Dear Mr. Holec:

This refers to five annexations (Ordinance Nos. 04-110, 04-111 and 04-119 through 04-121), and their designation to districts of the City of Greenville in Pitt County, North Carolina, submitted to the Attorney General pursuant to Section 5 of the Voting Rights Act, 42 U.S.C. 1973c. We received your submission on December 13, 2004.

The Attorney General does not interpose any objection to the specified changes. However, we note that Section 5 expressly provides that the failure of the Attorney General to object does not bar subsequent litigation to enjoin the enforcement of the changes. Procedures for the Administration of Section 4 of the Voting Rights Act (28 C.F.R. 51.41).

Sincerely,

Joseph D. Rich
Chief, Voting Section

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

Community Resource Exchange, Inc.

Pursuant to N.C.G.S. § 130A-310.34, Community Resource Exchange, Inc. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Stoneville, Rockingham County, North Carolina. The Property consists of approximately 22.5 acres and is located at 525 South Henry Street. Environmental contamination exists on the Property in soil, groundwater and soil gas. Community Resource Exchange, Inc. has committed itself to make no use of the Property other than for office space, light industry and warehousing. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Community Resource Exchange, 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) any 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 Town of Stoneville offices, 151 Smith Street, Stoneville, NC 27048 by contacting Bob Wyatt, Stoneville Town Manager, at that address or at 336-573-9333; 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. 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

Notice of Application for Innovative Approval of a Wastewater System for On-site Subsurface Use

Pursuant to NCGS 130A-343(g), the North Carolina Department of Environment and Natural Resources (DENR) shall publish a Notice in the NC Register that a manufacturer has submitted a request for approval of a wastewater system, component, or device for on-site subsurface use. The following application has been submitted to DENR:

Application by: Sam Carter, Government Relations Manager
Orenco Systems, Inc.
814 Airway Avenue
Sutherlin, Oregon 97479
800-348-9843

For: Innovative Approval for "AdvanTex[®]" wastewater treatment and effluent dispersal system

DENR Contact: Dr. Robert Uebler
1-252-946-6481
FAX 252-975-3716
bob.uebler@ncmail.net

The application may be reviewed by contacting the applicant or at 2728 Capital Blvd., Raleigh, NC, On-Site Wastewater Section, Division of Environmental Health. Draft proposed innovative approvals and proposed final action on the application by DENR can be viewed on the On-Site Wastewater Section web site: www.deh.enr.state.nc/oww/.

Written public comments may be submitted to DENR within 30 days of the date of the Notice publication in the North Carolina Register. All written comments should be submitted to Mr. Andy Adams, Chief, On-site Wastewater Section, 1642 Mail Service Center, Raleigh, NC 27699-1642, or andy.adams@ncmail.net, or Fax 919.715.3227. Written comments received by DENR in accordance with this Notice will be taken into consideration before a final agency decision is made on the innovative subsurface wastewater system application.

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

Statutory reference: G.S. 150B-21.2.

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Cemetery Commission intends to amend the rules cited as 04 NCAC 05A .0107; 05C .0101, .0103, .0105, .0201-.0202, .0301.

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: May 11, 2005

Time: 10:00 a.m.

Location: 1100 Navaho Drive, Suite 242, Raleigh, NC 27609

Reason for Proposed Action: The North Carolina Cemetery Commission is a receipt supported agency. The Commission has not raised fees in over fifteen (15) years. The Commission has been taking in less cash receipts than cash disbursements for several years and no longer has funds to operate. These amendments address that problem by raising license fees as allowed under NCGS 65-54, NCGS 65-55, NCGS 65-57, NCGS 65-68, and NCGS 65-69.

Procedure by which a person can object to the agency on a proposed rule: Any person who objects to a proposed rule shall either submit a letter of objection in writing to Claud Whitener at the address give below or submit in writing at the hearing.

Written comments may be submitted to: Claud R. Whitener III, NC Cemetery Commission, 1001 Navaho Drive, Suite 100, Raleigh, NC 27609, phone (919)981-2536.

Comment period ends: May 11, 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 05 - CEMETERY COMMISSION

SUBCHAPTER 05A - ORGANIZATION

SECTION .0100 - GENERAL INFORMATION

04 NCAC 05A .0107 CEMETERY LICENSE FEE

The annual cemetery license fee shall be ~~three hundred dollars (\$300.00)~~ five hundred dollars (\$500.00). This license has an expiration date of June 30 in each year.

Authority G.S. 65-49; 65-54.

SUBCHAPTER 05C - LICENSING

SECTION .0100 - CEMETERIES

04 NCAC 05C .0101 APPLICATION AND FILING FEE

Any legal entity wishing to establish and operate a cemetery company, as defined in G.S. 65-48(5) must first obtain a license from this commission. The legal entity shall file written application with the commission on the Commission's Application for Certificate of Authority. This form provides a space for the name of the corporation and cemetery, the names of directors and officers of the corporation, the mailing address of the corporation and the address of the cemetery. A filing fee of ~~eight hundred dollars (\$800.00)~~ one thousand dollars (\$1,000.00) must accompany the application. The application form is available by contacting:

North Carolina Cemetery Commission
~~1100~~1001 Navaho Drive, ~~GL-2~~Suite 100
 Raleigh, North Carolina 27609.

Authority G.S. 65-48(5); 65-49; 65-55.

04 NCAC 05C .0103 CHANGE OF CONTROL

Any entity wishing to purchase or acquire control of an existing cemetery company shall first make written application to the Cemetery Commission on the commission's Application for Change of Control. This form provides space for the name and address of the present and proposed owner, along with the name of the corporation and the name of the cemetery. This form can be obtained by writing:

North Carolina Cemetery Commission

~~1400~~ 1001 Navaho Drive, ~~GL-2~~ Suite 100

Raleigh, North Carolina 27609.

This form must be accompanied by a ~~two hundred dollar (\$200.00)~~ five hundred dollar (\$500.00) filing fee. The commission also requires the following:

- (1) an examination be made to establish compliance to trust fund ~~requirements~~ requirements, with the actual cost of the examination to be paid by the applicant;
- (2) a signed certificate assuming liabilities of the existing cemetery company;
- (3) a financial statement of the existing cemetery company showing net worth;
- (4) certification by title insurance policy or by certificate of an attorney-at-law that the cemetery land, subject to appropriate acreage requirements, is owned in fee simple, free of all encumbrances;
- (5) a financial statement of proposed owner, showing net worth and a statement of the proposed owner's experience in the cemetery business.

No one shall take over the operation of a cemetery company in anticipation of a change of control until all necessary information concerning that change of control has been submitted to the administrator of the Cemetery Commission. No one shall change control of a cemetery company without first obtaining approval of the Cemetery Commission. Once a change of control has been approved by the Cemetery Commission, the change of control must be completed within 90 days of the date of the Cemetery Commission's approval. If the change of control is not completed within 90 days of the date of the Cemetery Commission's approval, then the entity wishing to effect the change of control will be required to make a new application to the Cemetery Commission in accordance with provisions of this Rule. Upon completion of the change of control, the entity requesting the change of control shall notify in writing the Administrator of the Cemetery Commission of the completion. A representative of the buyer and the seller shall be present at any meeting when the commission is going to consider the change of control application.

Authority G.S. 65-49; 65-53(2); 65-59.

04 NCAC 05C .0105 MEETING REQUIREMENT

Any application and all related information for a new cemetery license or a change of control of a cemetery must be received by the administrator of the Commission ~~ten~~ 30 regular working days before the meeting date the item is to be heard.

Authority G.S. 65-49; 65-55.

SECTION .0200 - CEMETERY SALES ORGANIZATIONS: MANAGEMENT ORGANIZATIONS AND BROKERS

04 NCAC 05C .0201 APPLICATION AND FILING FEE

Any legal entity wishing to establish and operate a cemetery sales organization, cemetery management organization or a cemetery broker, as each are defined under G. S. 65-48, must first obtain a license from this commission. The legal entity shall file written application with the commission on the Commission's Application for Cemetery Broker, Sales and/or Management Contractor License. This form provides space for applicant's name and address; space is also provided for employment, references and criminal record for an individual, corporate officer or partner, as the case may be. The application form is available by contacting:

North Carolina Cemetery Commission
~~1400~~1001 Navaho Drive, ~~GL-2~~Suite 100
 Raleigh, North Carolina 27609.

The following documents shall accompany this application:

- (1) If individual, officer or partner has not been licensed as a cemetery salesman for a period of two years, the application is to be accompanied by a written request for waiver setting forth at least one year general cemetery experience.
- (2) Corporate applications are to be accompanied by:
 - (a) certified copy of that portion of the minutes of the corporation wherein the officer named on the application was elected an officer,
 - (b) certified copy of that portion of the minutes of the corporation wherein the officer named on the application was authorized to file the application on behalf of the corporation.
- (3) All brokerage, sales or management contracts.

Application ~~Filing~~-filing fees ~~shall be in accordance with G.S. 65-57(e).~~ are six hundred dollars (\$600.00) for sales and management organizations, and four hundred dollars (\$400.00) for brokers.

Authority G.S. 65-49; 65-57.

04 NCAC 05C .0202 LICENSE

Licenses for sales organizations, management organizations and brokers shall be granted where the Commission has received the proper fee, information and documents called for in G.S. 65-57(b) (1) to (5) and G.S. 65-57(c) and where it determines that, based on the information and documents, the applicant is of good moral character, or, in the case of a business organization, employs and is directed by personnel of good moral character. The annual license fee for sales organizations, management organizations, and brokers is five hundred dollars (\$500.00). These licenses have an expiration date of June 30 in each year.

Authority G.S. 65-49; 65-57.

SECTION .0300 - INDIVIDUAL PRE-NEED SALESPEOPLE

04 NCAC 05C .0301 APPLICATION AND FILING

FEE

Any person who offers to sell pre-need grave spaces, mausoleum crypts, niches, memorials, vaults or any other pre-need cemetery merchandise or services that are authorized for any cemetery, cemetery sales groups or cemetery management groups must first obtain a license from this commission. Applications for a license must be filed with the Commission on their Application for Persons Selling Pre-need Cemetery Property together with a fee in the amount of ~~twenty five dollars (\$25.00)~~, ~~one hundred dollars (\$100.00)~~, ~~fifteen dollars (\$15.00)~~, ~~fifty dollars (\$50.00)~~ of which shall constitute an application fee and ~~ten dollars (\$10.00)~~ fifty dollars (\$50.00) of which shall constitute ~~annual~~ a two year license fee. The form provides space for applicant's name, cemetery name, past address, previous employment and criminal record. The application form is available by contacting:

North Carolina Cemetery Commission
~~1100~~ 1001 Navaho Drive, ~~GL-2~~ Suite 100
 Raleigh, North Carolina 27609.

This license has an expiration date of June 30 in each ~~year~~ year, and is not transferable from the cemetery to which it is issued.

Authority G.S. 65-49; 65-58.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESCOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Marine Fisheries Commission intends to adopt the rule cited as 15A NCAC 03M .0517 and amend the rules cited as 15A NCAC 03I .0101, .0105; 03J .0104, .0106, .0301; 03L .0201-.0202, .0206, .0301; 03M .0515; .03O .0503; 03Q .0107; 03R .0103, .0107.

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: March 22, 2005

Time: 7:00 p.m.

Location: DENR Regional Office, 127 Cardinal Drive, Wilmington, NC

Date: March 29, 2005

Time: 7:00 p.m.

Location: Archdale Building, Ground Floor Hearing Room, Raleigh, NC

Date: April 5, 2005

Time: 7:00 p.m.

Location: DENR Regional Office, 943 Washington Square Mall, Washington, NC

Date: April 20, 2005

Time: 7:00 p.m.

Location: Clarion Oceanfront Hotel, 1601 S. Virginia Dare Trail, Kill Devil Hills, NC

Reason for Proposed Action:

15A NCAC 03I .0101 - Various other blue crab rule amendments are being proposed that would prohibit the sale of white-line peelers, but allow possession by the licensee/harvester of use in the licensee's permitted shedding operation. The proposed amendments would require that white-line peeler crabs be separated from pink and red-line peeler crabs where taken and placed in a separate container. The definitions rules should be amended to be consistent with the other proposed blue crab rule amendments.

15A NCAC 03I .0105 - The purpose of the proposed rule amendment is to shorten the attendance period for crab pots from seven to five days. This amendment is necessary in order to reduce the number of ghost pots in the water. Ghost pots are pots that, either through abandonment or loss (float lines cut by props, storm events, etc.), continue to catch crabs and finfish. Concern stems from the significant increase in the numbers of crab pots, the long life of vinyl coated pots, and the pots ability to continue to trap crabs and finfish after being separated from its float line. The amendment would also reduce the mortality rate of crabs caught in the pots.

15A NCAC 03J .0104 - The proposed rule is necessary in order to reduce conflict in designated pot areas and in an effort to protect habitats from bottom disturbing fishing gear. The increase in hard crab and peeler pot numbers has resulted in more frequent and severe conflicts over fishing space between crab potters and other commercial fisheries (trawlers, long haul seiners, etc.) and recreational activities (swimming, fishing, boating). Conflicts may arise from damage to vessels encountering gear, and may result in fishing gear being moved, damaged, destroyed or stolen. Also, theft of potted crabs has increased in some areas, as effort for and price of the commodity has increased.

15A NCAC 03J .0106 - Currently, there are no limits on the amount of crabs that can be landed from channel nets. Landings of hard crabs by these nets in New River in 2000 and 2001 dramatically increased from less than 1000 pounds to over 85,000 pounds. The proposed rule is necessary in order to curtail this increase and protect female sponge crabs from over harvest.

15A NCAC 03J .0301 - The proposed rule amendment is necessary in order to reduce the number of ghost pots in the water by extending the pot clean up period. Ghost pots are pots that, either through abandonment or loss (float lines cut by props, storm events, etc.), continue to catch crabs and finfish. Concern stems from the significant increase in the numbers of crab pots, the long life of vinyl coated pots, and the pots ability to continue to trap crabs and finfish after being separated from its float line. The amendment would also reduce the mortality rate of crabs caught in the pots. The rule will also give the Fisheries Director proclamation authority to impose restrictions and establish a mediation process. Both recommendations would address user conflicts in the pot fishery. In addition, the proposed rule amendment would clarify the crab pot buoy color requirements to alleviate any confusion regarding buoy markings. The rule will also change the crab pot designated area restriction date from May-October to June-September in order to account for annual variations in crab distribution by

water depth. Water temperature influences the depth at which crabs may be potted. The inside of the six foot depth contour line or specified distance from shore is used to designate pot areas during the current May-October time frame. If water temperatures remain cool past the May deadline, they are required to move their pots into shallower areas which may be less productive for crabs.

15A NCAC 03L .0201 - With increasing concerns over fluctuating blue crab landings and increasing fishing effort, there have been numerous requests to further protect the spawning stock of blue crabs in North Carolina. Blue crab recruits in any given year rely, in part, on the size of the spawning stock from which the young originated. The spawning stock includes all female crabs that survive natural and fishing mortality to reproduce. Environmental conditions (winter mortality, drought, hypoxia, hurricanes, and human development effects), diseases, predation and cannibalism are natural mortality issues of concern. Decreasing the culling tolerance and the increasing the size limit for blue crabs would help protect the spawning stock by allowing the large females the opportunity to produce multiple broods over their lifetime.

15A NCAC 03L .0202 - The crab trawl fishery has received a large amount of attention due to concerns over the bycatch and potential mortality of finfish and sublegal crabs. The purpose of this rule amendment is to expand the Fisheries Director's authority to by proclamation be able to increase the crab trawl mesh size in specific areas in order to minimize waste in this fishery.

15A NCAC 03L .0206 - Prohibiting or reducing the harvest of white-line peelers would minimize the harvest of "green" and white-line peelers in the peeler pot fishery, contribute to optimum yield of the resource, and have minimal impact on the majority of North Carolina's crab shedding operations. Research and crabbers, who harvest and shed their own crabs, indicate that white-line peelers when handled properly can be shed successfully with minimal mortality. Therefore, this rule amendment is necessary in order to prohibit the sale of white-line peelers, but allow possession by the licensee/harvester for use in the licensee's permitted shedding operation.

15A NCAC 03L .0301 - Addendum III to Amendment 3 to the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan (FMP) for American Lobster changes the minimum and maximum carapace length requirement for American lobster. This rule amendment is necessary in order to comply with the ASMFC FMP.

15A NCAC 03M .0515, .0517 - The new South Atlantic Fishery Management Council (SAFMC) Fishery Management Plan (FMP) for dolphin/wahoo prohibits the sale of recreationally caught dolphin or wahoo, with the exception of for-hire vessels that possess the appropriate state and federal commercial permits, who will be allowed to sell dolphin harvested under the bag limit. The FMP also establishes bag and trip limits, along with dealer and operator permits. The proposed rules are necessary in order for North Carolina's to be in compliance with the SAFMC FMP.

15A NCAC 03O .0503 -Amendment 1 to the Atlantic States Marine Fisheries Commission (ASMFC) Interstate Fishery Management Plan for American shad mandates that the ocean

intercept fishery will close January 1, 2005. Due to the closure, 15A NCAC 03O .0503 should be amended to remove the dealer permit provision in Subparagraph (b)(5).

15A NCAC 03Q .0107 - During the process to implement joint rules with the Wildlife Resources Commission resulting from the approval of the Estuarine Striped Bass Fishery Management Plan FMP this year, one of the joint rules was inadvertently left out. This was discovered when the WRC was seeking approval of their joint rules this fall. The Marine Fisheries Commission has already passed 15A NCAC 03Q .0201 - 0202 which were effective August 1, 2004, and 03M .0201, 03Q .0108 - .0109, and 03R .0201, which were effective September 1, 2004. Making this rule change will fulfill the rule changes necessitated by the Estuarine Striped Bass FMP.

15A NCAC 03R .0103 - The NC Division of Marine Fisheries (DMF) conducted trawling surveys in the early 1970s to inventory the state's estuarine resources. The result of these surveys was the identification of estuarine areas that consistently supported populations of juvenile shrimp, crab, flounder, croaker, spot, and menhaden. The Marine Fisheries Commission adopted regulations in 1977 to protect these estuarine areas, known as Nursery Areas. Nursery Areas are defined by 15 NCAC 03N .0102(a) as:

"...those areas in which for reasons such as food, cover, bottom type, salinity, temperature, and other factors, young finfish and crustaceans spend the major portion of their initial growing season."

Primary Nursery Areas (PNAs) are defined by 15 NCAC 03N .0102(b) as "...those areas in the estuarine system where initial post-larval development takes place. These areas are usually located in the uppermost sections of a system where populations are uniformly very early juveniles."

Protection of PNAs is imperative since these areas provide food, protection, and proper environmental conditions (salinity and bottom type) for development and growth of young finfish and crustaceans. In order to protect these areas, the DMF prohibits the use of trawl nets, long haul seines, swipe nets, dredges, or mechanical methods for clams or oysters for the purpose of taking any marine fishes (15A NCAC 03N .0104).

The area designated as Mallard Bay Area (413 acres) includes all waters northwest of the Intracoastal Waterway (IWW) from Beacon No. 93 to Beacon No. 96 [(15A NCAC 03R .0103(15)(d)]. This designation encompasses the Mallard Bay estuary as well as that portion of Topsail Sound from the dredged channel of the IWW northwest to the islands and marsh line protecting the mouth of the Mallard Bay estuary. However, through an oversight, this portion of the Mallard Bay PNA was opened to shrimp trawling in 1984 and has been routinely opened since then. The error was discovered in 2003 during an investigation into a CAMA application. Since June 12, 2003, proclamations have been issued to suspend part of Rule 15A NCAC 03R .0103 (15)(d) to allow shrimp trawling in this area adjacent to the IWW. The proposed rule amendment is necessary in order to declassify this portion of the Mallard Bay area as a primary nursery area.

15A NCAC 03R .0107 - Fishermen have complained about the various depth and distance from shore regulations for different designated pot areas and have asked for a standard depth

contour for all areas. Division of Marine Fisheries Marine Patrol requested a change to depth contours for the designated pot areas, because depth would be easier to measure and enforce as compared to distance from shore. The proposed rule amendment would change the designated pot area boundary descriptions to a standardized 6-foot depth contour in Hyde, Beaufort, Pamlico, and Craven counties.

Procedure by which a person can object to the agency on a proposed rule: If you have any objections to the proposed rules, please forward a typed or handwritten letter indicating your specific reasons for your objections to Belinda Loftin, P.O. Box 769, Morehead City, NC 28557.

Written comments may be submitted to: Belinda Loftin, P.O. Box 769, Morehead City, NC 28557, phone (252)726-7021 or email Belinda.Loftin@ncmail.net.

Comment period ends: May 2, 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 03 - MARINE FISHERIES

SUBCHAPTER 03I - GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0101 DEFINITIONS

(a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.

(b) The following additional terms are hereby defined:

- (1) Commercial Fishing Equipment or Gear. All fishing equipment used in coastal fishing waters except:
 (A) Seines less than 30 feet in length;
 (B) Collapsible crab traps, a trap used for taking crabs with the largest open

dimension no larger than 18 inches and that by design is collapsed at all times when in the water, except when it is being retrieved from or lowered to the bottom;

- (C) Spears, Hawaiian slings or similar devices which propel pointed implements by mechanical means, including elastic tubing or bands, pressurized gas or similar means;
 (D) A dip net having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;
 (E) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;
 (F) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line;
 (G) Cast Nets;
 (H) Gigs or other pointed implements which are propelled by hand, whether or not the implement remains in the hand; and
 (I) Up to two minnow traps.
 (2) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.
 (3) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.
 (4) Possess. Any actual or constructive holding whether under claim of ownership or not.
 (5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.
 (6) Use. Employ, set, operate, or permit to be operated or employed.
 (7) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
 (8) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
 (9) Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.

- (10) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
- (11) Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.
- (12) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- (13) Mechanical methods for clamming. Includes, but not limited to, dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
- (14) Mechanical methods for oystering. Includes, but not limited to, dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.
- (15) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.
- (16) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite ~~pink, white, or red line~~ white, pink, or red line or rim on the outer edge of the back fin or flipper.
- (17) Length of finfish.
 - (A) Total length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
 - (B) Fork length is determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the middle of the fork in the caudal (tail) fin.
 - (C) Fork length for billfish is measured from the tip of the lower jaw to the middle of the fork of the caudal (tail) fin.
- (18) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (19) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized sources for the purpose of rearing in a controlled environment. A controlled environment provides and maintains throughout the rearing process one or more of the following: predator protection, food, water circulation, salinity, or temperature controls utilizing technology not found in the natural environment.
- (20) Critical habitat areas. The fragile estuarine and marine areas that support juvenile and adult populations of fish species, as well as forage species utilized in the food chain. Critical habitats include nursery areas, beds of submerged aquatic vegetation, shellfish producing areas, anadromous fish spawning and anadromous fish nursery areas, in all coastal fishing waters as determined through marine and estuarine survey sampling. Critical habitats are vital for portions, or the entire life cycle, including the early growth and development of fish species.
 - (A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.
 - (B) Shellfish producing habitats are those areas in which shellfish, such as, but not limited to clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
 - (C) Anadromous fish spawning areas are those areas where evidence of spawning of anadromous fish has

- been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.
- (D) Anadromous fish nursery areas are those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (21) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (22) North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.
- (23) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.
- (24) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to:
- (A) Animals:
- (i) Sponges (Phylum Porifera);
 - (ii) Hard and Soft Corals, Sea Anemones (Phylum Cnidaria):
 - (I) Fire corals (Class Hydrozoa);
 - (II) Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);
 - (iii) Bryozoans (Phylum Bryozoa);
 - (iv) Tube Worms (Phylum Annelida):
 - (I) Fan worms (Sabellidae);
 - (II) Feather duster and Christmas tree worms (Serpulidae);
 - (III) Sand castle worms (Sabellaridae).
 - (v) Mussel banks (Phylum Mollusca:Gastropoda);
 - (vi) Colonial barnacles (Arthropoda: Crustacea: Megabalanus sp.).
- (B) Plants:
- (i) Coralline algae (Division Rhodophyta);
 - (ii) Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);
 - (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).
- (25) Coral:
- (A) Fire corals and hydrocorals (Class Hydrozoa);
 - (B) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);
 - (C) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia):
 - (i) Sea fans (Gorgonia sp.);
 - (ii) Sea whips (Leptogorgia sp. and Lophogorgia sp.);
 - (iii) Sea pansies (Renilla sp.).
- (26) Shellfish production on leases and franchises:
- (A) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.
 - (B) The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (27) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (28) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
- (29) Pound Net Set. A fish trap consisting of a holding pen, one or more enclosures, lead or leaders, and stakes or anchors used to support such trap. The lead(s), enclosures, and holding pen are not conical, nor are they supported by hoops or frames.
- (30) Educational Institution. A college, university or community college accredited by a regional accrediting institution.
- (31) Long Haul Operations. A seine towed between two boats.
- (32) Swipe Net Operations. A seine towed by one boat.
- (33) Bunt Net. The last encircling net of a long haul or swipe net operation constructed of small mesh webbing. The bunt net is used to

- form a pen or pound from which the catch is dipped or bailed.
- (34) Responsible party. Person who coordinates, supervises or otherwise directs operations of a business entity, such as a corporate officer or executive level supervisor of business operations and the person responsible for use of the issued license in compliance with applicable laws and regulations.
- (35) New fish dealer. Any fish dealer making application for a fish dealer license who did not possess a valid dealer license for the previous license year in that name or ocean pier license in that name on June 30, 1999. For purposes of license issuance, adding new categories to an existing fish dealers license does not constitute a new dealer.
- (36) Tournament Organizer. The person who coordinates, supervises or otherwise directs a recreational fishing tournament and is the holder of the Recreational Fishing Tournament License.
- (37) Holder. A person who has been lawfully issued in their name a license, permit, franchise, lease, or assignment.
- (38) Recreational Purpose. A fishing activity has a recreational purpose if it is not a commercial fishing operation as defined in G.S. 113-168.
- (39) Recreational Possession Limit. Includes, but is not limited to, restrictions on size, quantity, season, time period, area, means, and methods where take or possession is for a recreational purpose.
- (40) Attended. Being in a vessel, in the water or on the shore immediately adjacent to the gear and immediately available to work the gear and within 100 yards of any gear in use by that person at all times. Attended does not include being in a building or structure.
- (41) Commercial Quota. Total quantity of fish allocated for harvest taken by commercial fishing operations.
- (42) Recreational Quota. Total quantity of fish allocated for harvest taken for a recreational purpose.
- (43) Office of the Division. Physical locations of the Division conducting license transactions in the cities of Wilmington, Washington, Morehead City, Columbia, Wanchese and Elizabeth City, North Carolina. Other businesses or entities designated by the Secretary to issue Recreational Commercial Gear Licenses are not considered Offices of the Division.
- (44) Land:
- (A) For purposes of trip tickets, when fish reach a licensed seafood dealer, or where the fisherman is the dealer,
- when the fish reaches the shore or a structure connected to the shore.
- (B) For commercial fishing operations, when fish reach the shore or a structure connected to the shore.
- (C) For recreational fishing operations, when fish are retained in possession by the fisherman.
- (45) Master. Captain of a vessel or one who commands and has control, authority, or power over a vessel.
- (46) Regular Closed Oyster Season. The regular closed oyster season occurs from May 15 through October 15, unless amended by the Fisheries Director through proclamation authority.
- (47) Assignment. Temporary transferral to another person of privileges under a license for which assignment is permitted. The person assigning the license delegates the privileges permitted under the license to be exercised by the assignee, but retains the power to revoke the assignment at any time, is still the responsible party for the license.
- (48) Transfer. Permanent transferral to another person of privileges under a license for which transfer is permitted. The person transferring the license retains no rights or interest under the license transferred.
- (49) Designee. Any person who is under the direct control of the permittee or who is employed by or under contract to the permittee for the purposes authorized by the permit.
- (50) Blue Crab Shedding. The process whereby a blue crab emerges soft from its former hard exoskeleton. A shedding operation is any operation that holds peeler crabs in a controlled environment. A controlled environment provides and maintains throughout the shedding process one or more of the following: predator protection, food, water circulation, salinity or temperature controls utilizing proven technology not found in the natural environment. A shedding operation does not include transporting pink or red-line peeler crabs to a permitted shedding operation.
- (51) Fyke Net. An entrapment net supported by a series of internal or external hoops or frames, with one or more lead or leaders that guide fish to the net mouth. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

- (52) Hoop Net. An entrapment net supported by a series of internal or external hoops or frames. The net has one or more internal funnel-shaped openings with tapered ends directed inward from the mouth, through which fish enter the enclosure. The portion of the net designed to hold or trap the fish is completely enclosed in mesh or webbing, except for the openings for fish passage into or out of the net (funnel area).

Authority G.S. 113-134; 143B-289.52.

**15A NCAC 03I .0105 LEAVING DEVICES
UNATTENDED**

(a) It is unlawful to leave stakes, anchors, nets, buoys, or floating devices in any coastal fishing waters when such devices are not being employed in fishing operations except as otherwise provided by rule or General Statute.

(b) It is unlawful to leave pots in any coastal fishing waters for more than ~~seven-five~~ consecutive days, when such pots are not being employed in fishing operations, except upon a timely and sufficient showing of hardship as defined in Subparagraph (b)(2) of this Rule or as otherwise provided by General Statute.

- (1) Agents of the Fisheries Director may tag pots with a device approved by the Fisheries Director to aid and assist in the investigation and identification of unattended pots. Any such device attached to a pot by agents of the Fisheries Director must be removed by the individual utilizing the pot within ~~seven-five~~ days of attachment in order to demonstrate that the pot is being employed in fishing operations.
- (2) For the purposes of Paragraph (b) of this Rule only, a timely and sufficient showing of hardship in a commercial fishing operation shall be written notice given to the Fisheries Director that a mechanical breakdown of the owner's vessel(s) currently registered with the Division of Marine Fisheries under G.S. 113-168.6, or the death, illness or incapacity of the owner of the pot or his immediate family, as defined in G.S. 113-168, prevented or will prevent employing such pots in fishing operations more than ~~seven-five~~ consecutive days. The notice, specifying the time needed because of hardship, shall be received by the Fisheries Director before any pot is left in coastal fishing waters for seven consecutive days without being employed in fishing operations, and shall state, in addition to the following, the number and specific location of the pots, and the date on which the pots will be employed in fishing operations or removed from coastal fishing waters:
 - (A) in case of mechanical breakdown, the notice shall state the commercial

fishing vessel registration number, owner's N.C. motor boat registration number of the disabled vessel, date disabled, arrangements being made to repair the vessel or a copy of the work order showing the name, address and phone number of the repair facility; or

- (B) in case of the death, illness or incapacity of the owner of the pot or his immediate family, the notice shall state the name of the owner or immediate family member, the date of death, the date and nature of the illness or incapacity. The Fisheries Director may require a doctor's verification of the illness or incapacity.

- (3) The Fisheries Director may, by proclamation, modify the ~~seven-five~~ day requirement, if necessary due to hurricanes, severe weather or other variable conditions. Failure to employ in fishing operations or remove from coastal fishing waters all pots for which notice of hardship is received under this Rule within 14 days of the expiration of the hardship shall be violation of this Rule.

(c) It is unlawful to set or have any fishing equipment in coastal fishing waters in violation of this Section or which contains edible species of fish unfit for human consumption.

Authority G.S. 113-134; 113-137; 113-182; 143B-289.5.

**SUBCHAPTER 03J - NETS, POTS, DREDGES, AND
OTHER FISHING DEVICES**

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0104 TRAWL NETS

(a) It is unlawful to possess aboard a vessel while using a trawl in internal waters more than 500 pounds of finfish from December 1 through February 28 and 1,000 pounds of finfish from March 1 through November 30.

(b) It is unlawful to use trawl nets:

- (1) In internal coastal waters, from 9:00 p.m. on Friday through 5:00 p.m. on Sunday, except that in the areas listed in Subparagraph (b)(5) of this Rule, trawling is prohibited from December 1 through February 28 from one hour after sunset on Friday to one hour before sunrise on Monday.
- (2) For the taking of oysters;
- (3) In Albemarle Sound and its tributaries;
- (4) In the areas described in 15A NCAC 03R .0106, except that the Fisheries Director may, by proclamation, open the area designated in Item (6) of 15A NCAC 03R .0106 to peeler crab trawling; and

- (5) From December 1 through February 28 from one hour after sunset to one hour before sunrise in the following areas:
- (A) In Pungo River, north of a line beginning on Currituck Point at a point 35o 24.5833' N-76o 32.3166' W; running southwesterly to Wades Point to a point 35o 23.3062' N-76o 34.5135' W;
 - (B) In Pamlico River, west of a line beginning on Wades Point at a point 35o 23.3062' N – 76o 34.5135' W; running southwesterly to Fulford Point to a point 35o 19.8667' N – 76o 35.9333' W;
 - (C) In Bay River, west of a line beginning on Bay Point at a point 35o 11.0858' N – 76o 31.6155' W; running southerly to Maw Point to a point 35o 09.0214' N – 76o 32.2593' W;
 - (D) In Neuse River, west of a line beginning on the Minnesott side of the Neuse River Ferry at a point 34o 57.9116' N – 76o 48.2240' W; running southerly to the Cherry Branch side of the Neuse River Ferry to a point 34o 56.3658' N – 76o 48.7110' W; and
 - (E) In New River, all waters upstream of the N.C. Highway 172 Bridge when opened by ~~proclamation~~ proclamation; and
- (6) In designated pot areas opened to the use of pots by 15A NCAC 03J .0301(a)(2) and described in 15A NCAC 03R .0107(a)(5), (a)(6), and (a)(7), except Parts (A) and (B).

(c) Minimum mesh sizes for shrimp and crab trawls are presented in 15A NCAC 03L .0103 and .0202.

(d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require bycatch reduction devices or codend modifications in trawl nets to reduce the catch of finfish that do not meet size limits or are unmarketable as individual foodfish by reason of size.

(e) It is unlawful to use shrimp trawls for recreational purposes unless the trawl is marked by attaching to the codend (tailbag), one floating buoy, any shade of hot pink in color, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. The owner shall always be identified on the buoy by using an engraved buoy or by attaching engraved metal or plastic tags to the buoy. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

- (1) Gear owner's current motor boat registration number; or
- (2) Owner's U.S. vessel documentation name.

(f) It is unlawful to use shrimp trawls for the taking of blue crabs in internal waters, except that it shall be permissible to

take or possess blue crabs incidental to shrimp trawling in accordance with the following limitations:

- (1) For individuals using shrimp trawls authorized by a Recreational Commercial Gear License, 50 blue crabs, not to exceed 100 blue crabs if two or more Recreational Commercial Gear License holders are on board.
- (2) For commercial operations, crabs may be taken incidental to lawful shrimp trawl operations provided that the weight of the crabs shall not exceed:
 - (A) 50 percent of the total weight of the combined crab and shrimp catch; or
 - (B) 300 pounds, whichever is greater.

(g) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance with this Rule.

Authority G.S. 113-134; 113-173; 113-182; 113-221; 143B-289.52.

15A NCAC 03J .0106 CHANNEL NETS

(a) It is unlawful to use a channel net:

- (1) Until the Fisheries Director specifies by proclamation, time periods and areas for the use of channel nets and other fixed nets for shrimping.
- (2) Without yellow light reflective tape on the top portion of each staff or stake and on any buoys located at either end of the net.
- (3) With any portion of the set including boats, anchors, cables, ropes or nets within 50 feet of the center line of the Intracoastal Waterway Channel.
- (4) In the middle third of any navigation channel marked by Corps of Engineers and/or U.S. Coast Guard.
- (5) Unless attended by the fisherman who shall be no more than 50 yards from the net at all times.

(b) It is unlawful to use or possess aboard a vessel any channel net with a corkline exceeding 40 yards.

(c) It is unlawful to leave any channel net, channel net buoy, or channel net stakes in coastal fishing waters from December 1 through March 1.

(d) It is unlawful to use floats or buoys of metallic material for marking a channel net set.

(e) From March 2 through November 30, cables used in a channel net operation shall, when not attached to the net, be connected together and any attached buoy shall be connected by non-metal line.

(f) It is unlawful to leave channel net buoys in coastal fishing waters without yellow light reflective tape on each buoy and without the owner's identification being clearly printed on each buoy. Such identification must include one of the following:

- (1) Owner's N.C. motorboat registration number; or
- (2) Owner's U.S. vessel documentation name; or

- (3) Owner's last name and initials.
- (g) It is unlawful to use any channel nets, anchors, lines, or buoys in such a manner as to constitute a hazard to navigation.
- (h) It is unlawful to use channel nets for the taking of blue crabs in internal waters, except that it shall be permissible to take or possess blue crabs incidental to channel net operations in accordance with the following limitations:

- (1) Crabs may be taken incidental to lawful channel net operations provided that the weight of the crabs shall not exceed:
- (A) 50 percent of the total weight of the combined crab and shrimp catch; or
- (B) 300 pounds, whichever is greater.
- (2) The Fisheries Director may, by proclamation, close any area to channel net use for specific time periods in order to secure compliance with this Paragraph.

Authority G.S. 113-134; 113-182; 143B-289.52.

15A NCAC 03J .0301 POTS

- (a) It is unlawful to use pots except during time periods and in areas specified herein:

- (1) ~~From In Coastal Fishing Waters from November 1 December 1 through April 30, May 31, except that all pots shall be removed from internal waters from January 24 January 15 through February 7. Fish pots upstream of U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle and Eastmost Rivers to the Highway 258 Bridge are exempt from the January 24 through February 7 removal requirement. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 28 January 19 if it is determined that such waters are free of pots.~~
- (2) ~~From May 1 June 1 through October 31, November 30, north and east of the Highway 58 Bridge at Emerald Isle:~~
- (A) ~~In areas described in 15A NCAC 03R .0107(a);~~
- (B) ~~To allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for or designate the areas described in 15A NCAC 03R .0107(b); or any part thereof, for the use of pots.~~
- (3) ~~From May 1 through October 31 November 30 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation.~~

- (b) It is unlawful to use pots:

- (1) in any navigation channel marked by State or Federal agencies; or

- (2) in any turning basin maintained and marked by the North Carolina Ferry Division.

- (c) It is unlawful to use pots in a commercial fishing operation unless each pot is marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow or hot ~~pink~~ pink or any combination of colors that include yellow or hot pink. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:

- (1) gear owner's current motorboat registration number; or
- (2) gear owner's U.S. vessel documentation name; or
- (3) gear owner's last name and initials.

- (d) Pots attached to shore or a pier shall be exempt from Subparagraphs (a)(2) and (a)(3) of this Rule.

- (e) It is unlawful to use shrimp pots with mesh lengths smaller than one and one-fourth inches stretch or five-eighths inch bar.

- (f) It is unlawful to use eel pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of 1 inch by one-half inch located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots, except that not more than two eel pots per fishing operation with a mesh of any size may be used to take eels for bait.

- (g) It is unlawful to use crab pots in coastal fishing waters unless each pot contains no less than two unobstructed escape rings that are at least 2 5/16 inches inside diameter and located in the opposite outside panels of the upper chamber of the pot. Peeler pots with a mesh size less than 1 1/2 inches shall be exempt from the escape ring requirement. The Fisheries Director may, by proclamation, exempt the escape ring requirement in order to allow the harvest of peeler crabs or mature female crabs and may impose any or all of the following restrictions:

- (1) Specify areas, and
- (2) Specify time.

- (h) It is unlawful to use more than 150 pots per vessel in Newport River.

- (i) It is unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise.

- (j) User Conflicts:

- (1) ~~The Fisheries Director may, with the prior consent of the Marine Fisheries Commission, by proclamation close any area to the use of pots in order to resolve user conflict. In order to address user conflicts, the Fisheries Director may by proclamation impose any or all of the following restrictions:~~
- (A) Specify time period
- (B) Specify areas;
- (C) Specify means and methods; and
- (D) Specify time period.

The Fisheries Director shall hold a public meeting in the affected area before issuance of such proclamation.

- (2) Any person(s) desiring to ~~close any area to the use of pots~~ user conflict resolution may make such request in writing addressed to the Director of the Division of Marine Fisheries. Such requests shall contain the following information:

- (A) A map of the ~~proposed closed~~ affected area including an inset vicinity map showing the location of the ~~proposed closed~~ area with detail sufficient to permit on-site identification and location;
- (B) Identification of the user ~~conflicts~~ conflict causing a need for ~~closing the area to the use of pots~~ user conflict resolution;
- (C) Recommended ~~method~~ solution for resolving user ~~conflicts~~ conflict; and
- (D) Name and address of the person(s) requesting ~~the closed area~~ user conflict resolution.

- (3) ~~Person(s) making the requests to close an area for user conflict mediation shall present their request at the public meeting. Upon the requestor's demonstration of a user conflict to the Fisheries Director and within 90 days of the receipt of the information required in Subparagraph (j)(2) of this Rule, the Fisheries Director shall issue a public notice of intent to address a user conflict. A public meeting shall be held in the area of the user conflict. The requestor shall present their request at the public meeting, and other parties affected may participate.~~

- (4) The Fisheries Director shall deny the request or submit a ~~proposed~~ proclamation that addresses the results of the public meeting granting the request to the Marine Fisheries Commission for their approval.

- (5) Proclamations issued ~~closing or opening areas to the use of pots~~ under ~~Paragraph (j) Subparagraph (j)(1)~~ of this Rule shall suspend appropriate rules or portions of rules under 15A NCAC ~~3R~~ 03R .0107 as specified in the proclamation. The provisions of 15A NCAC ~~3I~~ 03I .0102 terminating suspension of a rule as of the next Marine Fisheries Commission meeting and requiring review by the Marine Fisheries Commission at the next meeting shall not apply to proclamations issued under ~~Paragraph (j) Subparagraph (j)(1)~~ of this Rule.

- (k) It is unlawful to use pots to take crabs unless the line connecting the pot to the buoy is non-floating.

Authority G. S. 113-134; 113-173; 113-182; 113-221;

143B-289.52.

SUBCHAPTER 03L - SHRIMP, CRABS, AND LOBSTER

SECTION .0200 - CRABS

15A NCAC 03L .0201 SIZE LIMIT AND CULLING TOLERANCE

(a) It is unlawful to possess blue crabs less than five inches from tip of spike to tip of spike except mature females, soft and peeler crabs and from March 1 through October 31, male crabs to be used as peeler bait. A culling tolerance of not more than 10 percent by number in any container shall be allowed.

(b) All crabs ~~less than~~ not of legal size, except mature female and soft crabs shall be immediately returned to the waters from which taken. Peeler crabs shall be separated where taken and placed in a separate container. White-line peeler crabs shall be separated from pink and red-line peeler crabs where taken and placed in a separate container. A culling tolerance of not more than five percent by number shall be allowed for white-line peelers in the pink and red-line peeler container. Those peeler crabs not separated shall be deemed hard crabs and are not exempt from the size restrictions specified in Paragraph (a) of this Rule.

(c) The Director, may by proclamation, impose the following restrictions when spawning stock biomass falls below the spawner index as defined in the Blue Crab Fishery Management Plan:

- (1) It is unlawful to possess mature female blue crabs greater than 6¾ inches from tip of spike to tip of spike from September 1 through April 30. A culling tolerance of not more than five percent by number in any container shall be allowed.
- (2) It is unlawful to possess female peeler crabs greater than 5¼ inches from tip of spike to tip of spike from September 1 through April 30.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03L .0202 CRAB TRAWLING

(a) It is unlawful to take or possess aboard a vessel crabs taken by trawl in internal waters except in areas and during such times as the Fisheries Director may specify by proclamation.

(b) It is unlawful to use any crab trawl with a mesh length less than three inches for taking hard crabs, except that the Fisheries Director may, by proclamation, increase the minimum mesh length to ~~not no~~ more than four inches, and specify areas for crab trawl mesh size use.

(c) It is unlawful to use trawls with a mesh length less than two inches or with a combined total headrope length exceeding 25 feet for taking soft or "peeler" crabs.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

15A NCAC 03L .0206 PEELER CRABS

(a) It is unlawful to bait peeler pots, except with male blue crabs. Male blue crabs to be used as peeler bait and less than the

legal size ~~must~~shall be kept in a separate container, and may not be landed or sold.

(b) It is unlawful to possess male white line peelers from June 1 through September 1.

(c) It is unlawful to sell white-line peelers.

(d) It is unlawful to possess white-line peelers unless they are to be used by the harvester in the harvester's permitted blue crab shedding operation.

(e) Peeler crabs shall be separated where taken and placed in a separate container.

Authority G.S. 113-134; 113-182; 143B-289.52.

SECTION .0300 - LOBSTER

15A NCAC 03L .0301 AMERICAN LOBSTER (NORTHERN LOBSTER)

(a) It is unlawful to possess American lobster:

- (1) with a carapace less than ~~3 1/4 inches~~; 3 3/8 inches or greater than 5 1/2 inches;
- (2) which has eggs or from which eggs have been artificially removed by any method;
- (3) meats, detached meats, detached tails or claws or any other part of a lobster that has been separated from the lobster;
- (4) which has an outer shell which has been speared;
- (5) that is a V-notched female lobster as described in Amendment 3 to the Atlantic States Marine Fisheries Commission Fishery Management Plan for American Lobster, copies of which are available through the Division of Marine Fisheries; or
- (6) in quantities greater than 100 per day or 500 per trip for trips five days or longer taken by gear or methods other than traps.

(b) American lobster traps not constructed entirely of wood (excluding heading or parlor twine and the escape vent) must contain a ghost panel that meets the following specifications:

- (1) the opening to be covered by the ghost panel shall be not less than 3 3/4 inches (9.53 cm) by 3 3/4 inches (9.53 cm);
- (2) the panel must be constructed of, or fastened to the trap with, one of the following untreated materials: wood lath, cotton, hemp, sisal or jute twine not greater than 3/16 inch (0.48 cm) in diameter, or non-stainless, uncoated ferrous metal not greater than 3/32 inch (0.24 cm) in diameter;
- (3) the door of the trap may serve as the ghost panel, if fastened with a material specified in this Section; and
- (4) the ghost panel must be located in the outer parlor(s) of the trap and not the bottom of the trap.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

SUBCHAPTER 03M - FINFISH

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0515 DOLPHIN

(a) It is unlawful to possess more than 10 dolphin per person per day taken by hook and line for recreational ~~purposes~~. ~~purposes except charter vessels with a valid National Marine Fisheries Service Coastal Migratory Pelagic Permit and licensed by the U.S. Coast Guard to carry six or less passengers for hire, may possess a maximum of 60 dolphin per day regardless of the number of people on board.~~

~~(b) Vessels, including charterboats when fishing with three or less persons (including captain and mate) on board, with a valid Standard or Retired Standard Commercial Fishing License or a Land or Sell License, may possess more than 60 dolphin per day.~~

(b) It is unlawful to possess more than 60 dolphin per day per vessel regardless of the number of people on board, except headboat vessels with a valid U.S. Coast Guard Certificate of Inspection may possess 10 dolphin per paying customer.

(c) It is unlawful to take or possess more than 10 dolphin per person per day, or sell dolphin without a valid Federal Commercial Dolphin/Wahoo vessel permit or a Federal Commercial Vessel Permit in any other fishery.

Authority G.S. 113-134; 113-182; 143B-289.52.

15A NCAC 03M .0517 WAHOO

(a) It is unlawful to possess more than two wahoo per person per day taken by hook and line for recreational purposes.

(b) It is unlawful to take or possess more than two wahoo per person per day, or sell wahoo without a Federal Commercial Dolphin/Wahoo permit or a Federal Commercial Vessel Permit in any other fishery.

(c) It is unlawful to take, sell, possess aboard or land from a vessel more than 500 pounds of wahoo per trip without a valid Federal Commercial Dolphin/Wahoo permit or a Federal Commercial Vessel Permit in any other fishery.

Authority G.S. 113-134; 113-182; 143B-289.

SUBCHAPTER 03O – LICENSES, LEASES AND FRANCHISES

SECTION .0500 – PERMITS

15A NCAC 03O .0503 PERMIT CONDITIONS; SPECIFIC

(a) Horseshoe Crab Biomedical Use Permit:

- (1) It is unlawful to use horseshoe crabs for biomedical purposes without first obtaining a permit.
- (2) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to submit a report on the use of horseshoe crabs to the Division of Marine Fisheries due on February 1 of each year unless otherwise specified on the permit. Such

reports shall be filed on forms provided by the Division and shall include a monthly account of the number of crabs harvested, statement of percent mortality up to the point of release, and a certification that harvested horseshoe crabs are solely used by the biomedical facility and not for other purposes.

- (3) It is unlawful for persons who have been issued a Horseshoe Crab Biomedical Use Permit to fail to comply with the Atlantic States Marine Fisheries Commission Horseshoe Crab Fisheries Management Plan monitoring and tagging requirements for horseshoe crabs. Copies of this plan are available from the Atlantic States Marine Fisheries Commission, 1444 Eye Street, NW, 6th Floor, Washington, DC 20005, (202) 289-6400, or the Division of Marine Fisheries' Morehead City Office.

(b) Dealers Permits for Monitoring Fisheries under a Quota/Allocation:

- (1) During the commercial season opened by proclamation or rule for the fishery for which a Dealers Permit for Monitoring Fisheries under a Quota/Allocation permit is issued, it is unlawful for fish dealers issued such permit to fail to:

- (A) Fax or send via electronic mail by noon daily, on forms provided by the Division, the previous day's landings for the permitted fishery to the dealer contact designated on the permit. Landings for Fridays or Saturdays may be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee may call in the previous day's landings to the dealer contact designated on the permit but must maintain a log furnished by the Division;
- (B) Submit the required log to the Division upon request or no later than five days after the close of the season for the fishery permitted;
- (C) Maintain faxes and other related documentation in accordance with 15A NCAC 03I .0114;
- (D) Contact the dealer contact daily regardless of whether or not a transaction for the fishery for which a dealer is permitted occurred;
- (E) Record the permanent dealer identification number on the bill of lading or receipt for each transaction or shipment from the permitted fishery.

- (2) Striped Bass Dealer Permit:

- (A) It is unlawful for a fish dealer to possess, buy, sell or offer for sale striped bass taken from the following areas without first obtaining a Striped Bass Dealer Permit validated for the applicable harvest area:

- (i) Atlantic Ocean;
- (ii) Albemarle Sound Management Area as designated in 15A NCAC 03R .0201.
- (iii) The joint and coastal waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.

- (B) No permittee may possess, buy, sell or offer for sale striped bass taken from the harvest areas opened by proclamation without having a North Carolina Division of Marine Fisheries issued valid tag for the applicable area affixed through the mouth and gill cover, or, in the case of striped bass imported from other states, a similar tag that is issued for striped bass in the state of origin. North Carolina Division of Marine Fisheries striped bass tags may not be bought, sold, offered for sale, or transferred. Tags shall be obtained at the North Carolina Division of Marine Fisheries Offices. The Division of Marine Fisheries shall specify the quantity of tags to be issued based on historical striped bass landings. It is unlawful for the permittee to fail to surrender unused tags to the Division upon request.

- (3) Albemarle Sound Management Area for River Herring Dealer Permit: It is unlawful to possess, buy, sell or offer for sale river herring taken from the following area without first obtaining an Albemarle Sound Management Area for River Herring Dealer Permit: Albemarle Sound Management Area for River Herring is defined in ~~15A NCAC 03R .0204~~ 15A NCAC 03I .0209.

- (4) Atlantic Ocean Flounder Dealer Permit:

- (A) It is unlawful for a Fish Dealer to allow vessels holding a valid License to Land Flounder from the Atlantic Ocean to land more than 100 pounds of flounder from a single transaction at their licensed location during the open season without first obtaining an Atlantic Ocean Flounder Dealer Permit. The licensed location must

- be specified on the Atlantic Ocean Flounder Dealer Permit and only one location per permit shall be allowed.
- (B) It is unlawful for a Fish Dealer to possess, buy, sell, or offer for sale more than 100 pounds of flounder from a single transaction from the Atlantic Ocean without first obtaining an Atlantic Ocean Flounder Dealer Permit.
- ~~(5) Atlantic Ocean American Shad Dealer Permit: It is unlawful for a Fish Dealer to possess, buy, sell or offer for sale American Shad taken from the Atlantic Ocean without first obtaining an Atlantic Ocean American Shad Dealer Permit.~~
- (c) Blue Crab Shedding Permit: It is unlawful to possess more than 50 blue crabs in a shedding operation without first obtaining a Blue Crab Shedding Permit from the Division of Marine Fisheries.
- (d) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean:
- (1) It is unlawful to trawl for shrimp in the Atlantic Ocean without Turtle Excluder Devices installed in trawls within one nautical mile of the shore from Browns Inlet (34° 35.7000' N latitude) to Rich's Inlet (34° 17.6000' N latitude) without a valid Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean when allowed by proclamation from April 1 through November 30.
 - (2) It is unlawful to tow for more than 55 minutes from April 1 through October 31 and 75 minutes from November 1 through November 30 in this area when working under this permit. Tow time begins when the doors enter the water and ends when the doors exit the water.
 - (3) It is unlawful to fail to empty the contents of each net at the end of each tow.
 - (4) It is unlawful to refuse to take observers upon request by the Division of Marine Fisheries or the National Marine Fisheries Service.
 - (5) It is unlawful to fail to report any sea turtle captured. Reports must be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling must be handled and resuscitated in accordance with requirements specified in 50 CFR 223.206, copies of which are available via the Internet at www.nmfs.gov and at the Division of Marine Fisheries, 127 Cardinal Drive Extension, Wilmington, North Carolina 28405.
- (e) Pound Net Set Permits. Rules setting forth specific conditions for pound net sets are found in 15A NCAC 03J .0107.
- (f) Aquaculture Operations/Collection Permits:
- (1) It is unlawful to conduct aquaculture operations utilizing marine and estuarine resources without first securing an Aquaculture Operation Permit from the Fisheries Director.
 - (2) It is unlawful:
 - (A) To take marine and estuarine resources from coastal waters for aquaculture purposes without first obtaining an Aquaculture Collection Permit from the Fisheries Director.
 - (B) To sell, or use for any purpose not related to North Carolina aquaculture, marine and estuarine resources taken under an Aquaculture Collection Permit.
 - (C) To fail to submit to the Fisheries Director an annual report due on December 1 of each year on the form provided by the Division the amount and disposition of marine and estuarine resources collected under authority of this permit.
 - (3) Lawfully permitted shellfish relaying activities authorized by 15A NCAC 03K .0103 and .0104 are exempt from requirements to have an Aquaculture Operation or Collection Permit issued by the Fisheries Director.
 - (4) Aquaculture Operations/Collection Permits shall be issued or renewed on a calendar year basis.
 - (5) It is unlawful to fail to provide the Division of Marine Fisheries with a listing of all designees who shall be acting under an Aquaculture Collection Permit at the time of application.
- (g) Scientific or Educational Collection Permit:
- (1) It is unlawful for individuals or agencies seeking exemptions from license, rule, proclamation or statutory requirements to collect for scientific or educational purposes as approved by the Division of Marine Fisheries any marine and estuarine species without first securing a Scientific or Educational Collection Permit.
 - (2) It is unlawful for persons who have been issued a Scientific or Educational Collection Permit to fail to submit a report on collections to the Division of Marine Fisheries due on December 1 of each year unless otherwise specified on the permit. Such reports shall be filed on forms provided by the Division. Scientific or Educational Collection Permits shall be issued on a calendar year basis.
 - (3) It is unlawful to sell marine and estuarine species taken under a Scientific or Educational Collection Permit:
 - (A) without the required license(s) for such sale;

- (B) to anyone other than a licensed North Carolina fish dealer; and
- (C) without authorization stated on the permit for such sale.
- (4) It is unlawful to fail to provide the Division of Marine Fisheries a listing of all designees who shall be acting under Scientific or Educational Collection Permits at the time of application.
- (5) The permittee or designees utilizing the permit must call or fax the Division of Marine Fisheries Communications Center not later than 24 hours prior to use of the permit, specifying activities and location.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 143B-289.52.

SUBCHAPTER 03Q - JURISDICTION OF AGENCIES: CLASSIFICATION OF WATERS

SECTION .0100 - GENERAL REGULATIONS: JOINT

15A NCAC 03Q .0107 SPECIAL REGULATIONS: JOINT WATERS

In order to effectively manage all fisheries resources in joint waters and in order to confer enforcement powers on both fisheries enforcement officers and wildlife enforcement officers with respect to certain rules, the Marine Fisheries Commission and the Wildlife Resources Commission deem it necessary to adopt special rules for joint waters. Such rules supersede any inconsistent rules of the Marine Fisheries Commission or the Wildlife Resources Commission that would otherwise be applicable in joint waters under the provisions of 15A NCAC 03Q .0106:

- (1) Striped Bass
 - (a) It is unlawful to possess any striped bass or striped bass hybrid taken by any means which is less than 18 inches long (total length).
 - (b) It is unlawful to possess more than three striped bass or striped bass hybrids taken by hook and line or with gear authorized by a Recreational Commercial Gear License in any one day from joint waters. one daily creel limit of striped bass or their hybrids, in the aggregate, per person per day, regardless of the number of management areas fished, and fish possessed by the individual must be in compliance with the size and creel limits for the management area being fished.
 - (c) It is unlawful to engage in net fishing for striped bass or striped bass hybrids in joint waters except as

authorized by ~~duly adopted~~ rules of the Marine Fisheries Commission.

- ~~(d) It is unlawful to possess striped bass or striped bass hybrids in the joint waters of Albemarle, Currituck, Roanoke and Croatan Sounds and their tributaries, excluding the Roanoke River, except during seasons as authorized by duly adopted rules of the Marine Fisheries Commission.~~
- ~~(e) In the joint waters of the Roanoke River and its tributaries, including Cashie, Middle and Eastmost Rivers, striped bass and hybrid striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules of the Wildlife Resources Commission for adjacent inland fishing waters.~~
- (2) Lake Mattamuskeet:
 - (a) It is unlawful to set or attempt to set any gill net in Lake Mattamuskeet canals designated as joint waters.
 - (b) It is unlawful to use or attempt to use any trawl net or seines in Lake Mattamuskeet canals designated as joint waters.
- (3) Cape Fear River. It is unlawful to use or attempt to use any net or net stakes within 800 feet of the dam at Lock No.1 on the Cape Fear River.
- (4) Shad: It is unlawful to possess more than 10 American shad or hickory shad, in the aggregate, per person per day taken by hook-and-line.

Authority G.S. 113-132; 113-134; 143B-289.52.

SUBCHAPTER 03R - DESCRIPTIVE BOUNDARIES

SECTION .0100 - DESCRIPTIVE BOUNDARIES

15A NCAC 03R .0103 PRIMARY NURSERY AREAS

The primary nursery areas referenced in 15A NCAC 03N .0104 are delineated in the following coastal water areas:

- (1) In the Roanoke Sound Area:
 - (a) Shallowbag Bay:
 - (i) Dough Creek - northeast of a line beginning on the west shore at a point 35° 54.5396' N - 75° 39.9681' W; running northeasterly to the east shore to a point 35° 54.4615' N - 75° 40.1598' W; and west of a line that crosses a canal on the east side of Dough Creek beginning on

- the north shore at a point 35° 54.7103' N - 75° 40.0951' W; running southerly to the south shore to a point 35° 54.6847' N - 75° 40.0882' W;
 - (ii) Scarborough Creek - south of a line beginning on the west shore at a point 35° 53.9801' N - 75° 39.5985' W; running northeasterly to the east shore to a point 35° 54.0372' N - 75° 39.5558' W.
 - (b) Broad Creek - all waters north of a line beginning on the west shore at a point 35° 51.9287' N - 75° 38.3377' W; running northeasterly to the east shore to a point 35° 52.0115' N - 75° 38.1792' W; and west and south of a line beginning on the north shore at a point 35° 53.3655' N - 75° 38.0254' W; running southeasterly to the south shore to a point 35° 53.3474' N - 75° 37.9430' W.
- (2) In the Northern Pamlico Sound Area:
 - (a) Long Shoal River:
 - (i) Long Shoal River - northwest of a line beginning on the north shore at a point 35° 38.0175' N - 75° 52.9270' W; running southwesterly to the south shore to a point 35° 37.8369' N - 75° 53.1060' W;
 - (ii) Deep Creek - southeast of a line beginning on the north shore at a point 35° 37.7346' N - 75° 52.1383' W; running southwesterly to the south shore to a point 35° 37.6673' N - 75° 52.2997' W;
 - (iii) Broad Creek - west of a line beginning on the north shore at a point 35° 35.9820' N - 75° 53.6789' W; running southerly to the south shore to a point 35° 35.7093' N - 75° 53.7335' W;
 - (iv) Muddy Creek - east of a line beginning on the north shore at a point 35° 36.4566' N - 75° 52.1460' W; running southerly to the south shore to a point 35° 36.2828' N - 75° 52.1640' W;
 - (v) Pains Bay - north of a line beginning on the west shore
 - at a point 35° 35.4517' N - 75° 49.1414' W; running easterly to the east shore to a point 35° 35.4261' N - 75° 48.8029' W;
 - (vi) Otter Creek - southwest of a line beginning on the west shore at a point 35° 33.2597' N - 75° 55.2129' W; running easterly to the east shore to a point 35° 33.1995' N - 75° 54.8949' W;
 - (vii) Clark Creek - northeast of a line beginning on the north shore at a point 35° 35.7776' N - 75° 51.4652' W; running southeasterly to the south shore to a point 35° 35.7128' N - 75° 51.4188' W;
- (b) Far Creek - west of a line beginning on the north shore at a point 35° 30.9782' N - 75° 57.7611' W; running southerly to Gibbs Point to a point 35° 30.1375' N - 75° 57.8108' W;
- (c) Middletown Creek - west of a line beginning on the north shore at a point 35° 28.4868' N - 75° 59.8186' W; running southwesterly to the south shore to a point 35° 28.1919' N - 76° 00.0216' W;
- (d) Wysocking Bay:
 - (i) Lone Tree Creek - east of a line beginning on the north shore at a point 35° 25.6048' N - 76° 02.3577' W; running southeasterly to the south shore to a point 35° 25.1189' N - 76° 02.0499' W;
 - (ii) Wysocking Bay - north of a line beginning on the west shore at a point 35° 25.7793' N - 76° 03.5773' W; running northeasterly to the east shore to a point 35° 25.9585' N - 76° 02.9055' W;
 - (iii) Douglas Bay - northwest of a line beginning on Mackey Point at a point 35° 25.2627' N - 76° 03.1702' W; running southwesterly to the south shore to a point 35° 24.8225' N - 76° 03.6353' W;
 - (iv) Tributaries west of Brown Island - west of a line beginning on Brown Island at a point 35° 24.3606' N - 76° 04.4557' W; running

- southerly to the north shore of Brown Island to a point 35° 24.2081' N - 76° 04.4622' W; and northwest of a line beginning on the south shore of Brown Island at a point 35° 23.8255' N - 76° 04.4761' W; running southwesterly to a point 35° 23.6543' N - 76° 04.8630' W;
- (e) East Bluff Bay - Harbor Creek east of a line beginning on the north shore at a point 35° 21.5762' N - 76° 07.8755' W; running southerly to a point 35° 21.4640' N - 76° 07.8750' W; running easterly to the south shore to a point 35° 21.4332' N - 76° 07.7211' W;
- (f) Cuning Harbor tributaries - north of a line beginning on the west shore at a point 35° 20.7567' N - 76° 12.6379' W; running easterly to the east shore to a point 35° 20.7281' N - 76° 12.2292' W;
- (g) Juniper Bay:
- (i) Upper Juniper Bay - north of a line beginning on the west shore at a point 35° 23.1687' N - 76° 15.1921' W; running easterly to the east shore to a point 35° 23.1640' N - 76° 14.9892' W;
- (ii) Rattlesnake Creek - west of a line beginning on the north shore at a point 35° 22.9453' N - 76° 15.2748' W; running southerly to the south shore to a point 35° 22.8638' N - 76° 15.3461' W;
- (iii) Buck Creek - north of a line beginning on the west shore at a point 35° 21.5220' N - 76° 13.8865' W; running southeasterly to the east shore to a point 35° 21.3593' N - 76° 13.7039' W;
- (iv) Laurel Creek - east of a line beginning on the north shore at a point 35° 20.6693' N - 76° 13.3177' W; running southerly to the south shore to a point 35° 20.6082' N - 76° 13.3305' W;
- (v) Old Haulover - west of a line beginning on the north shore at a point 35° 22.0186' N - 76° 15.6736' W; running southerly to the south shore
- to a point 35° 21.9708' N - 76° 15.6825' W;
- (h) Swanquarter Bay:
- (i) Upper Swanquarter Bay - north of a line beginning on the west shore at a point 35° 23.5651' N - 76° 20.6715' W; running easterly to the east shore to a point 35° 23.6988' N - 76° 20.0025' W;
- (ii) Oyster Creek - east of a line beginning on the north shore at a point 35° 23.1214' N - 76° 19.0026' W; running southeasterly to the south shore to a point 35° 23.0117' N - 76° 18.9591' W;
- (iii) Caffee Bay:
- (A) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1604' N - 76° 18.9140' W; running easterly to the east shore to a point 35° 22.1063' N - 76° 18.7500' W;
- (B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 22.1573' N - 76° 18.5101' W; running easterly to the east shore to a point 35° 22.1079' N - 76° 18.1562' W;
- (C) Upper Caffee Bay (Haulover) - east of a line beginning on the north shore at a point 35° 21.8499' N - 76° 17.5199' W; running southerly to the south shore to a point 35° 21.5451' N - 76° 17.4966' W.
- (i) Rose Bay:
- (i) Rose Bay - north of a line beginning on the west shore at a point 35° 26.6543' N - 76° 25.3992' W; running

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| | easterly to Channel Marker "6"; running northeasterly to Watch Point to a point 35° 26.8515' N - 76° 25.0055' W; | | east shore to a point 35° 22.4282' N - 76° 24.5147' W; |
| (ii) | Island Point Creek - west of a line beginning on the north shore at a point 35° 26.0413' N - 76° 25.0452' W; running southeasterly to the south shore to a point 35° 25.9295' N - 76° 24.9882' W; | (vii) | Eastern tributaries (Cedar Hammock and Long Creek) - east of a line beginning on the north shore at a point 35° 24.9119' N - 76° 23.1587' W; running southerly to the south shore to a point 35° 24.6700' N - 76° 23.2171' W; |
| (iii) | Tooley Creek - west of a line beginning on the north shore at a point 35° 25.4937' N - 76° 25.5324' W; running southerly to the south shore to a point 35° 25.1819' N - 76° 25.5776' W; | (j) | Spencer Bay: |
| (iv) | Broad Creek - east of a line beginning on the north shore at a point 35° 24.4620' N - 76° 23.3398' W; running southwesterly to the south shore to a point 35° 24.2352' N - 76° 23.5158' W; | (i) | Germantown Bay: |
| (v) | Lightwood Snag Bay - northwest of a line beginning on the north shore at a point 35° 24.3340' N - 76° 25.9680' W; running southwesterly to a point 35° 24.2610' N - 76° 26.1800' W; running southwesterly to a point on the shore 35° 23.9270' N - 76° 26.3300' W; | (A) | Ditch Creek - northwest of a line beginning on the north shore at a point 35° 24.1874' N - 76° 27.8527' W; running southwesterly to the south shore to a point 35° 24.0937' N - 76° 27.9348' W; |
| (vi) | Deep Bay: | (B) | Jenette Creek - northwest of a line beginning on the north shore at a point 35° 24.5054' N - 76° 27.6258' W; running southwesterly to the south shore to a point 35° 24.4642' N - 76° 27.6659' W; |
| | (A) Old Haulover - north of a line beginning on the west shore at a point 35° 23.2140' N - 76° 22.8560' W; running easterly to the east shore to a point 35° 23.2124' N - 76° 22.7340' W; | (C) | Headwaters of Germantown Bay - north of a line beginning on the west shore at a point 35° 24.8345' N - 76° 27.2605' W; running southeasterly to the east shore to a point 35° 24.6210' N - 76° 26.9221' W; |
| | (B) Drum Cove (Stinking Creek) - south of a line beginning on the west shore at a point 35° 22.5212' N - 76° 24.7321' W; running southeasterly to the | (D) | Swan Creek - southeast of a line beginning on the north shore at a point 35° 24.4783' N - 76° 27.1513' W; running southwesterly to the |

- south shore to a point 35° 24.3899' N - 76° 27.2809' W;
- (ii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 22.9741' N - 76° 28.3469' W; running southerly to the south shore to a point 35° 22.8158' N - 76° 28.3280' W;
 - (iii) Unnamed tributary - west of a line beginning on the north shore at a point 35° 23.1375' N - 76° 28.5681' W; running southerly to the south shore to a point 35° 23.0209' N - 76° 28.5060' W;
 - (iv) Unnamed tributary - southwest of a line beginning on the north shore at a point 35° 23.3775' N - 76° 28.7332' W; running southeasterly to the south shore to a point 35° 23.3297' N - 76° 28.5608' W;
 - (v) Unnamed tributaries - northwest of a line beginning on the north shore at a point 35° 23.7207' N - 76° 28.6590' W; running southwesterly to the south shore to a point 35° 23.4738' N - 76° 28.7763' W;
 - (vi) Upper Spencer Bay - northwest of a line beginning on the north shore at a point 35° 24.3129' N - 76° 28.5300' W; running southwesterly to the south shore to a point 35° 23.9681' N - 76° 28.7671' W;
 - (vii) Spencer Creek - east of a line beginning on the north shore at a point 35° 23.9990' N - 76° 27.3702' W; running southerly to the south shore to a point 35° 23.8598' N - 76° 27.4037' W;
 - (k) Long Creek - north of a line beginning on the west shore at a point 35° 22.4678' N - 76° 28.7868' W; running southeasterly to the east shore to a point 35° 22.3810' N - 76° 28.7064' W;
 - (l) Willow Creek - east of a line beginning on the north shore at a point 35° 23.1370' N - 76° 29.8829' W; running southeasterly to the south shore to a point 35° 22.9353' N - 76° 29.7215' W;
 - (m) Abels Bay - north and east of a line beginning on the west shore at a point 35° 24.1072' N - 76° 30.3848' W; running southeasterly to the east shore to a point 35° 23.9898' N - 76° 30.1178' W; thence running southerly to the south shore to a point 35° 23.6947' N - 76° 30.1900' W;
 - (n) Crooked Creek - north of a line beginning on the west shore at a point 35° 24.4138' N - 76° 32.2124' W; running easterly to the east shore to a point 35° 24.3842' N - 76° 32.0419' W.
- (3) In the Pungo River Area:
- (a) Fortescue Creek:
 - (i) Headwaters of Fortescue Creek - southeast of a line beginning on the south shore at a point 35° 25.5379' N - 76° 30.6923' W; running easterly to the north shore to a point 35° 25.5008' N - 76° 30.5537' W;
 - (ii) Warner Creek - north of a line beginning on the west shore at a point 35° 26.2778' N - 76° 31.5463' W; running easterly to the east shore to a point 35° 26.3215' N - 76° 31.4522' W;
 - (iii) Island Creek - north of a line beginning on the west shore at a point 35° 26.1342' N - 76° 32.3883' W; running easterly to the east shore to a point 35° 26.1203' N - 76° 32.2603' W;
 - (iv) Dixon Creek - south of a line beginning on the west shore at a point 35° 25.5766' N - 76° 31.8489' W; running easterly to the east shore to a point 35° 25.5865' N - 76° 31.6960' W;
 - (v) Pasture Creek - north of a line beginning on the west shore at a point 35° 25.9437' N - 76° 31.8468' W; running southwesterly to the east shore to a point 35° 25.9918' N - 76° 31.7224' W;
 - (vi) Cox, Snell, and Seer Creeks - northeast of a line beginning on the west shore

- at a point 35° 26.0496' N - 76° 31.2087' W; running southeasterly to the east shore to a point 35° 25.8497' N - 76° 30.8828' W;
 - (vii) Unnamed tributary on the north side of Fortescue Creek - northeast of a line beginning on the west shore at a point 35° 25.7722' N - 76° 30.7825' W; running southeasterly to the east shore to a point 35° 25.7374' N - 76° 30.7102' W;
 - (viii) Runway Creek - northeast of a line beginning on the west shore at a point 35° 25.6547' N - 76° 30.6637' W; running easterly to the east shore to a point 35° 25.6113' N - 76° 30.5714' W;
 - (b) Slade Creek:
 - (i) Upper Slade Creek - south of a line beginning on the north shore at a point 35° 27.9168' N - 76° 30.5189' W; running westerly to the south shore to a point 35° 27.9532' N - 76° 30.7140' W;
 - (ii) Jarvis Creek - northeast of a line beginning on the west shore at a point 35° 28.2450' N - 76° 30.8921' W; running southeasterly to the east shore to a point 35° 28.2240' N - 76° 30.8200' W;
 - (iii) Jones Creek - south of a line beginning on the west shore at a point 35° 28.0077' N - 76° 30.9337' W; running southeasterly to the east shore to a point 35° 27.9430' N - 76° 30.8938' W;
 - (iv) Becky Creek - north of a line beginning on the west shore at a point 35° 28.6081' N - 76° 31.6886' W; running northeasterly to the east shore to a point 35° 28.6297' N - 76° 31.6073' W;
 - (v) Neal Creek - north of a line beginning on the west shore at a point 35° 28.7797' N - 76° 31.8657' W; running northeasterly to the east shore to a point 35° 28.8084' N - 76° 31.7727' W;
 - (vi) Wood Creek - north of a line beginning on the west shore at a point 35° 28.5788' N - 76° 32.4163' W; running northeasterly to the east shore to a point 35° 28.6464' N - 76° 32.3339' W;
 - (vii) Spellman Creek - north of a line beginning on the east shore at a point 35° 28.2233' N - 76° 32.6827' W; running southwesterly to the west shore to a point 35° 28.2567' N - 76° 32.6533' W;
 - (viii) Speer Creek - east of a line beginning on the north shore at a point 35° 27.9680' N - 76° 32.3593' W; running southerly to the south shore to a point 35° 27.9216' N - 76° 32.3862' W;
 - (ix) Church Creek and Speer Gut - east of a line beginning on the north shore at a point 35° 27.5910' N - 76° 32.7412' W; running southwesterly to the south shore to a point 35° 27.5282' N - 76° 32.8227' W;
 - (x) Allison and Foreman Creek - south of a line beginning on Parmalee Point at a point 35° 27.2812' N - 76° 33.0634' W; running southwesterly to the west shore to a point 35° 27.2418' N - 76° 33.1451' W;
 - (c) Flax Pond - west of a line beginning the north shore at a point 35° 32.0297' N - 76° 33.0389' W; running southwesterly to the south shore to a point 35° 31.9212' N - 76° 33.2061' W;
 - (d) Battalina and Tooleys creeks - northwest of a line beginning on the north shore at a point 35° 32.3914' N - 76° 36.1548' W; running southwesterly to the south shore to a point 35° 32.0627' N - 76° 36.3769' W;
- (4) In the Pamlico River Area:
- (a) North Creek:
 - (i) North Creek - north of a line beginning on the west shore at a point 35° 25.6764' N - 76° 39.9970' W; running northeasterly to the east

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| <p>(ii) shore to a point 35° 25.5870' N - 76° 40.0806' W;
East Fork:</p> <p style="margin-left: 20px;">(A) Northeast of a line beginning on the west shore at a point 35° 25.8000' N - 76° 39.2679' W; running southeasterly to the east shore to a point 35° 25.6914' N - 76° 39.1374' W;</p> <p style="margin-left: 20px;">(B) Unnamed tributary of East Fork - northwest of a line beginning on the north shore at a point 35° 25.6950' N - 76° 39.4337' W; running southwesterly to the south shore to a point 35° 25.6445' N - 76° 39.4698' W;</p> <p>(iii) Frying Pan Creek - east of a line beginning on the north shore at a point 35° 24.9881' N - 76° 39.5948' W; running southwesterly to Chambers Point to a point 35° 24.8508' N - 76° 39.6811' W;</p> <p>(iv) Little East Creek - west of a line beginning on the north shore at a point 35° 25.1463' N - 76° 40.3490' W; running southwesterly to Cousin Point to a point 35° 25.0075' N - 76° 40.4159' W;</p> <p>(b) Goose Creek:</p> <p style="margin-left: 20px;">(i) Hatter Creek - west of a line beginning on the north shore at a point 35° 19.9593' N - 76° 37.5992' W; running southerly to the south shore to a point 35° 19.9000' N - 76° 37.5904' W;</p> <p style="margin-left: 20px;">(ii) Upper Spring Creek:</p> <p style="margin-left: 40px;">(A) Headwaters of Upper Spring Creek - east of a line beginning on the north shore at a point 35° 16.3636' N - 76° 36.0568' W; running southeasterly to the</p> | <p style="margin-left: 20px;">south shore to a point 35° 16.1857' N - 76° 36.0111' W;</p> <p style="margin-left: 20px;">(B) Unnamed tributary - north of a line beginning on the west shore at a point 35° 16.8386' N - 76° 36.4447' W; running easterly to the east shore to a point 35° 16.8222' N - 76° 36.3811' W;</p> <p>(iii) Eastham Creek:</p> <p style="margin-left: 20px;">(A) Slade Landing Creek - south of a line beginning on the west shore at a point 35° 17.5450' N - 76° 35.9677' W; running southeasterly to the east shore to a point 35° 17.4845' N - 76° 35.8946' W;</p> <p style="margin-left: 20px;">(B) Mallard Creek - north of a line beginning on the west shore at a point 35° 17.8230' N - 76° 36.1314' W; running southeasterly to the east shore to a point 35° 17.7927' N - 76° 36.0330' W;</p> <p>(iv) Mud Gut - northeast of a line beginning on the north shore at a point 35° 17.8754' N - 76° 36.7704' W; running southeasterly to the south shore to a point 35° 17.8166' N - 76° 36.7468' W;</p> <p>(v) Wilkerson Creek - east of a line beginning on the north shore at a point 35° 18.4096' N - 76° 36.7479' W; running southwesterly to the south shore to a point 35° 18.3542' N - 76° 36.7741' W;</p> <p>(vi) Dixon Creek - east of a line beginning on the north shore at a point 35° 18.8893' N - 76° 36.5973' W; running southerly to the south shore</p> |
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- to a point 35° 18.5887' N – 76° 36.7142' W;
- (c) Oyster Creek; Middle Prong:
- (i) Oyster Creek:
- (A) West of a line, beginning on the north shore at a point 35° 19.4780' N - 76° 34.0131' W; running southerly to the south shore to a point 35° 19.3796' N - 76° 34.0021' W;
- (B) Duck Creek - south of a line beginning on the west shore at a point 35° 19.0959' N - 76° 33.2998' W; running northeasterly to the east shore to a point 35° 19.1553' N - 76° 33.2027' W;
- (ii) James Creek - southwest of a line beginning on the north shore at a point 35° 18.6045' N – 76° 32.3233' W; running southeasterly to James Creek Point at a point 35° 18.4805' N - 76° 32.0240' W;
- (iii) Middle Prong - south of a line beginning on the west shore at a point 35° 17.8888' N - 76° 31.9379' W; running southerly to the east shore to a point 35° 17.7323' N - 76° 31.9052' W;
- (iv) Clark Creek:
- (A) Headwaters of Clark Creek (including Mouse Harbor Ditch) - southeast of a line beginning on the west shore at a point 35° 18.1028' N - 76° 31.1661' W; running northeasterly to the east shore to a point 35° 18.1907' N - 76° 31.0610' W;
- (B) Boat Creek - east of a line beginning on the north shore at a point 35° 18.5520' N - 76° 31.2927' W; running southerly to the south shore to a point 35° 18.4189' N - 76° 31.2660' W;
- (5) In the Western Pamlico Sound Area:
- (a) Mouse Harbor:
- (i) Long Creek - north of a line beginning on the west shore at a point 35° 18.4025' N - 76° 29.8139' W; running northeasterly to the east shore to a point 35° 18.4907' N - 76° 29.5652' W;
- (ii) Lighthouse Creek - north of a line beginning on the west shore at a point 35° 18.5166' N - 76° 29.2166' W; running southeasterly to the east shore to a point 35° 18.4666' N - 76° 29.1666' W;
- (iii) Cedar Creek and Island creeks - south of a line beginning on the west shore at a point 35° 16.9073' N - 76° 29.8667' W; running southeasterly to the east shore to a point 35° 16.6800' N - 76° 29.4500' W;
- (b) Porpoise Creek - west of a line beginning on the north shore at a point 35° 15.7263' N - 76° 29.4897' W; running southeasterly to the south shore to a point 35° 15.6335' N - 76° 29.3346' W;
- (c) Middle Bay:
- (i) Middle Bay - west of a line beginning on the north shore at a point 35° 14.6137' N - 76° 30.8086' W; running southeasterly to the south shore to a point 35° 14.0631' N - 76° 30.5176' W;
- (ii) Little Oyster Creek - north of a line beginning on the west shore at a point 35° 14.4745' N - 76° 30.2111' W; running northeasterly to the east shore to a point 35° 14.5825' N - 76° 29.9144' W;
- (d) Jones Bay, west of the IWW:
- (i) Little Drum Creek and Little Eve Creek - south of a line beginning on the west shore at a point 35° 12.4380' N -

- 76° 31.7428' W; running southeasterly to the east shore to a point 35° 12.3499' N - 76° 31.2554' W;
 - (ii) Ditch Creek - south of a line beginning on the west shore at a point 35° 13.3609' N - 76° 33.6539' W; running southeasterly to the east shore to a point 35° 13.2646' N - 76° 33.1996' W;
 - (iii) Lambert Creek - west of a line beginning on the north shore at a point 35° 13.8980' N - 76° 34.3078' W; running southeasterly to the south shore to a point 35° 13.8354' N - 76° 34.2665' W;
 - (iv) Headwaters of Jones Bay, (west of the IWW) - west of a line beginning on the north shore at a point 35° 14.4684' N - 76° 35.4307' W; running southerly to the south shore to a point 35° 14.3947' N - 76° 35.4205' W;
 - (v) Bills Creek - north of a line beginning on the west shore at a point 35° 14.4162' N - 76° 34.8566' W; running northerly to the east shore to a point 35° 14.4391' N - 76° 34.7248' W;
 - (vi) Doll Creek - north of a line beginning on the west shore at a point 35° 14.3320' N - 76° 34.2935' W; running southeasterly to the east shore to a point 35° 14.2710' N - 76° 34.0406' W;
 - (vii) Drum Creek - north of a line beginning on the west shore at a point 35° 14.1764' N - 76° 33.2632' W; running easterly to the east shore to a point 35° 14.1620' N - 76° 33.0614' W.
- (6) In the Bay River Area:
 - (a) Mason Creek - southeast of a line beginning on the north shore at a point 35° 08.2531' N - 76° 41.4897' W; running southwesterly to the west shore to a point 35° 08.1720' N - 76° 41.6340' W;
 - (b) Moore Creek - southeast of a line beginning on the north shore at a point 35° 08.9671' N - 76° 40.2017' W; running southeasterly to the south shore to a point 35° 08.8629' N - 76° 40.1598' W;
- (c) Small tributaries from Bell Point to Ball Creek:
 - (i) Tributary west of Bell Point - south of a line beginning on the west shore at a point 35° 09.9536' N - 76° 39.3977' W; running northeasterly to the east shore to a point 35° 09.9970' N - 76° 39.3420' W;
 - (ii) Little Pasture Creek - south of a line beginning on the west shore at a point 35° 09.8944' N - 76° 39.1483'; running southeasterly to the east shore to a point 35° 09.8417' N - 76° 39.1130' W;
 - (iii) Rice Creek - south of a line beginning on the west shore at a point 35° 09.7616' N - 76° 38.9686' W; running southeasterly to the east shore to a point 35° 09.7378' N - 76° 38.8833' W;
- (d) Ball and Cabin creeks - south of a line beginning on the west shore at a point 35° 09.6479' N - 76° 37.9973' W; running southeasterly to the east shore to a point 35° 09.5589' N - 76° 37.5879' W;
- (e) Bonner Bay:
 - (i) Riggs Creek - west of a line beginning on the north shore at a point 35° 09.4050' N - 76° 36.2205' W; running southeasterly to the south shore to a point 35° 09.2298' N - 76° 36.0949' W;
 - (ii) Spring Creek - west of a line beginning on the north shore at a point 35° 08.5149' N - 76° 36.0799' W; running southerly to the south shore to a point 35° 08.3575' N - 76° 36.0713' W;
 - (iii) Bryan and Ives creeks - south of a line beginning on the west shore at a point 35° 08.3632' N - 76° 35.8653' W; running northeasterly to the east shore to a point 35° 08.4109' N - 76° 35.7075' W;
 - (iv) Dipping Vat Creek - east of a line beginning on the north

- shore at a point 35° 09.2734' N - 76° 34.3363' W; running southerly to the south shore to a point 35° 09.1212' N - 76° 34.3667' W;
- (v) Long Creek - east of a line beginning on the west shore at a point 35° 08.1404' N - 76° 34.5741' W; running northeasterly to the east shore to a point 35° 08.2078' N - 76° 34.4819' W;
- (vi) Cow Gallus Creek - west of a line beginning on the north shore at a point 35° 08.5125' N - 76° 34.6417' W; running southerly to the south shore to a point 35° 08.4083' N - 76° 34.6131' W;
- (f) Rock Hole Bay - northeast of a line beginning on the west shore at a point 35° 11.6478' N - 76° 32.5840' W; running southeasterly to the east shore to a point 35° 11.2664' N - 76° 32.2160' W;
- (g) Dump Creek - north of a line beginning on the west shore at a point 35° 11.7105' N - 76° 33.4228' W; running easterly to the east shore to a point 35° 11.7174' N - 76° 33.1807' W;
- (h) Tributaries east of IWW at Gales Creek:
- (i) Raccoon Creek - east of a line beginning on the north shore at a point 35° 12.9169' N - 76° 35.4930' W; running southeasterly to the south shore to a point 35° 12.6515' N - 76° 35.3368' W;
- (ii) Ditch Creek - east of a line beginning on the north shore at a point 35° 12.4460' N - 76° 35.0707' W; running southeasterly to the south shore to a point 35° 12.3495' N - 76° 34.9917' W;
- (i) Tributaries west of IWW at Gales Creek:
- (i) Jumpover Creek - west of a line beginning on the north shore at a point 35° 13.2830' N - 76° 35.5843' W; running southerly to the south shore to a point 35° 13.2035' N - 76° 35.5844' W;
- (ii) Gales Creek - west of a line beginning on the north shore at a point 35° 12.9653' N - 76° 35.6600' W; running southerly to the south shore to a point 35° 12.8032' N - 76° 35.6366' W;
- (iii) Whealon and Tar creeks - west of a line beginning on the north shore at a point 35° 12.7334' N - 76° 35.5430' W; running southeasterly to the south shore to a point 35° 12.4413' N - 76° 35.3594' W;
- (j) Chadwick and No Jacket creeks - north of a line beginning on the west shore at a point 35° 11.9511' N - 76° 35.8899' W; running northeasterly to the east shore to a point 35° 12.0599' N - 76° 35.3973' W;
- (k) Bear Creek - west of a line beginning on the north shore at a point 35° 11.7526' N - 76° 36.2721' W; running southwesterly to the south shore to a point 35° 11.5781' N - 76° 36.3366' W;
- (l) Little Bear Creek - north of a line beginning on the west shore at a point 35° 11.1000' N - 76° 36.3060' W; running northeasterly to the east shore to a point 35° 11.2742' N - 76° 35.9822' W;
- (m) Tributaries to Bay River from Petty Point to Sanders Point:
- (i) Oyster Creek - north of a line beginning on the west shore at a point 35° 10.7971' N - 76° 36.7399' W; running northeasterly to the east shore to a point 35° 10.9493' N - 76° 36.4878' W;
- (ii) Potter Creek - north of a line beginning on the west shore at a point 35° 10.7259' N - 76° 37.0764' W; running northeasterly to the east shore to a point 35° 10.7778' N - 76° 36.7933' W;
- (iii) Barnes and Gascon creeks - north of a line beginning on the west shore at a point 35° 10.6396' N - 76° 37.3137' W; running northeasterly to the east shore to a point 35° 10.6929' N - 76° 37.2087' W;
- (iv) Harris Creek - north of a line beginning on the west shore at a point 35° 10.5922' N -

- 76° 37.5333' W; running northeasterly to the east shore to a point 35° 10.6007' N - 76° 37.5103' W;
 - (v) Mesic Creek - north of a line beginning on the west shore at a point 35° 10.5087' N - 76° 37.9520' W; running easterly to the east shore to a point 35° 10.4830' N - 76° 37.8477' W;
 - (n) In Vandemere Creek:
 - (i) Cedar Creek - north of a line beginning on the west shore at a point 35° 11.2495' N - 76° 39.5727' W; running northeasterly to the east shore to a point 35° 11.2657' N - 76° 39.5238' W;
 - (ii) Long Creek - east of a line beginning on the north shore at a point 35° 11.4779' N - 76° 38.7790' W; running southerly to the south shore to a point 35° 11.4220' N - 76° 38.7521' W;
 - (iii) Little Vandemere Creek - north of a line beginning on the west shore at a point 35° 12.1449' N - 76° 39.2620' W; running southeasterly to the east shore to a point 35° 12.1182' W 76° 39.1993' W;
 - (o) Smith Creek - north of a line beginning on the west shore to a point 35° 10.4058' N - 76° 40.2565' W; running northeasterly to the east shore to a point 35° 10.4703' N - 76° 40.1593' W;
 - (p) Harper Creek - west of a line beginning on the north shore at a point 35° 09.2767' N - 76° 41.8489' W; running southwesterly to the south shore to a point 35° 09.1449' N - 76° 41.9137' W;
 - (q) Chapel Creek - north of a line beginning on the west shore at a point 35° 08.9333' N - 76° 42.8382' W; running northeasterly to the east shore to a point 35° 08.9934' N - 76° 42.7694' W;
 - (r) Swindell Bay - south of a line beginning on the west shore at a point 35° 08.2580' N - 76° 42.9380' W; running southeasterly to the east shore to a point 35° 08.2083' N - 76° 42.8031' W.
- (7) In the Neuse River Area North Shore:
 - (a) Swan Creek - west of a line beginning on the south shore at a point 35° 06.5470' N - 76° 33.8203' W; running northeasterly to a point 35° 06.4155' N - 76° 33.9479'; running to the south shore of Swan Island to a point 35° 06.3168' N - 76° 34.0263 W; running northeasterly to a point 35° 06.6705' N - 76° 33.7307' W, running northeasterly to the north shore to a point 35° 06.8183' N - 76° 33.5971' W;
 - (b) Broad Creek:
 - (i) Greens Creek - north of a line beginning on the west shore at a point 35° 06.0730' N - 76° 35.5110' W; running southeasterly to the east shore to a point 35° 05.9774' N - 76° 35.3704' W;
 - (ii) Pittman Creek - north of a line beginning on the west shore at a point 35° 05.8143' N - 76° 36.1475' W; running northeasterly to the east shore to a point 35° 05.8840' N - 76° 36.0144' W;
 - (iii) Burton Creek - west of a line beginning on the north shore at a point 35° 05.7174' N - 76° 36.4797' W; running southwesterly to the south shore to a point 35° 05.6278' N - 76° 36.5067' W;
 - (iv) All tributaries on the north shore of Broad Creek - north of a line beginning on the west shore of the western most tributary at a point 35° 05.5350' N - 76° 37.4058' W; running easterly to a point 35° 05.4752' N - 76° 36.9672' W; running to a point 35° 05.4868 N - 76° 36.9163' W; north of a line beginning on the west shore of the eastern most tributary at 35° 05.4415' N - 76° 36.7869' W, running northeasterly to a point 35° 05.4664' N - 76° 36.7540' W
 - (v) Brown Creek - northwest of a line beginning on the west shore at a point 35° 05.5310' N - 76° 37.8132' W; running northeasterly to the east shore to a point 35° 05.5737' N - 76° 37.6908' W;

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| <p>(vi) Broad Creek including Gideon Creek - west of a line beginning on the north shore at a point 35° 05.5310' N - 76° 37.8132' W; running southerly to the south shore to a point 35° 05.3212' N - 76° 37.8398' W;</p> <p>(vii) Tar Creek - south of a line beginning on the west shore at a point 35° 05.2604' N - 76° 37.5093' W; running easterly to the east shore to a point 35° 05.2728' N - 76° 37.6251' W;</p> <p>(viii) Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35° 05.3047' N - 76° 37.0316' W; running easterly to the east shore to a point 35° 05.2674' N - 76° 36.8086' W;</p> <p>(ix) Tributary east of Tar Creek - south of a line beginning on the west shore at a point 35° 05.2674' N - 76° 36.8086' W; running easterly to the east shore to a point 35° 05.2445' N - 76° 36.5416' W;</p> <p>(x) Parris Creek - south of a line beginning on the west shore at a point 35° 05.2445' N - 76° 36.5416' W; running southeasterly to the east shore to a point 35° 05.2031' N - 76° 36.4573' W;</p> <p>(xi) Mill Creek - south of a line beginning on the west shore at a point 35° 05.4439' N - 76° 36.0260' W; running northeasterly to the east shore to a point 35° 05.4721' N - 76° 35.8835' W;</p> <p>(xii) Cedar Creek - south of a line beginning on the west shore at a point 35° 05.3711' N - 76° 35.6556' W; running southeasterly to the east shore to a point 35° 05.2867' N - 76° 35.5348' W.</p> <p>(c) Orchard and Old House creeks - north of a line beginning on the west shore at a point 35° 03.3302' N - 76° 38.4478' W; running northeasterly to the east shore to a point 35° 03.6712' N - 76° 37.9040' W;</p> | <p>(d) Pierce Creek - north of a line beginning on the west shore at a point 35° 02.5030' N - 76° 40.0536' W; running northeasterly to the east shore to a point 35° 02.5264' - 76° 39.9901' W;</p> <p>(e) Whittaker Creek - north of a line beginning on the west shore at a point 35° 01.7186' N - 76° 41.1309' W; running easterly to the east shore to a point 35° 01.6702' N - 76° 40.9036' W;</p> <p>(f) Oriental:</p> <p>(i) Smith and Morris creeks - north of a line beginning on the west shore at a point 35° 02.1553' N - 76° 42.2931' W; running southeasterly to the east shore to a point 35° 02.1097' N - 76° 42.1806' W;</p> <p>(ii) Unnamed tributary west of Dewey Point - north of a line beginning on the west shore at a point 35° 01.3704' N - 76° 42.4906' W; running northeasterly to the east shore to a point 35° 01.3530' N - 76° 42.4323' W;</p> <p>(iii) Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.4340' N - 76° 42.7920' W; running southeasterly to the east shore to a point 35° 01.4040' N - 76° 42.7320' W;</p> <p>(iv) Unnamed tributary on the south shore of Greens Creek - south of a line beginning on the west shore at a point 35° 01.3680' N - 76° 42.4920' W; running southeasterly to the east shore to a point 35° 01.3560' N - 76° 42.4320' W;</p> <p>(v) Greens Creek - west of a line beginning on the north shore at a point 35° 01.5985' N - 76° 42.9959' W; running southeasterly to the south shore to a point 35° 01.4759' N - 76° 42.9570' W;</p> <p>(vi) Kershaw Creek - north of a line beginning on the west shore at a point 35° 01.5985' N - 76° 42.9959' W; running</p> |
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- easterly to the east shore to a point 35° 01.6077' N - 76° 42.8459' W;
- (vii) Shop Gut Creek - west of a line beginning on the north shore at a point 35° 01.2720' N - 76° 42.1500' W; running southerly to the south shore to a point 35° 01.1700' N - 76° 42.1380' W.
- (g) Dawson Creek:
- (i) Unnamed eastern tributary of Dawson Creek - east of a line beginning on the north shore at a point 35° 00.2064' N - 76° 45.2652' W; running southeasterly to the south shore to a point 35° 00.1790' N - 76° 45.2289' W;
- (ii) Unnamed tributary of Dawson Creek (at mouth) - east of a line beginning on the north shore at a point 34° 59.6620' N - 76° 45.1156' W; running southerly to the south shore to a point 34° 59.6326' N - 76° 45.1177' W;
- (h) Beard Creek tributary - southeast of a line beginning on the north shore at a point 35° 00.3176' N - 76° 51.9098' W; running southwesterly to the southwest shore to a point 35° 00.1884' N - 76° 51.9850' W.
- (8) In the Neuse River Area South Shore:
- (a) Clubfoot Creek - south of a line beginning on the west shore at a point 34° 52.4621' N - 76° 45.9256' W; running easterly to the east shore to a point 34° 52.4661' N - 76° 45.7567' W;
- (i) Mitchell Creek - west of a line beginning on the north shore at a point 34° 54.4176' N - 76° 45.7680' W; running southerly to the south shore to a point 34° 54.2610' N - 76° 45.8277' W;
- (ii) Gulden Creek - east of a line beginning on the north shore at a point 34° 54.1760' N - 76° 45.4438' W; running southerly to the south shore to a point 34° 54.0719' N - 76° 45.4888' W;
- (b) Adams Creek:
- (i) Godfrey Creek - south of a line beginning on the west shore at a point 34° 57.3104' N - 76° 41.1292' W; running easterly to the east shore to a point 34° 57.2655' N - 76° 41.1187' W;
- (ii) Delamar Creek - south of a line beginning on the west shore at a point 34° 57.0475' N - 76° 40.7230' W; running southeasterly to the east shore to a point 34° 57.0313' N - 76° 40.7015' W;
- (iii) Kellum Creek - west of a line beginning on the north shore at a point 34° 55.5240' N - 76° 39.8072' W; running southeasterly to the south shore to a point 34° 55.4356' N - 76° 39.8201' W;
- (iv) Kearney Creek and unnamed tributary - west of a line beginning on the north shore of the north creek at a point 34° 55.1847' N - 76° 39.9686' W; running southerly to the south shore to a point 34° 54.9661' N - 76° 40.0091' W;
- (v) Isaac Creek - south of a line beginning on the west shore at a point 34° 54.2457' N - 76° 40.1010' W; running easterly to the east shore to a point 34° 54.2630' N - 76° 40.0088' W;
- (vi) Back Creek - southeast of a line beginning on the northeast shore at a point 34° 54.6598' N - 76° 39.5257' W; running southwesterly to the southwest shore to a point 34° 54.5366' N - 76° 39.7075' W;
- (vii) Cedar Creek - southeast of a line beginning on the west shore at a point 34° 55.7759' N - 76° 38.6070' W; running easterly to the east shore to a point 34° 55.7751' N - 76° 38.4965' W;
- (viii) Jonaquin Creek - northeast of a line beginning on the west shore at a point 34° 56.1192' N - 76° 38.4997' W; running easterly to the east shore to a point 34°

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| | 56.1172' N - 76° 38.4584' W; | | beginning at a point on the north shore 34° 59.1974' N - 76° 30.4118' W; running southeasterly to the south shore to a point 34° 58.9738' N - 76° 30.1168' W; |
| (ix) | Dumpling Creek - east of a line beginning on the northwest shore at a point 34° 56.9187' N - 76° 39.5559' W; running southeasterly to the southeast shore to a point 34° 56.8421' N - 76° 39.5155' W; | (iii) | Mulberry Point Creek - east of a line beginning on the north shore at a point 35° 00.4736' N - 76° 29.7538' W; running southerly to the south shore to a point 35° 00.3942' N - 76° 29.7082' W; |
| (x) | Sandy Huss Creek - northeast of a line beginning on the west shore at a point 34° 57.2348' N - 76° 39.8457' W; running southeasterly to the east shore to a point 34° 57.1638' N - 76° 39.7169' W; | (iv) | Tump Creek - east of a line beginning on the north shore at a point 35° 00.2035' N - 76° 29.5947' W; running southerly to the south shore to a point 35° 00.0500' N - 76° 29.4897' W; |
| (c) | Garbacon Creek - south of a line beginning on the west shore at a point 34° 59.0044' N - 76° 38.5758' W; running easterly to the east shore to a point 34° 59.0006' N - 76° 38.4845' W; | (v) | Tributary south of Tump Creek - east of a line beginning on the north shore at a point 34° 59.7784' N - 76° 29.3548' W; running southerly to the south shore to a point 34° 59.6830' N - 76° 29.3303' W; |
| (d) | South River: | (vi) | Deep Gut - northeast of a line beginning on the north shore at a point 34° 59.6134' N - 76° 29.0376' W; running southeasterly to the south shore to a point 34° 59.4799' N - 76° 28.9362' W; |
| | (i) Big Creek - southwest of a line beginning on the northwest shore at a point 34° 56.9502' N - 76° 35.3498' W; running southeasterly to the southeast shore to a point 34° 56.8346' N - 76° 35.2091' W; | (vii) | Big Gut - east of a line beginning on the north shore at a point 34° 59.0816' N - 76° 28.7076' W; running southerly to the south shore to a point 34° 58.9300' N - 76° 28.7383' W. |
| | (ii) Horton Bay - north of a line beginning on the west shore at a point 34° 59.1936' N - 76° 34.7657' W; running easterly to the east shore to a point 34° 59.2023' N - 76° 34.4586' W; | | |
| (e) | Brown Creek - south of a line beginning on the west shore at a point 34° 59.8887' N - 76° 33.5707' W; running easterly to the east shore to a point 34° 59.9440' N - 76° 33.4180' W; | (9) | West Bay; Long Bay Area: |
| (f) | Turnagain Bay: | (a) | Fur Creek and Henrys Creek - southwest of a line beginning on the northwest shore at a point 34° 56.5580' N - 76° 27.7065' W; running southeasterly to the southeast shore to a point 34° 56.3830' N - 76° 27.4563' W; |
| | (i) Abraham Bay - west of a line beginning on the north shore at a point 35° 00.1780' N - 76° 30.7564' W; running southerly to the south shore to a point 34° 59.8338' N - 76° 30.7128' W; | (b) | Cadduggen Creek - south of a line beginning on the west shore at a point 34° 56.5767' N - 76° 23.8711' W; running easterly to the east shore to a point 34° 56.2890' N - 76° 23.6626' W. |
| | (ii) Broad Creek and Persons Creek - southwest of a line | (10) | Core Sound Area: |

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| <p>(a) Cedar Island Bay - northwest of a line beginning on the northeast shore at a point 34° 59.7770' N - 76° 17.3837' W; running southwesterly to the southwest shore to a point 34° 59.0100' N - 76° 17.9339' W;</p> <p>(b) Lewis Creek - north of a line beginning on the west shore at a point 34° 56.8736' N - 76° 16.8740' W; running easterly to the east shore to a point 34° 56.9455' N - 76° 16.8234' W;</p> <p>(c) Thorofare Bay:</p> <p>(i) Merkle Hammock Creek - southwest of a line beginning on the northwest shore at a point 34° 55.4796' N - 76° 21.4463' W; running southeasterly to the southeast shore to a point 34° 55.3915' N - 76° 21.1682' W;</p> <p>(ii) Barry Bay - west of a line beginning on the north shore at a point 34° 54.6450' N - 76° 20.6127' W; running southerly to the south shore to a point 34° 54.4386' N - 76° 20.4912' W;</p> <p>(d) Nelson Bay:</p> <p>(i) Willis Creek and Fulchers Creek - west of a line beginning on the north shore of Willis Creek at a point 34° 51.1006' N - 76° 24.5996' W; running southerly to the south shore of Fulchers Creek to a point 34° 50.2861' N - 76° 24.8708' W;</p> <p>(ii) Lewis Creek - west of a line beginning on the north shore at a point 34° 51.9362' N - 76° 24.6322' W; running southerly to the south shore to a point 34° 51.7323' N - 76° 24.6487' W;</p> <p>(e) Cedar Creek between Sea Level and Atlantic - west of a line beginning on the north shore at a point 34° 52.0126' N - 76° 22.7046' W; running southerly to the south shore to a point 34° 51.9902' N - 76° 22.7190' W;</p> <p>(f) Oyster Creek, northwest of the Highway 70 bridge;</p> <p>(g) Jarretts Bay Area:</p> <p>(i) Smyrna Creek - northwest of the Highway 70 bridge;</p> | <p>(ii) Ditch Cove and adjacent tributary - east of a line beginning on the north shore at a point 34° 48.0167' N - 76° 28.4674' W; running southerly to the south shore to a point 34° 47.6143' N - 76° 28.6473' W;</p> <p>(iii) Broad Creek - northwest of a line beginning on the west shore at a point 34° 47.7820' N - 76° 29.2724' W; running northeasterly to the east shore to a point 34° 47.9766' N - 76° 28.9729' W;</p> <p>(iv) Howland Creek - northwest of a line beginning on the northeast shore at a point 34° 47.5129' N - 76° 29.6217' W; running southwesterly to the southwest shore to a point 34° 47.3372' N - 76° 29.8607' W;</p> <p>(v) Great Creek - southeast of a line beginning on the northeast shore at a point 34° 47.4279' N - 76° 28.9565' W; running southwesterly to the southwest shore to a point 34° 47.1515' N - 76° 29.2077' W;</p> <p>(vi) Williston Creek - northwest of the Highway 70 bridge;</p> <p>(vii) Wade Creek - west of a line beginning on the north shore at a point 34° 46.3022' N - 76° 30.5443' W; running southerly to the south shore to a point 34° 46.2250' N - 76° 30.3864' W;</p> <p>(viii) Jump Run - north of a line beginning on the west shore at a point 34° 45.5385' N - 76° 30.3974' W; running easterly to the east shore to a point 34° 45.5468' N - 76° 30.3485' W;</p> <p>(ix) Middens Creek - west of a line beginning on the north shore at a point 34° 45.5046' N - 76° 30.9710' W; running southerly to the south shore to a point 34° 45.4093' N - 76° 30.9584' W;</p> <p>(x) Tusk Creek - northwest of a line beginning on the</p> |
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- northwest shore at a point
34° 44.8049' N - 76°
30.6248' W; running
southerly to the south shore
to a point 34° 44.6074' N -
76° 30.7553' W;
- (xi) Creek west of Bells Island -
west of a line beginning on
the north shore at a point 34°
43.9531' N - 76° 30.4144'
W; running southerly to the
south shore to a point 34°
43.7825' N - 76° 30.3543'
W.
- (11) Straits, North River, Newport River Area:
- (a) Straits:
- (i) Sleepy Creek - north of a
line beginning on the west
shore at a point 34° 43.3925'
N - 76° 31.4912' W; running
easterly to the east shore to a
point 34° 43.3651' N - 76°
31.3250' W;
- (ii) Whitehurst Creek - north of
a line beginning on the west
shore at a point 34°
43.5118' N - 76° 33.3392'
W; running northeasterly to
the east shore to a point 34°
43.5561' N - 76° 33.1869'
W;
- (b) North River, north of Highway 70
bridge:
- (i) Ward Creek - north of
Highway 70 bridge:
- (A) North Leopard
Creek - southeast of
a line beginning on
the southwest shore
at a point 34°
45.9573' N - 76°
34.4208' W;
running
northeasterly to the
northeast shore to a
point 34° 46.0511'
N - 76° 34.3170'
W;
- (B) South Leopard
Creek - southeast of
a line beginning on
the southwest shore
at a point 34°
45.4930' N - 76°
34.7622' W;
running
northeasterly to the
northeast shore to a
point 34° 45.5720'
N - 76° 34.6236'
W;
- (ii) Turner Creek (Gibbs Creek)
- west of a line beginning on
the north shore at a point 34°
43.4693' N - 76° 37.6372'
W; running southerly to the
south shore to a point 34°
43.4054' N - 76° 37.6585'
W;
- (c) Newport River - west of a line
beginning on the north shore at a
point 34° 46.5635' N - 76° 44.3998'
W; running southerly to Lawton Point
to a point 34° 45.6840' N - 76°
44.0895' W;
- (i) Russel Creek - northeast of a
line beginning on the north
shore at a point 34° 45.5840'
N - 76° 39.8020' W; running
southeasterly to the south
shore to a point 34° 45.5819'
N - 76° 39.7895' W;
- (ii) Ware Creek - northeast of a
line beginning on the north
shore at a point 34° 46.4576'
N - 76° 40.5020' W; running
southeasterly to the south
shore to a point 34° 46.4125'
N - 76° 40.4460' W;
- (iii) Bell Creek - east of a line
beginning on the north shore
at a point 34° 47.2805' N -
76° 40.9082' W; running
southerly to the south shore
to a point 34° 47.0581' N -
76° 40.8854' W;
- (iv) Eastman Creek - east of a
line beginning on the north
shore at a point 34° 47.8640'
N - 76° 41.0671' W; running
southerly to the south shore
to a point 34° 47.8027' N -
76° 41.0605' W;
- (v) Oyster Creek - north of a
line beginning on the west
shore at a point 34° 46.6610'
N - 76° 42.5011' W; running
easterly to the east shore to a
point 34° 46.7161' N - 76°
42.3481' W;
- (vi) Harlow Creek - north of a
line beginning on the west
shore at a point 34° 46.7138'
N - 76° 43.4838' W; running
northeasterly to the east

- shore to a point 34° 46.8490' N - 76° 43.3296' W;
 - (vii) Calico Creek - west of a line beginning on the north shore at a point 34° 43.7318' N - 76° 43.1268' W; running southerly to the south shore to a point 34° 43.6066' N - 76° 43.2040' W;
 - (viii) Crab Point Bay - northwest of a line beginning on the northeast shore at a point 34° 44.0615' N - 76° 42.9393' W; running southwesterly to the southwest shore to a point 34° 43.9328' N - 76° 43.0721' W.
 - (12) Bogue Sound; Bogue Inlet Area:
 - (a) Gales Creek - north of the Highway 24 bridge;
 - (b) Broad Creek - north of the Highway 24 bridge;
 - (c) Sanders Creek - north of a line beginning at a point 34° 42.4694' N - 76° 58.3754' W on the west shore; running easterly to a point 34° 42.4903' N - 76° 58.143' W on the east shore;
 - (d) Goose Creek - north of a line beginning on the west shore at a point 34° 41.8183' N - 77° 00.7208' W; running easterly to the east shore to a point 34° 41.8600' N - 77° 00.5108' W;
 - (e) Archer Creek - west of a line beginning on the north shore at a point 34° 40.4721' N - 77° 00.7577' W; running southerly to the south shore to a point 34° 40.3521' N - 77° 00.8008' W;
 - (f) White Oak River - northwest of a line beginning on the northeast shore at a point 34° 45.6730' N - 77° 07.5960' W; running southwesterly to the southwest shore to a point 34° 45.2890' N - 77° 07.7500' W;
 - (i) Pettiford Creek - east of a line beginning on the north shore at a point 34° 42.8670' N - 77° 05.3990' W; running southerly to the south shore to a point 34° 42.6310' N - 77° 05.3180' W.
 - (ii) Holland Mill Creek - west of a line beginning on the north shore at a point 34° 43.8390' N - 77° 08.0090' W; running southeasterly to the south shore to a point 34° 43.4800' N - 77° 07.7650' W.
- (g) Hawkins Creek - west of a line beginning on the north shore at a point 34° 41.1210' N - 77° 07.5720' W; running southerly to the south shore to a point 34° 41.0460' N - 77° 07.5930' W;
- (h) Queen's Creek - north of state road number 1509 bridge:
 - (i) Dick's Creek - west of a line beginning on the north shore at a point 34° 39.9790' N - 77° 09.3470' W; running southeasterly to the south shore to a point 34° 39.9350' N - 77° 09.3280' W;
 - (ii) Parrot Swamp - west of a line beginning on the north shore at a point 34° 40.6170' N - 77° 09.7820' W; running southeasterly to the south shore to a point 34° 40.3660' N - 77° 09.5980' W;
 - (iii) Hall's Creek - east of a line beginning on the north shore at a point 34° 41.0740' N - 77° 09.8640' W; running easterly to the south shore to a point 34° 41.0300' N - 77° 09.6740' W;
- (i) Bear Creek - west of a line beginning at Willis Landing at a point 34° 38.7090' N - 77° 12.6860' W; running southeasterly to the south shore to a point 34° 38.4740' N - 77° 12.3810' W.
- (13) New River Area:
 - (a) Salliers Bay area - all waters north and northwest of the IWW beginning at a point on the shoreline 34° 37.0788' N - 77° 12.5350' W; running easterly to a point near Beacon "58" at a point 34° 37.9670' N - 77° 12.3060' W; running along the IWW near Cedar Point to a point 34° 33.1860' N - 77° 20.4370' W; running northerly to a point on the shoreline 34° 33.1063' N - 77° 20.4679' W; following the shoreline to the point of origin; including Howard Bay, Mile Hammock Bay, Salliers Bay, and Freeman Creek;
 - (b) New River Inlet area (including Hellgate Creek and Ward's Channel) -

- all waters south of the IWW from a point on the shoreline 34° 33.0486' N – 77° 18.6295' W running northwesterly to a point near Beacon "65" 34° 33.0550' N - 77° 18.6380' W; running along the IWW to a point near Beacon "15" 34° 31.0630' N - 77° 22.2630' W; running southerly to a point on the shoreline 34° 30.9212' N – 77° 22.2257' W; following the shoreline across New River Inlet at the COLREGS demarcation line back to the point of origin excluding the marked New River Inlet Channel;
- (c) New River:
- (i) Trap's Bay - northeast of a line beginning on the west shore at a point 34° 34.0910' N - 77° 21.0010' W; running southeasterly to the east shore to a point 34° 33.8260' N - 77° 20.4060' W;
 - (ii) Courthouse Bay:
 - (A) Tributary of Courthouse Bay - southeast of a line beginning on Harvey's Point at a point 34° 35.0050' N - 77° 22.3910' W; running northeasterly to the east shore to a point 34° 35.0830' N - 77° 22.1890' W;
 - (B) Tributary of Courthouse Bay - northwest of a line beginning on the west shore at a point 34° 35.0970' N - 77° 22.6010' W; running northeasterly to the east shore to a point 34° 35.1630' N - 77° 22.5030' W;
 - (C) Rufus Creek - east of a line beginning at a point on the north shore 34° 34.4630' N - 77° 21.6410' W; running southerly to a point near Wilken's Bluff 34° 34.3140' N - 77° 21.6620' W;
 - (iii) Wheeler Creek - south of a line beginning on the west shore at a point 34° 34.0570' N - 77° 23.3640' W; running easterly to a point near Poverty Point 34° 34.1060' N - 77° 23.2440' W;
 - (iv) Fannie Creek - south of a line beginning on the west shore at a point 34° 34.1470' N - 77° 23.6390' W; running easterly to the east shore to a point 34° 34.1300' N - 77° 23.5600' W;
 - (v) Snead's Creek - northwest of a line beginning on the west shore at a point 34° 35.2850' N - 77° 23.5500' W; running northerly to the east shore to a point 34° 35.3440' N - 77° 23.4860' W;
 - (vi) Everette Creek - south of a line beginning on the west shore at a point 34° 34.2570' N - 77° 24.8480' W; running easterly to the east shore to a point 34° 34.2380' N - 77° 24.6970' W;
 - (vii) Stone's Creek - southwest of a line beginning on the northwest shore at a point 34° 36.6170' N - 77° 26.8670' W; running southeasterly to the southeast shore to a point 34° 36.5670' N - 77° 26.8500' W;
 - (viii) Muddy Creek - north of a line beginning on the west shore 34° 36.8670' N - 77° 26.6340' W; running easterly to the east shore to a point 34° 36.8670' N - 77° 26.6170' W;
 - (ix) Mill Creek - north of a line beginning on the west shore at a point 34° 37.2350' N - 77° 25.7000' W; running easterly to the east shore to a point 34° 37.2360' N - 77° 25.6890' W;
 - (x) Whitehurst Creek - west of a line beginning on the north shore at a point 34° 38.0780' N - 77° 22.6110' W; running easterly to the south shore to

- (xi) a point 34° 38.0720' N - 77° 22.6000' W;

(xii) Town Creek - west of a line beginning on the north shore at a point 34° 39.6060' N - 77° 23.0690' W; running southerly to the south shore to a point 34° 39.5950' N - 77° 23.0830' W;

(xiii) Lewis Creek - southwest of a line beginning on the northwest shore at a point 34° 40.9330' N - 77° 24.5290' W; running southeasterly to the southeast shore to a point 34° 40.9190' N - 77° 24.5040' W;

(xiv) Northeast Creek - east of a line beginning at the mouth of Scale's Creek at a point 34° 43.7350' N - 77° 24.1190' W; running southeasterly to the south shore to a point 34° 43.3950' N - 77° 23.5450' W;

(xv) Southwest Creek - southwest of a line beginning on the north shore at a point 34° 41.8500' N - 77° 25.6460' W; running southeasterly to the south shore to a point 34° 41.5540' N - 77° 25.2250' W;

(d) Upper New River - north of a line beginning on the west shore at a point 34° 42.9770' N - 77° 25.9070' W; running easterly through a point near Beacon "53" to a point 34° 43.2600' N - 77° 25.3800' W; to the east shore to a point 34° 43.4260' N - 77° 25.0700' W;

(i) Chadwick Bay - all waters bounded by a line beginning on Roses Point at a point 34° 32.2240' N - 77° 22.2880' W; running easterly to a point near Marker "6" at 34° 32.4180' N - 77° 21.6080' W; then following the IWW to a point near Marker "14" at 34° 31.3220' N - 77° 22.1520' W; following the shoreline of Chadwick Bay back to the point of origin:

(ii) Fullard Creek (including Charles Creek) - northwest of a line beginning on the north shore at a point 34° 32.2210' N - 77° 22.8080' W; running southeasterly to the south shore to a point 34° 32.0340' N - 77° 22.7160' W;

(iii) Bump's Creek - north of a line beginning on the west shore at a point 34° 32.3430' N - 77° 22.4570' W; running northeasterly to the east shore to a point 34° 32.4400' N - 77° 22.3830' W.

(14) Stump Sound Area: Stump Sound - all waters north of the IWW from a point on the shoreline 34° 31.1228' N - 77° 22.3181' W; running southerly to a point across the IWW from Beacon "15" 34° 31.1040' N - 77° 22.2960' W; running along the IWW to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W; running northerly to a point on the shoreline 34° 24.5183' N - 77° 34.9833' W; running along the shoreline to the point of origin; except 100 feet north of the IWW from a point across from Beacon "49" 34° 28.1330' N - 77° 30.5170' W to a point near Marker "78" 34° 25.4050' N - 77° 34.2120' W. All waters south of IWW from a point on the shoreline 34° 31.0550' N - 77° 22.2574' W; running northerly to a point near Beacon "15" at 34° 31.0630' N - 77° 22.2630' W; running along the IWW to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W; running southeasterly to a point on the shoreline 34° 23.9817' N - 77° 35.0367' W; running along the shoreline to the point of origin; except 100 feet on the south side of the IWW from a point near Beacon "49" 34° 28.082' N - 77° 30.4600' W at Morris Landing to a point across the IWW from Marker "78" 34° 25.3110' N - 77° 34.1710' W and except the dredged canals at Old Settler's Beach and the dredged channel from the IWW north of Marker "57" to the Old Settler's Beach Canals.

(15) Topsail Sound Area:

(a) Virginia Creek - all waters northwest of a line beginning on the southwest shore near the mouth at a point 34° 24.8030' N - 77° 35.5960' W; running northeasterly to a point 34° 25.0333' N - 77° 35.3167' W; running easterly to intersect the nursery area line near Becky's Creek at a point 34° 25.4050' N - 77° 34.2120' W, with the exception of the natural channel as marked by the North Carolina Division of Marine Fisheries;

(b) Old Topsail Creek - all waters northwest of a line beginning on the

- northeast shore at a point 34° 21.7740' N - 77° 40.3870' W; running southwesterly to the southwest shore to a point 34° 21.4930' N - 77° 40.6900' W, with the exception of the dredged channel as marked by the North Carolina Division of Marine Fisheries;
- (c) Topsail Sound - all waters enclosed within a line starting near Beacon "BC" at a point 34° 24.6110' N - 77° 35.7050' W; then bounded on the northeast and southeast by Bank's Channel, on the southwest by Marker "98" channel and on the northeast by the IWW; then back to the point of origin;
- (d) Mallard Bay Area - all waters northwest of the IWW beginning at a point on the shoreline 34° 24.0278' N - 77° 36.8498' W; running southerly to a point 34° 24.0167' N - 77° 36.7333' W near Beacon "93" "93"; ~~34° 23.9090' N - 77° 36.7420' W;~~ running along the IWW to a point 34° 23.8167' N - 77° 36.9667' W; running southwesterly along the marsh line to a point on the shoreline 34° 22.6168' N - 77° 38.8580' W near Beacon "96": "96"; ~~34° 22.5480' N - 77° 38.7890' W; running northerly to a point on the shoreline 34° 22.6168' N - 77° 38.8580' W;~~ running along the shoreline to the point of origin.
- (16) Middle Sound Area:
- (a) Howard Channel and Long Point Channel area - all waters southeast of the IWW beginning at a point on the shoreline 34° 20.4514' N - 77° 40.0183' W; running along the shorelines of Topsail Inlet Channel and Marker # 98 Channel to a point near Beacon "98" 34° 21.5670' N - 77° 40.4580' W; to running along the IWW to a point on the north side of the Figure 8 Island Marina Channel to a point 34° 16.5120' N - 77° 45.4870' W; following the shoreline of Figure 8 Island Marina Channel to a point 34° 16.2628' N - 77° 44.7855' W; following the shoreline across Rich Inlet at the COLREGS demarkation line to the point of origin. [with the exception of Howard Channel from the IWW to New Topsail Inlet, Green Channel from Marker "105" to Rich's Inlet, Butler's Creek (Utley's Channel) from the IWW to Nixon's Channel, and Nixon's Channel from IWW to Rich's Inlet;]
- (b) Futch Creek - northwest of a line beginning on the north shore at Baldeagle Point at a point 34° 17.9900' N - 77° 44.4930' W; running southerly to Porter's Neck to a point 34° 18.1170' N - 77° 44.3760' W;
- (c) Page's Creek - northwest of a line beginning on the north shore at a point 34° 16.7420' N - 77° 46.6940' W; running southwesterly to the south shore to a point 34° 16.6910' N - 77° 46.8510' W;
- (d) All waters bounded on the north by the Figure Eight Island Causeway, on the east by Mason's Channel, on the south by Mason's Inlet Channel and on the west by the Intracoastal Waterway, with the exception of Mason's Channel.
- (17) Greenville Sound Area:
- (a) Shell Island area - all waters bounded on the north by Mason's Inlet Channel, on the west by the IWW, on the south by Old Moores Inlet Channel and on the east by Wrightsville Beach.
- (b) Howe Creek (Moore's Creek) - northwest of a line beginning on the north shore at a point 34° 14.9060' N - 77° 47.2180' W; running southwesterly to the south shore to a point 34° 14.8470' N - 77° 47.3810' W;
- (c) Bradley Creek - all waters west of a line beginning on the north side of the Highway 17, 74 and 76 bridge at a point 34° 12.9700' N - 77° 50.0260' W running southerly to the south side of the Bridge at a point 34° 12.8620' N - 77° 50.0550' W;
- (d) Wrightsville Beach area - all waters in an area enclosed by a line beginning across the IWW from the mouth of Bradley Creek at a point 34° 12.3530' N - 77° 49.1250' W; running easterly to a point (near the Borrow Pit) 34° 12.3820' N - 77° 48.6610' W; then bounded by Bank's Channel on the east, Shinn Creek on the south and the IWW on the west, back to point of origin.
- (18) Masonboro Sound Area:
- (a) Masonboro-Myrtle Grove Sound area (west side) -all waters west and northwest of the IWW beginning at a point on the shoreline 34° 12.7423' N

- 77° 49.8391' W; running southeasterly to a point at the mouth of Bradley Creek at a point 34° 12.4130' N - 77° 49.2110' W; running along the west side of the IWW to a point opposite Beacon "161" at 34° 03.5590' N - 77° 53.4550' W; running westerly to a point on the shoreline 34° 03.5715' N - 77° 53.4979' W; running along the shoreline back to the point of origin.
- (b) Masonboro-Myrtle Grove Sound area (east side) - all waters south and southeast of a line beginning on the north end of Masonboro Island at a point 34° 10.9130' N - 77° 48.9550' W; running northwesterly to a point near the intersection of Shinn Creek and the IWW 34° 11.3840' N - 77° 49.5240' W; running along the east side of the IWW to a point near Marker "161" 34° 03.5270' N - 77° 53.3550' W; running southerly to a point on the shoreline 34° 03.3917' N - 77° 53.0423' W; running along the shoreline across Carolina Beach Inlet at the COLREGS demarcation line back to the point of origin (with the exception of Old Masonboro Channel and Carolina Beach Inlet Channel).
- (19) Cape Fear River Area:
- (a) Cape Fear River - all waters north of a line beginning on the west shore at a point 34° 10.4410' N - 77° 57.7400' W; running easterly through Beacon "59" to the east shore to a point 34° 10.4050' N - 77° 57.1310' W; with the exception of the maintained channel, and all waters north of a line beginning on the west shore at a point 34° 04.6040' N - 77° 56.4780' W; running easterly through Beacon "41" to the east shore to a point 34° 04.7920' N - 77° 55.4740' W; with the exception of 300 yards east and west of the main shipping channel up to Beacon "59" (mouth of Brunswick River);
- (b) The Basin (Ft. Fisher area) - east of a line beginning on the north shore at a point 33° 57.2950' N - 77° 56.1450' W; running southeasterly to the south shore to a point 33° 57.1120' N - 77° 56.2060' W;
- (c) Walden Creek - all waters northwest of a line beginning on the north side of county road No. 1528 bridge at a point 33° 58.2950' N - 77° 59.0280' W running southerly to the south side of the bridge at a point 33° 58.2250' N - 77° 59.0440' W;
- (d) Baldhead Island Creeks:
- (i) Baldhead Creek - southeast of a line beginning on the north shore at a point 33° 51.7680' N - 77° 59.1700' W; running westerly to the south shore to a point 33° 51.7590' N - 77° 59.1850' W;
- (ii) Cape Creek - southeast of a line beginning on the north shore at a point 33° 51.9740' N - 77° 58.3090' W; running southwesterly to the south shore to a point 33° 51.9480' N - 77° 58.3480' W;
- (iii) Bluff Island Creek (East Beach Creek) - south of a line beginning on the west shore at a point 33° 52.6740' N - 77° 58.1530' W; running easterly to the east shore to a point 33° 52.6850' N - 77° 58.0780' W;
- (iv) Deep Creek - south of a line on the west shore at a point 33° 52.6850' N - 77° 58.0780' W; running northeasterly to the east shore to a point 33° 52.7690' N - 77° 58.0110' W;
- (e) Dutchman Creek - north of a line beginning on the west shore at a point 33° 55.1560' N - 78° 02.7260' W; running southeasterly to the east shore to a point 33° 55.1130' N - 78° 02.5990' W;
- (f) Denis Creek - west of a line beginning on the north shore at a point 33° 55.0410' N - 78° 03.5180' W; running southerly to the south shore to a point 33° 55.0120' N - 78° 03.5110' W;
- (g) Piney Point Creek - west of a line beginning on the north shore at a point 33° 54.6310' N - 78° 03.5020' W; running southerly to the south shore to a point 33° 54.6040' N - 78° 03.5010' W;
- (h) Molasses, Coward and Smokehouse creeks - all waters bounded by the IWW and the Elizabeth River on the north and east, the Oak Island Coast Guard canal on the east, Oak Island

- on the south and the CP and L Discharge canal on the west;
- (i) Oak Island area - all waters north of the IWW from a point on the shoreline 33° 55.2827' N – 78° 03.7681' W; running southerly to a point across the IWW from Marker # 9 33° 55.2610' N – 78° 03.7630' W; running along the IWW to a point near Beacon "18" 33° 55.7410' N - 78° 10.2760' W; running northerly to a point on the shoreline 33° 55.7718' N – 78° 10.2744' W; running along the shoreline back to the point of origin; all waters south of the IWW from a point near Marker "9" 33° 55.2060' N - 78° 03.7580' W; running along the IWW to a point across the IWW from Beacon "18" 33° 55.7199' N – 78° 10.2764' W; running southerly to a point on the shoreline 33° 55.6898' N – 78° 10.2775' W; running along the shoreline back to the point of origin.
- (20) Lockwoods Folly Inlet Area:
- (a) Davis Creek and Davis Canal - east of a line beginning on the north shore at a point 33° 55.2280' N - 78° 10.8610' W; running southerly to the south shore to a point 33° 55.1970' N - 78° 10.8390' W;
- (b) Lockwoods Folly River - north of a line beginning on the west shore at a point 33° 56.3880' N - 78° 13.2360' W; running easterly to the east shore to a point 33° 56.6560' N - 78° 12.8350' W;
- (c) Spring Creek (Galloway Flats area) - all waters northwest of a line beginning on the north shore at a point 33° 55.7350' N - 78° 13.7090' W; running southwesterly to the south shore to a point 33° 55.5590' N - 78° 13.7960' W.
- (21) Shallotte Inlet Area:
- (a) Shallotte River - north of a line beginning on Bill Holden's Landing at a point 33° 55.8840' N - 78° 22.0710' W; running northeasterly to Gibbins Point to a point 33° 56.3190' N - 78° 21.8740' W;
- (b) Shallotte River (Ocean Flats)-excluding Gibbs Creek, the area enclosed by a line beginning at Long Point 33° 54.6210' N - 78° 21.7960' W; then bounded on the south by the IWW, the west by Shallotte River, the north by Gibb's Creek and the east by the shoreline of the Shallotte River back to the point of origin;
- (c) Shallotte Creek (Little Shallotte River) - east of a line beginning on Shell Landing at a point 33° 55.7390' N - 78° 21.6410' W; running southerly to Boone's Neck Point to a point 33° 55.5990' N - 78° 21.5480' W;
- (d) Saucepan Creek - northwest of a line beginning on the west shore at a point 33° 54.7007' N - 78° 23.4183' W; running northerly to the east shore (mouth of Old Mill Creek) to a point 33° 54.9140' N - 78° 23.4370' W;
- (e) Old Channel area - all waters south of the IWW from a point near Beacon "83" 33° 54.2890' N - 78° 23.1930' W; running along the IWW to a point near Ocean Isle Beach bridge 33° 53.7270' N - 78° 26.3760' W; running southerly to a point on the shoreline 33° 53.7082' N – 78° 26.3732' W; running southerly along the shoreline to a point on the shoreline 33° 53.3827' N – 78° 26.2118' W; running along the shoreline to the point of origin; except the dredged finger canals at Ocean Isle Beach located on the south side of the IWW between the Ocean Isle Beach Bridge and IWW Marker "89".
- (22) Little River Inlet Area:
- (a) Gause Landing area - all waters north of the IWW from a point on the shoreline 33° 53.9053' N – 78° 25.6064' W; running southerly to a point near Beacon "90" 33° 53.8790' N - 78° 25.5950' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line; 33° 52.0003' N – 78° 33.5633' W; running northerly along the South Carolina line to a point on the shoreline 33° 52.0290' N – 78° 33.5893' W; running along the shoreline to the point of origin.
- (b) Eastern Channel Area – all waters bounded on the east and south by Eastern Channel, on the west by Jink's Creek and on the north by the IWW;
- (c) The Big Narrows Area:
- (i) Big Teague Creek - west of a line beginning on the north shore at a point 33° 52.8260' N - 78° 30.0110' W; running southerly to the south shore

- to a point 33° 52.8040' N - 78° 29.9940' W;
 - (ii) Little Teague Creek - west of a line beginning on the north shore at a point 33° 52.9280' N - 78° 30.1500' W; running southeasterly to the south shore to a point 33° 52.9130' N - 78° 30.1220' W;
 - (iii) Big Norge Creek - south of a line beginning on the west shore at a point 33° 52.8550' N - 78° 30.6190' W; running easterly to the east shore to a point 33° 52.8620' N - 78° 30.5900' W;
 - (d) Mad Inlet area - all waters south of the IWW from a point on the shoreline 33° 52.3121' N - 78° 30.4990' W; running northerly to a point near the Sunset Beach bridge 33° 52.8450' N - 78° 30.6510' W; then following the IWW to a point at the intersection of the IWW and the South Carolina line 33° 51.9888' N - 78° 33.5458' W; running southeasterly along the South Carolina line to a point on the shoreline; running along the shoreline across Mad Inlet at the COLREGS demarcation line to the point of origin; with the exception of Bonaparte Creek;
 - (e) Calabash River - all waters east of a line beginning at a point on the north side of state road No. 1164 bridge at a point 33° 53.3850' N - 78° 32.9710' W running southerly to the south side of the bridge at a point 33° 53.3580' N - 78° 32.9750' W.
- ~~Lone Tree Creek 35° 25' 05" N 76° 02' 05" W running 239° (M) 1000 yards to a point 35° 24' 46" N 76° 02' 32" W; thence 336° (M) 2200 yards to a point 35° 25' 42" N 76° 03' 16" W; thence 062° (M) 750 yards to a point on shore 35° 25' 54" N 76° 02' 54" W; thence following the shoreline and the Lone Tree Creek primary nursery area line to the beginning point;~~
 - (ii) ~~Bound by a line beginning at a point on the south shore of Mt. Pleasant Bay 35° 23' 07" N 76° 04' 12" W running 083° (M) 1200 yards to a point 35° 23' 17" N 76° 03' 32" W; thence 023° (M) 2400 yards to a point 35° 24' 27" N 76° 03' 12" W; thence 299° (M) 1100 yards to a point on shore 35° 24' 38" N 76° 04' 48" W; thence following the shoreline and the Browns Island and Mt. Pleasant Bay primary nursery area line to the beginning point; except pots may be set no more than 50 yards from the shoreline.~~
 - (B) ~~In Juniper Bay bound by a line beginning at a point on Juniper Bay Point 35° 20' 18" N 76° 13' 22" W running 275° (M) 2300 yards to a point 35° 20' 15" N 76° 14' 45" W; thence 007° (M) 2100 yards to Daymarker No. 3; thence 040° (M) 1100 yards to a point on shore 35° 21' 45" N 76° 14' 24" W; thence following the shoreline and the Buck Creek and the Laurel Creek primary nursery area line to the beginning point.~~
 - (C) ~~In Swanquarter Bay, bound by a line beginning at a point on the north shore of Caffee Bay 35° 21' 57" N 76° 17' 44" W; running 191° (M) 800 yards to a point on the south shore 35° 21' 35" N 76° 17' 45" W; thence following the shoreline to a point on shore 35° 21' 37" N 76° 18' 22" W; thence running 247° (M) 1300 yards to a point 35° 21' 17" N 76° 19' 03" W; thence 340° (M) 1350~~

Authority G.S. 113-134; 113-182; 143B-289.52.

15A NCAC 03R .0107 DESIGNATED POT AREAS

(a) ~~As referenced in 15A NCAC 03J .0301, it is unlawful to use pots north and east of the Highway 58 Bridge at Emerald Isle from May 1 through October 31, except in areas described below:~~

- (1) ~~In Albemarle Sound and tributaries.~~
- (2) ~~In Roanoke Sound and tributaries.~~
- (3) ~~In Croatan Sound and tributaries.~~
- (4) ~~In Pamlico Sound and tributaries, except the following areas and areas further described in Paragraphs (5), (6), and (7) of this Rule:~~
 - (A) ~~In Wysocking Bay:~~
 - (i) ~~Bound by a line beginning at a point on the south shore of~~

- yards to a point $35^{\circ} 21' 51''$ N $76^{\circ} 19' 27''$ W; thence 081° (M) 1150 yards to a point on the north shore $35^{\circ} 22' 02''$ N $76^{\circ} 18' 48''$ W; thence following the shoreline and the primary nursery area line to the beginning point.
- (D) — In Deep Cove east of a line beginning at a point on the south shore $35^{\circ} 20' 33''$ N $76^{\circ} 22' 57''$ W, running 021° (M) 1800 yards to a point on the north shore $35^{\circ} 21' 55''$ N $76^{\circ} 22' 43''$ W and west of a line beginning at a point on the south shore $35^{\circ} 20' 44''$ N $76^{\circ} 22' 05''$ W running 003° (M) 1400 yards to a point on the north shore $35^{\circ} 21' 26''$ N $76^{\circ} 22' 11''$ W.
- (E) — Off Striking Bay bound by a line beginning at a point on the west shore of Striking Bay $35^{\circ} 23' 20''$ N $76^{\circ} 26' 59''$ W running 190° (M) 1900 yards to a point $35^{\circ} 22' 23''$ N $76^{\circ} 27' 00''$ W; thence 097° (M) 900 yards to Beacon No. 2; thence 127° (M) 1600 yards to a point $35^{\circ} 21' 55''$ N $76^{\circ} 25' 43''$ W; thence following the shoreline to a point $35^{\circ} 22' 30''$ N $76^{\circ} 25' 14''$ W; thence 322° (M) 2200 yards to a point $35^{\circ} 23' 17''$ N $76^{\circ} 26' 10''$ W; thence following the shoreline to a point $35^{\circ} 23' 19''$ N $76^{\circ} 26' 24''$ W; thence 335° (M) 900 yards to a point $35^{\circ} 23' 40''$ N $76^{\circ} 26' 43''$ W; thence 059° (M) 500 yards to a point $35^{\circ} 23' 30''$ N $76^{\circ} 26' 58''$ W; thence following the shoreline to the beginning point.
- (F) — In Rose Bay bound by a line beginning at a point southwest of Swan Point $35^{\circ} 23' 56''$ N $76^{\circ} 23' 39''$ W running 288° (M) 1500 yards to a point on shore $35^{\circ} 24' 03''$ N $76^{\circ} 24' 33''$ W; thence 162° (M) 1650 yards to a point $35^{\circ} 23' 19''$ N $76^{\circ} 24' 04''$ W; thence 084° (M) 1350 yards to a point on shore $35^{\circ} 23' 29''$ N $76^{\circ} 23' 17''$ W; thence following the shoreline to the beginning point.
- (G) — In Spencer Bay bound by a line beginning at a point on shore at Willow Point $35^{\circ} 22' 26''$ N $76^{\circ} 28' 00''$ W running 059° (M) 1700 yards to a point $35^{\circ} 22' 57''$ N $76^{\circ} 27' 13''$ W; thence 317° (M) 1500 yards to a point $35^{\circ} 23' 25''$ N $76^{\circ} 27' 57''$ W; thence 243° (M) 1300 yards to a point on shore $35^{\circ} 23' 02''$ N $76^{\circ} 28' 35''$ W; thence following the shoreline
- and the unnamed primary nursery area line to the beginning point.
- (H) — In Big Porpoise Bay bound by a line beginning at a point on shore $35^{\circ} 15' 58''$ N $76^{\circ} 29' 10''$ W running 182° (M) 750 yards to Sage Point $35^{\circ} 15' 36''$ N $76^{\circ} 29' 06''$ W; thence 116° (M) 850 yards to a point $35^{\circ} 15' 28''$ N $76^{\circ} 28' 36''$ W; thence 023° (M) 700 yards to a point on shore $35^{\circ} 15' 48''$ N $76^{\circ} 28' 30''$ W; thence following the shoreline to the beginning point.
- (I) — In Middle Bay bound by a line beginning at Middle Bay Point $35^{\circ} 14' 53''$ N $76^{\circ} 28' 41''$ W; running 210° (M) 3650 yards to Sow Island Point $35^{\circ} 13' 09''$ N $76^{\circ} 29' 28''$ W; thence following the shoreline of Middle Bay to Big Fishing Point $35^{\circ} 14' 05''$ N $76^{\circ} 29' 52''$ W; thence 008° (M) 1100 yards to a point on the north shore $35^{\circ} 14' 31''$ N $76^{\circ} 29' 52''$ W; thence following the shoreline to the point of beginning.
- (J) — In Jones Bay bound by a line beginning at a point on Sow Island Point $35^{\circ} 13' 09''$ N $76^{\circ} 29' 28''$ W running 204° (M) 2600 yards to Green Flasher No. 5; thence 322° (M) 2450 yards to a point $35^{\circ} 12' 48''$ N $76^{\circ} 30' 58''$ W; thence 217° (M) 1200 yards to a point on shore $35^{\circ} 12' 20''$ N $76^{\circ} 31' 16''$ W; thence 284° (M) 740 yards to a point on shore $35^{\circ} 12' 26''$ N $76^{\circ} 31' 46''$ W; thence following the shoreline to a point $35^{\circ} 12' 36''$ N $76^{\circ} 32' 01''$ W; thence 051° (M) 600 yards to a point $35^{\circ} 12' 52''$ N $76^{\circ} 31' 45''$ W; thence parallel with the shoreline no more than 600 yards from shore to a point $35^{\circ} 13' 11''$ N $76^{\circ} 32' 07''$ W; thence 038° (M) to a point 600 yards from the north shore $35^{\circ} 13' 39''$ N $76^{\circ} 31' 54''$ W; thence parallel with the shoreline no more than 600 yards from shore to a point $35^{\circ} 13' 09''$ N $76^{\circ} 30' 48''$ W; thence 009° (M) 600 yards to a point on shore $35^{\circ} 13' 26''$ N $76^{\circ} 30' 47''$ W; thence following the shoreline to the beginning point.
- (K) — In an area bound by a line beginning at Boar Point $35^{\circ} 12' 07''$ N $76^{\circ} 31' 04''$ W running 106° (M) 2000 yards to Green Flasher No. 5; thence 200° (M) 2200 yards to a point $35^{\circ} 10' 56''$ N $76^{\circ} 30' 10''$ W; thence 282° (M)

- 2350 yards to Bay Point 35° 11' 02" N 76° 31' 35" W; thence following the shoreline to the beginning point.
- (5) In Pamlico River west of a line from a point on Pamlico Point 35° 18' 42" N 76° 28' 58" W running 009° (M) through Daymarker No. 1 and Willow Point Shoal Beacon to a point on Willow Point 35° 22' 23" N 76° 28' 48" W pots may be used in the following areas:
- (A) In that area bound by a line beginning at a point on the line from Pamlico Point to Willow Point 35° 19' 24" N 76° 28' 56" W running westerly parallel to the shoreline at a distance of no more than 1000 yards to Green Flasher No. 1 at the mouth of Goose Creek; thence 248° (M) parallel to the ICWW to a point off Fulford Point 35° 19' 59" N 76° 36' 41" W; thence 171° (M) to a point on Fulford Point 35° 19' 41" N 76° 36' 34" W.
- (B) All coastal waters and tributaries of Oyster Creek, James Creek, Middle Prong and Clark Creek.
- (C) All coastal waters of Goose Creek:
- (i) In that area bound by a line beginning at a point on Reed Hammock 35° 20' 24" N 76° 36' 51" W running 171° (M) 300 yards to a point 35° 20' 16" N 76° 36' 48" W; thence parallel with the shoreline no more than 300 yards from shore to a point 35° 20' 09" N 76° 37' 10" W; thence 302° (M) 300 yards to a point on shore 35° 20' 13" N 76° 37' 19" W.
- (ii) In that area bound by a line beginning at a point on shore 35° 19' 58" N 76° 37' 33" W; running 291° (M) 300 yards to a point 35° 19' 57" N 76° 37' 21" W; thence parallel to the shoreline no more than 300 yards from shore to a point 35° 18' 16" N 76° 37' 16" W; thence 292° (M) to a point on the north shore of Snode Creek 35° 18' 15" N 76° 37' 27" W.
- (iii) In that area bound by a line beginning at a point at the mouth of Goose Creek 35° 19' 59" N 76° 36' 41" W; running 348° (M) to Green Daymarker No. 5; thence south parallel to the shoreline no more than 300 yards from shore to a point 35° 18' 12" N 76° 37' 07" W; thence 112° (M) to Store Point 35° 18' 09" N 76° 36' 57" W.
- (iv) Between the line from Store Point to Snode Creek and a line beginning at a point on Long Neck Point running 264° (M) through Beacon No. 15 to Huskie Point from the shoreline to no more than 150 yards from shore.
- (v) All coastal waters southeast of the line from Long Neck Point through Beacon No. 15 to Huskie Point.
- (vi) Campbell Creek west of a line from a point on Huskie Point 35° 17' 00" N 76° 37' 06" W running 004° (M) to Pasture Point 35° 17' 20" N 76° 37' 08" W, to the Inland Commercial line.
- (D) All coastal waters bound by a line beginning on Reed Hammock 35° 20' 24" N 76° 36' 51" W running 171° (M) to a point 35° 20' 16" N 76° 36' 47" W; thence 100° (M) 800 yards to Red Daymarker No. 4; thence 322° (M) 1200 yards to a point 35° 20' 40" N 76° 36' 48" W; thence westerly parallel to the shoreline at a distance of 300 yards to a point in Bond Creek 35° 20' 40" N 76° 41' 37" W; thence 199° (M) to a point on the south shore of Muddy Creek 35° 20' 18" N 76° 41' 34" W, including all waters of Muddy Creek up to the Inland Coastal boundary line.
- (E) Along the west shore of Bond Creek from Fork Point to the Coastal-Inland boundary line from the shoreline to no more than 50 yards from shore.
- (F) All coastal waters of South Creek upstream of a line beginning at a point on Fork Point 35° 20' 45" N 76° 41' 47" W running 017° (M) to a point on Hickory Point 35° 21' 44" N 76° 41' 36" W.
- (G) In that area bound by a line beginning at a point at the six foot depth contour south of Hickory Point 35° 21' 33" N 76° 41' 39" W; thence easterly following the six foot depth contour to a point off the east end of Indian Island 35° 21' 42" N 76° 38' 04" W; thence 270° (M) to a point on the

- east end of Indian Island 35° 21' 38" N 76° 38' 36" W; thence following the shoreline of Indian Island to a point on the west end 35° 21' 37" N 76° 39' 40" W; thence 293° (M) toward Daymarker No. 1 to a point at the six foot depth contour 35° 21' 46" N 76° 40' 16" W; thence following the six foot depth contour in a westerly direction to a point off Long Point 35° 22' 42" N 76° 42' 44" W; thence 233° (M) to a point on shore 35° 22' 24" N 76° 43' 05" W.
- (H) — Beginning at a point on shore near Long Point 35° 22' 29" N 76° 43' 25" W, running 001° (M) to a point 300 yards offshore 35° 22' 39" N 76° 43' 26" W; thence westerly parallel to the shoreline at a distance of 300 yards to a point 35° 22' 39" N 76° 43' 59" W; thence 209° (M) to a point on shore 35° 22' 30" N 76° 44' 03" W.
- (I) — Beginning at a point on shore 35° 22' 30" N 76° 44' 27" W, running 355° (M) to a point offshore 35° 22' 40" N 76° 44' 31" W; thence westerly parallel to the shoreline at a distance of 300 yards to a point 35° 22' 53" N 76° 45' 00" W; thence running 251° (M) to a point on shore 35° 22' 46" N 76° 45' 14" W.
- (J) — Beginning at a point on shore 35° 22' 54" N 76° 45' 43" W; running 003° (M) to a point offshore 35° 23' 03" N 76° 45' 43" W; thence westerly parallel to the shoreline at a distance of 300 yards to the intersection of a line beginning on the north shore at Gum Point 35° 25' 09" N 76° 45' 33" W; running 210° (M) to a point on the south shore 35° 23' 28" N 76° 46' 26" W.
- (K) — All coastal waters west of a line beginning on the north shore at Gum Point 35° 25' 09" N 76° 45' 33" W running 210° (M) to a point on the south shore 35° 23' 28" N 76° 46' 26" W.
- (L) — On the north side of Pamlico River bound by a line beginning at the intersection of the line from Gum Point to the south shore 500 yards from shore 35° 24' 55" N 76° 45' 39" W running easterly parallel to the shoreline at a distance of 500 yards to a point at the six foot contour near Adams Point 35° 23' 08" N 76° 35' 59" W.
- (M) — All waters and tributaries of North Creek except the marked navigation channel.
- (N) — In that area bound by a line beginning at a point at the six foot contour near Adams Point 35° 23' 08" N 76° 35' 59" W running westerly following the six foot depth contour to a point off Wades Point 35° 23' 28" N 76° 34' 09" W.
- (O) — Pungo River:
- (i) — Bound by a line beginning at Wades Point 35° 23' 16" N 76° 34' 30" W running 059° (M) to a point at the six foot depth contour, 35° 23' 28" N 76° 34' 09" W; thence northerly following the six foot depth contour to a point near Beacon No. 3 35° 25' 44" N 76° 34' 46" W; thence 272° (M) 950 yards to a point on shore 35° 25' 41" N 76° 35' 22" W.
- (ii) — Bound by a line beginning at a point on shore 35° 25' 50" N 76° 35' 37" W running 050° (M) 1150 yards to a point at 35° 26' 17" N 76° 35' 10" W; thence northerly following the six foot depth contour to a point 35° 26' 54" N 76° 36' 09" W; thence 314° (M) 350 yards to a point on shore 35° 27' 00" N 76° 36' 20" W.
- (iii) — Bound by a line beginning at a point on shore 35° 27' 14" N 76° 36' 26" W running 077° (M) 800 yards to a point 35° 27' 23" N 76° 36' 02" W; thence northerly following the six foot depth contour to a point off Windmill Point 35° 30' 50" N 76° 38' 09" W; thence 076° (M) to a point 200 yards west of Daymarker No. 3 35° 31' 21" N 76° 36' 37" W; thence 312° (M) to a point at the "Breakwater" 35° 31' 36" N 76° 37' 05" W.
- (iv) — All coastal waters bound by a line beginning at a point at the "Breakwater" 200 yards

northeast of Beacon No. 6 35° 31' 47" N 76° 36' 51" W running 132° (M) to a point 200 yards from Daymarker No. 4 35° 31' 31" N 76° 36' 21" W; thence running 102° (M) to a point 35° 31' 28" N 76° 35' 59" W; thence running 010° (M) to Beacon No. 1; thence running 045° (M) 700 yards to a point on shore 35° 32' 22" N 76° 35' 42" W.

(v) — All coastal waters north and east of a line beginning at a point on shore west of Lower Dowry Creek 35° 32' 25" N 76° 35' 07" W running 177° (M) 1950 yards to a point 200 yards north of Daymarker No. 11 35° 31' 31" N 76° 35' 06" W; thence easterly parallel to the marked navigation channel at a distance of 200 yards to a point on the shore northwest of Wilkerson Creek 35° 33' 13" N 76° 27' 36" W.

(vi) — All coastal waters south of a line beginning on shore south of Wilkerson Creek 35° 33' 02" N 76° 27' 20" W running westerly parallel to the marked navigation channel at a distance of 200 yards to a point southeast of Daymarker No. 14 35° 31' 05" N 76° 32' 34" W; thence running 208° (M) to a point on shore 35° 30' 28" N 76° 32' 47" W.

(vii) — All coastal waters bound by a line beginning on shore east of Durants Point 35° 30' 29" N 76° 33' 25" W running 347° (M) to a point southwest of Daymarker No. 12 35° 31' 08" N 76° 33' 53" W; thence westerly parallel to the marked navigation channel at a distance of 200 yards to a point south of Beacon No. 10 35° 31' 08" N 76° 35' 35" W; thence running 185° (M) to a point at the six foot depth contour between

Beacon No. 8 and the eastern shore of Pungo River 35° 30' 08" N 76° 35' 28" W; thence following the six foot depth contour to a point 35° 28' 09" N 76° 33' 43" W; thence 127° (M) to a point on shore 35° 28' 00" N 76° 33' 25" W; thence 159° (M) to a point at the six foot depth contour 35° 27' 40" N 76° 33' 12" W including the waters of Slades Creek and its tributaries; thence 209° (M) to a point on shore 35° 27' 22" N 76° 33' 21" W; thence 272° (M) to a point at the six foot depth contour 35° 27' 18" N 76° 33' 53" W; thence southerly following the six foot depth contour to a point south of Sandy Point 35° 26' 35" N 76° 33' 50" W; thence 087° (M) to a point on shore 35° 26' 38" N 76° 33' 34" W.

(viii) — In that area bound by a line beginning at a point on shore 35° 26' 20" N 76° 33' 18" W running 176° (M) to a point at the six foot depth contour 35° 26' 05" N 76° 33' 13" W; thence southerly following the six foot depth contour throughout Fortescue Creek to a point off Fortescue Creek 35° 25' 44" N 76° 32' 09" W; thence 145° (M) to a point on shore 35° 25' 36" N 76° 32' 01" W.

(ix) — In that area bound by a line beginning at a point on shore 35° 25' 20" N 76° 32' 01" W running 258° (M) to a point at the six foot depth contour 35° 25' 17" N 76° 32' 18" W; thence following the six foot depth contour to the intersection of the line from a point 500 yards west of Currituck Point 35° 24' 30" N 76° 32' 42" W; thence southeasterly parallel to the shoreline and including Abel Bay at a distance of 500 yards to a

- point at the intersection of the line from Pamlico Point to Willow Point 35° 22' 09" N 76° 28' 48" W.
- (6) In Bay River west of a line beginning at a point on Maw Point 35° 09' 02" N 76° 32' 09" W running 022° (M) to a point on Bay Point 35° 11' 02" N 76° 31' 34" W, pots may be used in the following areas:
- (A) In that area beginning at a point on Maw Point 35° 09' 02" N 76° 32' 09" W; running 018° (M) to Green Daymarker No. 1; thence 223° (M) to a point on shore in Fisherman Bay 35° 09' 18" N 76° 32' 23" W.
- (B) In Fisherman Bay bound by a line beginning at a point on the shore west of Maw Point 35° 09' 18" N 76° 33' 02" W; thence 351° (M) 3200 yards to lighted Beacon No. 3 in Bay River; thence 230° (M) 1200 yards to a point on the shore 35° 10' 24" N 76° 34' 00" W.
- (C) In that area bound by a line beginning at a point on the east shore at the mouth of Bonners Bay 35° 10' 05" N 76° 35' 18" W; thence 306° (M) 300 yards to a point in Bay River, 35° 10' 10" N 76° 35' 30" W; thence parallel to the shoreline no more than 300 yards from shore to a point in Bay River 35° 10' 40" N 76° 34' 42" W; thence 188° (M) to a point on shore 35° 10' 27" N 76° 34' 42" W.
- (D) In Bonner Bay bound by a line beginning at a point on the east shore 35° 10' 05" N 76° 35' 18" W running 306° (M) 200 yards to a point 35° 10' 09" N 76° 35' 25" W; thence parallel to the shoreline no more than 200 yards offshore to a point 35° 09' 16" N 76° 35' 18" W; thence 097° (M) 200 yards to a point on shore 35° 09' 16" N 76° 35' 13" W.
- (E) In Bonner Bay, Spring Creek and Long Creek south of a line beginning at a point on the east shore 35° 09' 16" N 76° 35' 13" W running 274° (M) to a point on the west shore 35° 09' 14" N 76° 35' 43" W.
- (F) In Bonner Bay bound by a line beginning at a point on the west shore 35° 09' 14" N 76° 35' 44" W running 094° (M) 100 yards to a point 35° 09' 13" N 76° 35' 39" W; thence parallel to the shoreline no more than 100 yards offshore to a point in Riggs Creek 35° 09' 15" N 76° 36' 08" W; thence 142° (M) to a point on shore 35° 09' 13" N 76° 36' 08" W.
- (G) In that area bound by a line beginning on the south shore of Bay River west of Bell Point 35° 09' 40" N 76° 40' 00" W; running 314° (M) to a point 200 yards offshore 35° 09' 43" N 76° 40' 06" W; thence no more than 200 yards from the shoreline to a point 35° 09' 53" N 76° 36' 45" W; thence 102° (M) to a point 35° 09' 50" N 76° 35' 54" W; thence 181° (M) to a point 35° 09' 36" N 76° 35' 51" W; thence 237° (M) to a point in Riggs Creek 35° 09' 18" N 76° 36' 12" W; thence 322° (M) to a point on shore at the mouth of Riggs Creek 35° 09' 21" N 76° 36' 18" W.
- (H) In that area on the south side of Bay River bound by a line beginning at a point on shore at the confluence of Bay River and Trent Creek 35° 08' 27" N 76° 43' 12" W running 016° (M) 150 yards to a point 35° 08' 31" N 76° 43' 11" W; thence no more than 150 yards from shore to a point 35° 08' 57" N 76° 40' 19" W; thence 116° (M) to a point on shore at Moores Creek 35° 08' 57" N 76° 40' 14" W.
- (I) In Bay River and Trent Creek west of a line beginning at a point on the south shore 35° 08' 27" N 76° 43' 12" W running 016° (M) to a point on the north shore 35° 08' 41" N 76° 43' 09" W.
- (J) In that area on the north shore of Bay River bound by a line beginning at a point west of Vandemere Creek 35° 10' 53" N 76° 39' 42" W running 135° (M) 150 yards to a point 35° 10' 52" N 76° 39' 39" W; thence no more than 150 yards from shore to a point at the confluence of Bay River and Trent Creek 35° 08' 37" N 76° 43' 10" W; thence to a point on the north shore 35° 08' 39" N 76° 43' 09" W.
- (K) In Vandemere Creek northeast of a line beginning at a point on the east shore 35° 11' 04" N 76° 39' 22" W running 315° (M) to a point on the west shore 35° 11' 12" N 76° 39' 36" W.
- (L) In that area bound by a line beginning at a point at the mouth of Vandemere

- Creek 35° 11' 04" N 76° 39' 22" W, running 216° (M) 200 yards to a point in Bay River 35° 10' 58" N 76° 39' 25" W; thence parallel to the shoreline no more than 200 yards from shore to a point in Bay River northwest of Beacon No. 4 35° 10' 40" N 76° 36' 38" W; thence 344° (M) 200 yards to a point on shore 35° 10' 45" N 76° 36' 42" W.
- (M) — In that area bound by a line beginning at a point on Sanders Point 35° 11' 19" N 76° 35' 54" W; running 067° (M) 200 yards to a point 35° 11' 23" N 76° 35' 47" W; thence following the shoreline no more than 200 yards from shore to a point in Bay River northwest of Beacon No. 4 35° 10' 40" N 76° 36' 38" W; thence 344° (M) 200 yards to a point on the shore 35° 10' 45" N 76° 36' 42" W.
- (N) — In that area beginning at a point on shore 35° 11' 53" N 76° 35' 54" W of a line running 170° (M) to a point 35° 11' 40" N 76° 35' 51" W; thence parallel to the shoreline no more than 500 yards from shore to a point 35° 11' 57" N 76° 35' 05" W; thence running 344° (M) to a point on shore at the mouth of Gales Creek 35° 12' 10" N 76° 35' 12" W.
- (O) — In that area bound by a line beginning at a point on shore at the mouth of Gale Creek 35° 12' 08" N 76° 34' 52" W; running 278° (M) 200 yards to a point in Bay River 35° 12' 08" N 76° 35' 02" W; thence running parallel to the shoreline at a distance of 200 yards to a point in Bay River 35° 11' 32" N 76° 33' 24" W; thence running 352° (M) 200 yards to a point on shore at Dump Creek 35° 11' 39" N 76° 33' 25" W.
- (P) — In Gale Creek except the Intracoastal Waterway north of a line beginning at a point on the west shore 35° 12' 08" N 76° 35' 12" W running 098° (M) to a point on the west shore 35° 12' 08" N 76° 34' 52" W.
- (Q) — In an area bound by a line beginning at a point on the eastern shore at the mouth of Rockhole Bay 35° 11' 06" N 76° 32' 11" W; thence 180° (M) 600 yards to a point in Bay River 35° 10' 49" N 76° 32' 09" W; thence east with the five foot curve 1100 yards to a point 35° 10' 36" N 76° 31' 30" W; thence 000° (M) 850 yards to a point on Bay Point 35° 11' 02" N 76° 31' 34" W.
- (7) — In the Neuse River and West Bay Area south and west of a line beginning at a point on Maw Point 35° 09' 02" N 76° 32' 09" W, running 137° (M) through the Maw Point Shoal Day Marker No. 2 and through the Neuse River Entrance Light to a point at the mouth of West Bay 35° 02' 09" N 76° 21' 53" W, pots may be set in the following areas:
- (A) — All coastal fishing waters northwest of a line beginning at a point at the mouth of Sloecum Creek 34° 57' 02" N 76° 53' 42" W, running 029° (M) to a point at the mouth of Beards Creek 35° 00' 08" N 76° 52' 13" W. Pots may also be set in coastal fishing waters of Goose Bay and Upper Broad Creek.
- (B) — In that area bound by a line beginning at a point on the north shore at Mill Creek 34° 59' 34" N 76° 51' 06" W; thence running 223° (M) approximately 300 yards into the river to a point 34° 59' 25" N 76° 51' 14" W; thence along the six foot depth curve southeast to a point at the rock jetty 34° 58' 06" N 76° 49' 14" W; thence 016° (M) approximately 300 yards to a point on the shore 34° 58' 17" N 76° 49' 12" W.
- (C) — In that area bound by a line beginning at a point on the north shore approximately 500 yards west of Pierson Point 34° 58' 32" N 76° 46' 38" W; thence running 171° (M) approximately 300 yards into the river to a point 34° 58' 24" N 76° 46' 34" W; thence east and northeast along the six foot curve to a point in the river 34° 58' 47" N 76° 45' 39" W; thence 330° (M) approximately 700 yards to a point on the shore 50 yards west of an existing pier 34° 59' 04" N 76° 45' 54" W.
- (D) — In that area bound by a line beginning at a point on the north shore east of Dawson Creek Bridge 34° 59' 34" N 76° 45' 12" W; thence running 244° (M) approximately 500 yards to Day Marker No. 4 (entrance to Dawson Creek Channel); thence running east 117° (M) to a point 34° 59' 22" N 76° 45' 19" W; thence east and northeast along the six foot curve to a point 50 yards west of Day Marker No. 3 (channel to Oriental) 35° 01' 02" N 76° 41' 51" W; thence 303°

- (M) ~~approximately 600 yards to a point on the eastern tip of Windmill Point 35° 01' 10" N 76° 42' 08" W.~~
- (E) ~~In Greens Creek (Oriental) west of a line at the confluence of Greens and Kershaw Creeks beginning at a point on the south shore 35° 01' 28" N 76° 42' 55" W running 005° (M) to a point on the north shore 35° 01' 38" N 76° 42' 54" W, no more than 75 yards from the shoreline east of this line to the Highway 55 bridge.~~
- (F) ~~In that area bound by a line beginning at a point on Whittaker Point 35° 01' 37" N 76° 40' 56" W; thence running 192° (M) approximately 500 yards to a point in the river 35° 01' 23" N 76° 40' 57" W; thence along the six foot depth curve northeast to a point in the river off Orchard Creek 35° 03' 18" N 76° 37' 53" W; thence 280° (M) approximately 900 yards to a point on the eastern tip of Cockle Point 35° 03' 20" N 76° 38' 27" W.~~
- (G) ~~In that area bound by a line beginning at a point on the north shore near the mouth of Orchard Creek 35° 03' 38" N 76° 37' 54" W running 177° (M) approximately 400 yards to a point 35° 03' 27" N 76° 37' 54" W; thence along the six foot depth curve to a point eastward; thence 174° (M) 600 yards to a point on the north shore 35° 03' 56" N 76° 36' 42" W.~~
- (H) ~~In that area bound by a line beginning at a point on the north shore approximately 400 yards south of Gum Thicket Creek 35° 04' 12" N 76° 36' 11" W; thence running 132° (M) approximately 600 yards to a point 35° 03' 55" N 76° 35' 48" W; thence along the six foot depth curve eastward to a point 35° 04' 10" N 76° 34' 37" W; thence 304° (M) to a point on the shore 400 yards north of Gum Thicket Creek 35° 04' 38" N 76° 35' 42" W.~~
- (I) ~~In Lower Broad Creek west of a line running 188° (M) through Red Day Marker No. 4. No more than 150 yards from shore between a line running 188° (M) through Red Day Marker No. 4 and a line running 228° (M) through Green Marker No. 3. Pots may not be set in Burton Creek.~~
- (J) ~~Piney Point Shoal Area, in that area bound by a line beginning at a point on the north side of a creek (locally known as Wadin or Persimmon Creek) 35° 07' 17" N 76° 33' 26" W running 115° (M) approximately 300 yards to a point near the six foot depth curve 35° 07' 15" N 76° 33' 16" W; thence south and southeast along the six foot depth curve to a point east of the old lighthouse 35° 05' 17" N 76° 32' 42" W; thence 288° (M) through the old lighthouse to a point on shore north of Red Day Marker No. 2 at the mouth of Broad Creek 35° 05' 42" N 76° 35' 18" W.~~
- (K) ~~In that area bound by a line beginning at a point on the south shore of Maw Bay 35° 08' 32" N 76° 32' 38" W; thence running 114° (M) to Maw Point Shoal Day Marker No. 2; thence 317° (M) to Maw Point 35° 08' 55" N 76° 32' 11" W.~~
- (L) ~~In that area east of Slocum Creek bound by a line beginning at a point 34° 57' 02" N 76° 53' 42" W; thence running 029° (M) approximately 1100 yards to a point 34° 57' 32" N 76° 53' 28" W; thence along the six foot curve to a point 34° 56' 34" N 76° 49' 38" W; thence 176° (M) approximately 300 yards to a point 34° 56' 26" N 76° 49' 35" W.~~
- (M) ~~In that area bound by a line beginning at a point 34° 56' 22" N 76° 49' 05" W, running 057° (M) approximately 1100 yards to Day Marker "2" off Cherry Point; thence 097° (M) approximately 200 yards to a point 34° 56' 42" N 76° 48' 27" W; thence along the six foot curve to a point 34° 55' 10" N 76° 45' 40" W; thence 187° (M) approximately 400 yards to a point on Temple Point 34° 54' 58" N 76° 45' 40" W.~~
- (N) ~~In that area southeast of a line beginning at a point at the mouth of Clubfoot Creek 34° 55' 20" N 76° 45' 09" W running 076° (M) to a point on shore 34° 55' 37" N 76° 44' 23" W.~~
- (O) ~~In Clubfoot Creek south of a line beginning at a point on the east shore 34° 54' 30" N 76° 45' 26" W, running 284° (M) to a point on the west shore 34° 54' 33" N 76° 45' 43" W. Pots may be set 50 yards from shore north of this line.~~
- (P) ~~In that area bound by a line beginning~~

- at the western tip of Great Island 34° 55' 47" N 76° 44' 50" W; thence running 275° (M) approximately 500 yards to a point 34° 55' 46" N 76° 45' 07" W; thence 029° (M) approximately 1400 yards to a point 34° 56' 24" N 76° 44' 48" W; thence 120° (M) to a point 34° 56' 06" N 76° 43' 59" W; thence 232° (M) to a point on Great Island 34° 55' 50" N 76° 44' 17" W.
- (Q) — In that area bound by a line beginning at a point west of Long Creek 34° 55' 38" N 76° 44' 18" W running 064° (M) to a point 34° 55' 57" N 76° 43' 43" W; thence 138° (M) to a point on shore at the mouth of Great Neck Creek 34° 55' 50" N 76° 43' 25" W.
- (R) — In that area bound by a line beginning at a point at the mouth of Great Neck Creek 34° 55' 50" N 76° 43' 25" W; running 318° (M) 750 yards to a point 34° 56' 04" N 76° 43' 47" W; thence following the shoreline no more than 750 yards from shore to a point 34° 56' 50" N 76° 43' 11" W; thence 116° (M) 750 yards to a point on shore at Courts Creek 34° 56' 42" N 76° 42' 46" W.
- (S) — In that area bound by a line beginning at a point on Courts Creek 34° 56' 42" N 76° 42' 46" W; running 296° (M) 1000 yards to a point 34° 56' 52" N 76° 43' 20" W; thence parallel with the shoreline no more than 1000 yards to a point 34° 57' 53" N 76° 41' 59" W; thence 190° (M) 1000 yards to a point on shore 34° 57' 24" N 76° 42' 00" W.
- (T) — In that area bound by a line beginning at a point on shore, 34° 57' 24" N 76° 42' 00" W; running 010° (M) 500 yards to a point 34° 57' 38" N 76° 42' 00" W; thence running parallel to the shoreline no more than 500 yards from shore to a point 34° 57' 33" N 76° 41' 00" W; thence 179° (M) to a point 34° 57' 23" N 76° 40' 58" W; thence 260° (M) to a point on shore at the mouth of Adams Creek 34° 57' 22" N 76° 41' 10" W.
- (U) — In that area bound by a line beginning at a point on the northeast side of Adams Creek 34° 57' 30" N 76° 40' 36" W; thence 278° (M) 225 yards offshore to a point 34° 57' 30" N 76° 40' 45" W; thence 359° (M) to a point off Winthrop Point 34° 58' 26" N 76° 40' 56" W; thence running 056° (M) to a point off Cedar Point 34° 59' 07" N 76° 40' 04" W; thence 140° (M) to the shoreline on Cedar Point 34° 58' 50" N 76° 39' 41" W.
- (V) — In that area bound by a line beginning at a point on Cedar Point 34° 58' 50" N 76° 39' 41" W; running 320° (M) 750 yards to a point 34° 59' 05" N 76° 40' 01" W; thence parallel to the shoreline no more than 750 yards from shore to a point 34° 59' 16" N 76° 39' 31" W; thence 167° (M) to a point on shore 34° 58' 56" N 76° 39' 21" W.
- (W) — In that area bound by a line beginning at a point on shore 34° 58' 56" N 76° 39' 21" W running 347° (M) to a point 34° 59' 03" N 76° 39' 24" W; thence parallel to the shoreline no more than 200 yards from shore to a point 34° 59' 08" N 76° 38' 47" W; thence 184° (M) to a point on shore 34° 59' 01" N 76° 35' 25" W.
- (X) — In that area bound by a line beginning at a point west of Garbacon Creek 34° 59' 01" N 76° 38' 43" W; running 004° (M) 750 yards to a point 34° 59' 23" N 76° 38' 46" W; thence parallel with the shoreline no more than 750 yards from shore to a point off Browns Creek 35° 00' 20" N 76° 33' 45" W; thence 172° (M) to the shoreline on the west side of Browns Creek 34° 59' 57" N 76° 33' 35" W.
- (Y) — In that area bound by a line beginning at a point on shore at the mouth of Browns Creek 34° 59' 55" N 76° 33' 29" W; running 352° (M) 750 yards to a point on 35° 00' 22" N 76° 33' 34" W; thence parallel to the shoreline no more than 750 yards from shore to a point 35° 01' 45" N 76° 29' 51" W; thence 162° (M) 750 yards to a point on shore north of Cedar Bay Point 35° 01' 22" N 76° 29' 34" W.
- (Z) — In that area bound by a line beginning on the north side of Rattan Bay at a point on the shoreline 35° 03' 45" N 76° 28' 32" W; thence running 316° (M) 600 yards offshore to a point 35° 03' 54" N 76° 28' 52" W; thence running parallel with the shoreline 600 yards offshore to a point 35° 04' 09" N 76° 26' 44" W; thence 239°

- (M) 600 yards to a point on shore $35^{\circ} 04' 57''$ N $76^{\circ} 27' 00''$ W.
- (AA) In Adams Creek:
- (i) Between a line running 080° (M) through Red Flasher No. 4 at the mouth of Adams Creek and a line beginning at a point on the south shore of Cedar Creek $34^{\circ} 55' 52''$ N $76^{\circ} 38' 49''$ W, running 297° (M) to a point on the west shore of Adams Creek $34^{\circ} 56' 03''$ N $76^{\circ} 39' 27''$ W, no more than 200 yards from shore.
 - (ii) Between a line beginning at a point at the mouth of Cedar Creek $34^{\circ} 55' 52''$ N $76^{\circ} 38' 49''$ W, running 297° (M) to a point on the west shore of Adams Creek $34^{\circ} 56' 03''$ N $76^{\circ} 39' 27''$ W, and a line beginning at a point on the east shore $34^{\circ} 54' 55''$ N $76^{\circ} 39' 36''$ W, running 280° (M) to a point on the west shore $34^{\circ} 54' 55''$ N $76^{\circ} 40' 01''$ W, no more than 300 yards from the west shore and 200 yards from the east shore.
 - (iii) South of a line beginning at a point on the east shore $34^{\circ} 54' 55''$ N $76^{\circ} 39' 36''$ W, running 280° (M) to a point on the west shore $34^{\circ} 54' 55''$ N $76^{\circ} 40' 01''$ W, except in the marked navigation channel.
- (BB) In South River:
- (i) Southeast of a line beginning at a point on the southwest shore $34^{\circ} 58' 35''$ N $76^{\circ} 35' 25''$ W, running 049° (M) through Red Flasher No. 2 to a point on the northeast shore $34^{\circ} 59' 07''$ N $76^{\circ} 34' 52''$ W, no more than 200 yards from the shoreline.
 - (ii) That area bound by a line beginning at a point on the southwest shore $34^{\circ} 58' 35''$ N $76^{\circ} 35' 25''$ W, running 049° (M) to Red Flasher No. 2; thence running 207° (M) to a point north of Hardy Creek $34^{\circ} 58' 13''$ N $76^{\circ} 35' 22''$ W; thence following the shoreline to the point of beginning.
- (CC) In Turnagain Bay:
- (i) Between a line running 077° (M) through Green Flasher No. 1 and a line beginning at a point on the east shore $34^{\circ} 59' 04''$ N $76^{\circ} 29' 01''$ W, running 276° (M) to a point on the west shore $34^{\circ} 59' 03''$ N $76^{\circ} 29' 28''$ W, no more than 300 yards on the east shore and 100 yards on the west shore.
 - (ii) Between a line beginning at a point on the east shore $34^{\circ} 59' 04''$ N $76^{\circ} 29' 01''$ W, running 276° (M) to a point on the west shore $34^{\circ} 59' 03''$ N $76^{\circ} 29' 28''$ W, and a line beginning at a point on the east shore $34^{\circ} 57' 56''$ N $76^{\circ} 29' 25''$ W, running 275° (M) to a point on the west shore $34^{\circ} 57' 58''$ N $76^{\circ} 29' 44''$ W, no more than 150 yards from shore.
- (DD) In West Bay North Bay area:
- (i) In that area bound by a line beginning at a point $35^{\circ} 02' 32''$ N $76^{\circ} 22' 27''$ W; thence southwest 220° (M) to Marker No. 5 WB; thence southeast 161° (M) to a point in West Bay $35^{\circ} 00' 34''$ N $76^{\circ} 21' 50''$ W; thence southwest 184° (M) to Deep Bend Point $34^{\circ} 58' 36''$ N $76^{\circ} 21' 48''$ W; thence following the shoreline of West Bay and North Bay to a point $35^{\circ} 02' 09''$ N $76^{\circ} 21' 53''$ W; thence 317° (M) to the beginning point.
 - (ii) In West Bay bound by a line beginning at a point on shore $35^{\circ} 03' 34''$ N $76^{\circ} 26' 24''$ W, running 033° (M) 100 yards to a point $35^{\circ} 03' 38''$ N $76^{\circ} 26' 23''$ W; thence parallel to the shoreline no more than 100 yards from shore to a point $35^{\circ} 00' 06''$ N $76^{\circ} 25' 24''$ W, running 278° (M) to a point on shore $35^{\circ} 00' 06''$ N $76^{\circ} 25' 28''$ W.

- W.
- (iii) — In West Bay bound by a line beginning at a point $35^{\circ} 00' 06''$ N $76^{\circ} 25' 28''$ W, running 098° (M) 500 yards to a point $35^{\circ} 00' 06''$ N $76^{\circ} 25' 12''$ W; thence 171° (M) 2800 yards to a point $34^{\circ} 58' 45''$ N $76^{\circ} 24' 42''$ W; thence 270° (M) 1400 yards to a point on shore $34^{\circ} 58' 39''$ N $76^{\circ} 25' 22''$ W.
- (EE) — In West Thorofare Bay and Merkle Bay south and southeast of a line beginning at a point in West Bay at Tump Point $34^{\circ} 58' 42''$ N $76^{\circ} 22' 49''$ W; thence southwest 258° (M) to Marker F1 R15 ft. 3M 8 WB; thence southwest 203° (M) to Long Bay Point $34^{\circ} 57' 52''$ N $76^{\circ} 24' 12''$ W.
- (FF) — In Long Bay:
- (i) — In that area bound by a line beginning at a point on the south side of Stump Bay in Long Bay $34^{\circ} 57' 13''$ N $76^{\circ} 27' 12''$ W; running northeast 077° (M) across Stump Bay to a point $34^{\circ} 57' 39''$ N $76^{\circ} 25' 51''$ W; thence 032° (M) to a point $34^{\circ} 58' 39''$ N $76^{\circ} 25' 22''$ W, following the shoreline to the beginning point.
- (ii) — Southwest of a line beginning on the west shore $34^{\circ} 57' 13''$ N $76^{\circ} 27' 12''$ W, running 134° (M) to a point on the east shore at Swimming Point $34^{\circ} 56' 46''$ N $76^{\circ} 26' 26''$ W.
- (iii) — In the area bound by a line beginning at a point on shore at Swimming Point $34^{\circ} 56' 46''$ N $76^{\circ} 26' 26''$ W, running 314° (M) 300 yards to a point $34^{\circ} 56' 52''$ N $76^{\circ} 26' 33''$ W; thence parallel to the shoreline no more than 300 yards from shore to a point $34^{\circ} 58' 03''$ N $76^{\circ} 24' 10''$ W; thence 203° (M) to Long Bay Point $34^{\circ} 57' 52''$ N $76^{\circ} 24' 12''$ W.
- (GG) — Raccoon Island, on the northeast shore between a point on the northwest shore $35^{\circ} 04' 27''$ N $76^{\circ} 26' 16''$ W and a point on the southwest shore $35^{\circ} 04' 00''$ N $76^{\circ} 25' 33''$ W from the shoreline no more than 150 yards from shore; on the south and west shores, no more than 50 yards from the shoreline.
- (8) — Core Sound, Back Sound and the Straits and their tributaries.
- (9) — North River:
- (A) — In that area bound by a line beginning at a point on the shore on the east side of North River south of Goose Bay $34^{\circ} 43' 35''$ N $76^{\circ} 34' 55''$ W; thence running 252° (M) to a point in the river $34^{\circ} 43' 28''$ N $76^{\circ} 35' 14''$ W; thence running 355° (M) to a point in the river $34^{\circ} 45' 20''$ N $76^{\circ} 35' 45''$ W; thence running 060° (M) to a point in the river $34^{\circ} 45' 45''$ N $76^{\circ} 35' 04''$ W; thence running 165° (M) to a point on the shore at the mouth of South Leopard Creek $34^{\circ} 45' 36''$ N $76^{\circ} 34' 59''$ W; thence with the shoreline to the point of beginning.
- (B) — In that area bound by a line beginning at a point on the west side of North River near Steep Point $34^{\circ} 43' 40''$ N $76^{\circ} 37' 20''$ W; thence running 040° (M) to a point $34^{\circ} 44' 35''$ N $76^{\circ} 36' 36''$ W; thence running 291° (M) 300 yards to a point $34^{\circ} 44' 37''$ N $76^{\circ} 36' 45''$ W; thence running 219° (M) to a point $34^{\circ} 44' 13''$ N $76^{\circ} 37' 05''$ W; thence running 307° (M) to a point $34^{\circ} 44' 16''$ N $76^{\circ} 37' 12''$ W; thence running 018° (M) to a point $34^{\circ} 45' 20''$ N $76^{\circ} 36' 56''$ W following the shoreline to the beginning point.
- (C) — In that area of the North River marshes bound by a line beginning at Red Flasher No. "6" running 038° (M) along the southeast side of Steep Point Channel through Red Day Marker No. "8" to a point $34^{\circ} 44' 08''$ N $76^{\circ} 36' 52''$ W; thence 125° (M) to a point $34^{\circ} 43' 48''$ N $76^{\circ} 36' 08''$ W; thence 144° (M) to a point $34^{\circ} 43' 30''$ N $76^{\circ} 35' 47''$ W; thence 188° (M) to a point $34^{\circ} 42' 23''$ N $76^{\circ} 35' 47''$ W; thence 221° (M) to Red Flasher No. "56"; thence 278° (M) to a point $34^{\circ} 42' 14''$ N $76^{\circ} 36' 43''$ W; thence 346° (M) to a point $34^{\circ} 42' 45''$ N $76^{\circ} 36' 58''$ W; thence 008° (M) to a point $34^{\circ} 43' 14''$ N $76^{\circ} 36' 58''$ W; thence 318° (M) to the beginning point.

- (D) — In the area north of a line beginning on the east shore at 34° 46' 11" N 76° 35' 13" W; thence running 270° (M) to a point on the west shore at 34° 46' 11" N 76° 37' 01" W.
- (10) — Newport River:
- (A) — In that area east and south of a line beginning at a point on the south shore 34° 45' 30" N 76° 43' 10" W; thence running 026° (M) to a point on the north shore Newport River near Oyster Creek; thence following the shoreline to a point on the west bank of Core Creek at 34° 47' 05" N 76° 41' 14" W; thence running 099° (M) through Marker "21" to a point on the east shore at 34° 47' 05" N 76° 41' 10" W; thence following the shoreline southward to Gallant Point at 34° 44' 00" N 76° 40' 19" W; thence running 271° (M) to Marker "2" at 34° 43' 58" N 76° 40' 32" W; thence running 148° (M) to a point at 34° 43' 42" N 76° 40' 05" W; thence running 182° (M) to a point at 34° 43' 21" N 76° 40' 11" W at the Beaufort Causeway; thence running west with U.S. Highway 70 and the shoreline as the southern border to the point of beginning.
- (B) — In that area north and east of a line beginning at Penn Point 34° 45' 44" N 76° 43' 35" W; thence running 022° (M) to a point on the north shore 34° 46' 47" N 76° 43' 15" W near White Rock.
- (11) — Bogue Sound:
- (A) — In that area bound by a line beginning at a point 34° 40' 33" N 77° 00' 48" W on the south shore of Bogue Sound at Archer Point running 014° (M) to Channel Marker No. 37 at 34° 41' 15" N 77° 00' 43" W and in the east by the Atlantic Beach Bridge.
- (B) — In that area north of the Intracoastal Waterway beginning at the Atlantic Beach Bridge and running parallel with the Intracoastal Waterway to the Highway 58 Bridge.
- (C) — In that area east of the Atlantic Beach Bridge at 34° 43' 08" N 76° 44' 12" W; thence 119° (M) to a point at Tar Landing Bay 34° 42' 30" N 76° 42' 12" W; thence 191° (M) to a point on Bogue Banks 34° 42' 00" N 76° 42' 15" W; thence back to the Atlantic Beach Bridge.
- (12) — Designated primary nursery areas in all coastal fishing waters which are listed in 15A NCAC 03R .0103, except Burton Creek off Lower Broad Creek in Pamlico County.
- (13) — West and south of the Highway 58 Bridge at Emerald Isle from May 1 through October 31 in areas and during such times as the Fisheries Director shall designate by proclamation.
- (b) — It is unlawful to use pots from May 1 through October 31 in the areas described in Subparagraphs (b)(1) through (6) of this Rule except in accordance with 15A NCAC 03J .0301(a)(2)(B):
- (1) — In Wysocking Bay:
- (A) — Bound by a line beginning at a point on the south shore of Lone Tree Creek 35° 25' 05" N 76° 02' 05" W running 239° (M) 1000 yards to a point 35° 24' 46" N 76° 02' 32" W; thence 336° (M) 2200 yards to a point 35° 25' 42" N 76° 03' 16" W; thence 062° (M) 750 yards to a point on shore 35° 25' 54" N 76° 02' 54" W; thence following the shoreline and the Lone Tree Creek primary nursery area line to the beginning point;
- (B) — Bound by a line beginning at a point on the south shore of Mt. Pleasant Bay 35° 23' 07" N 76° 04' 12" W running 083° (M) 1200 yards to a point 35° 23' 17" N 76° 03' 32" W; thence 023° (M) 2400 yards to a point 35° 24' 35" N 76° 04' 00" W; thence 299° (M) 1100 yards to point on shore 35° 24' 38" N 76° 04' 48" W; thence following the shoreline and the Browns Island and Mt. Pleasant Bay primary nursery area line to the beginning point; except pots may be set no more than 50 yards from the shoreline;
- (2) — In Juniper Bay bound by a line beginning at a point on Juniper Bay Point 35° 20' 18" N 76° 13' 22" W running 275° (M) 2300 yards to a point 35° 20' 15" N 76° 14' 45" W; thence 007° (M) 2100 yards to Daymarker No. 3; thence 040° (M) 1100 yards to a point on shore 35° 21' 45" N 76° 14' 24" W; thence following the shoreline and the Buck Creek primary nursery area line to the beginning point;
- (3) — In Rose Bay bound by a line beginning at a point southwest of Swan Point 35° 23' 56" N 76° 23' 39" W running 288° (M) 1500 yards to a point 35° 24' 03" N 76° 24' 33" W; thence 162° (M) 1650 yards to a point 35° 23' 19" N 76° 24' 04" W; thence 084° (M) 1350 yards to a point on shore 35° 23' 29" N 76° 23' 17" W; thence following the shoreline to the

- beginning point;
- (4) In Spencer Bay bound by a line beginning at a point on shore at Willow Point 35° 22' 26" N - 76° 28' 00" W running 059° (M) 1700 yards to a point 35° 22' 57" N - 76° 27' 13" W; thence 317° (M) 1500 yards to a point 35° 23' 25" N - 76° 27' 57" W; thence 243° (M) 1300 yards to a point on shore 35° 23' 02" N - 76° 28' 35" W; thence following the shoreline to the beginning point;
- (5) In Bay River, beginning at a point on shore at Moore Creek 35° 08' 51" N - 76° 40' 14" W; running 296° (M) to a point 35° 08' 59" N - 76° 50' 19" W; thence no more than 150 yards from shore to a point 35° 09' 43" N - 76° 40' 06" W; thence running 134° (M) to a point on shore west of Bell Point 35° 09' 40" N - 76° 40' 00" W;
- (6) In Neuse River:
- (A) Beginning at a point on shore north of Swan Creek 35° 07' 17" N - 76° 33' 26" W running 115° (M) to a point near the six foot depth contour 35° 07' 15" N - 76° 33' 16" W; thence running 074° (M) to Beacon No. 2 at Maw Point Shoal; thence running 294° (M) to a point on shore 35° 08' 30" N - 76° 32' 36" W; thence following the shoreline to the beginning point 35° 07' 17" N - 76° 33' 26" W;
- (B) Beginning at a point on shore north of Gum Thicket Creek 35° 04' 40" N - 76° 35' 38" W; thence running 129° (M) to a point 35° 04' 12" N - 76° 34' 37" W; thence running 355° (M) to Beacon No. 1 in Broad Creek; thence running the six foot contour line to Green Marker No. 3;
- (C) Beginning at a point on the eastern tip of Cockle Point 35° 03' 20" N - 76° 38' 27" W; thence running 100° (M) to a point 35° 03' 18" N - 76° 37' 53" W; thence running 005° (M) to a point on shore 35° 03' 38" N - 76° 37' 54" W; thence following the primary nursery area line to the beginning point 35° 03' 20" N - 76° 38' 27" W;
- (D) Beginning at a point on shore on the eastern side of the MBYB channel 34° 58' 16" N - 76° 49' 05" W running 186° (M) to a point on the six foot depth contour 34° 58' 07" N - 76° 49' 05" W; thence following the six foot depth contour to a point 34° 58' 24" N - 76° 46' 34" W; thence running 351° (M) to a point on shore 34° 58' 32" N - 76° 46' 38" W;
- (E) Beginning at a point on shore at Beards Creek 35° 00' 08" N - 76° 52' 13" W; thence running 209° (M) to a point 34° 59' 52" N - 76° 52' 20" W; thence running along the six foot depth contour to a point 34° 59' 25" N - 76° 51' 14" W; thence running 043° (M) to a point on shore at Mill Creek 34° 59' 34" N - 76° 51' 06" W.
- (a) The pot areas referenced in 15A NCAC 03J .0301(a)(2) (A) are delineated in the following coastal fishing waters:
- (1) In Albemarle and Currituck sounds and tributaries.
- (2) In Roanoke Sound and tributaries.
- (3) In Croatan Sound and tributaries.
- (4) In Pamlico Sound and tributaries, except areas further described in Subparagraphs (a)(5), (a)(6), and (a)(7) of this Rule. Pots shall not be set within the following area described by lines:
- (A) Striking Bay - beginning on shore at a point 35° 23.7003' N - 76° 26.6951' W; running southeasterly to shore at a point 35° 23.3580' N - 76° 26.3777' W; running easterly along shore to Long Point to a point 35° 23.3380' N - 76° 26.2540' W; running southeasterly to Drum Point to a point 35° 22.4830' N - 76° 25.1930' W; running southerly along shore to Point of Narrows to a point 35° 21.9240' N - 76° 25.4080' W; running northwesterly near Marker "2" to a point 35° 22.4166' N - 76° 26.4833' W; running westerly to a point 35° 22.3833' N - 76° 27.0000' W; running northerly to Short Point to a point 35° 23.3831' N - 76° 26.9922' W; running northerly along shore to a point 35° 23.5000' N - 76° 26.9666' W; running northeasterly to the beginning point.
- (5) In the Pamlico River and its tributaries west of a line beginning on Willow Point at a point 35° 22.3741' N - 76° 28.6905' W; running southerly to Pamlico Point to a point 35° 18.5882' N - 76° 28.9625' W; pots may be used within an area bound by the shoreline to the depth of six feet, except areas listed in Paragraph (b) of this Rule that may be opened to the use of pots by proclamation and except:
- (A) Pots shall not be set within the following areas described by lines:
- (i) Lupton Point - beginning on Lupton Point at a point 35° 25.6012' N - 76° 31.9641' W; running northwesterly to

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| | a point 35° 25.7333' N - 76° 32.1500' W; running southerly along the six foot depth to a point 35° 25.2833' N - 76° 32.3000' W; running northeasterly to shore to a point 35° 25.3389' N - 76° 31.9592' W; running northerly along shore to the beginning point. | | |
| (ii) | Green Point - beginning on shore at a point 35° 26.6478' N - 76° 33.5008' W; running westerly to a point 35° 26.5833' N - 76° 33.8333' W; running southeasterly along the six foot depth to a point 35° 26.0833' N - 76° 33.2167' W; running northerly to shore to a point 35° 26.4216' N - 76° 33.2856' W; running northwesterly along the shore to the beginning point. | (vi) | Lower Dowry Point - beginning on shore west of Lower Dowry Creek at a point 35° 32.4334' N - 76° 35.6647' W; running southwesterly to a point 35° 32.2333' N - 76° 35.8500' W; running easterly along the six foot depth to a point 35° 32.1166' N - 76° 35.1166' W; running northerly to shore to a point 35° 32.4740' N - 76° 35.1017' W; running westerly along shore to the Inland/Coastal line on the east shore of Lower Dowry Creek; running westerly along the Inland/Coastal line to the west shore of Lower Dowry Creek; running westerly along shore to the beginning point. |
| (iii) | July Point - beginning on shore at a point 35° 27.3667' N - 76° 33.3500' W; running northeasterly to a point 35° 27.5166' N - 76° 33.3000' W; running westerly along the six foot depth to a point 35° 27.3000' N - 76° 33.8833' W; running easterly to the beginning point. | (vii) | Schrams Beach - beginning on shore at a point 35° 27.2222' N - 76° 36.4662' W; running northeasterly to a point 35° 27.2988' N - 76° 36.2600' W; running southerly along the six foot depth to a point 35° 26.9000' N - 76° 36.1500' W; running northwesterly to shore to a point 35° 27.0418' N - 76° 36.3767' W; running northerly along shore to the beginning point. |
| (iv) | Manley Point - beginning on shore at a point 35° 28.0171' N - 76° 33.3144' W; running northwesterly to a point 35° 28.1500' N - 76° 33.7167' W; running southeasterly along the six foot depth to a point 35° 27.6667' N - 76° 33.2000' W; running northwesterly to the beginning point. | (viii) | Grassy Point - beginning on shore at a point 35° 25.8333' N - 76° 35.6167' W; running northeasterly to a point 35° 25.9846' N - 76° 35.4654' W; running southerly along the six foot depth to a point 35° 25.7333' N - 76° 34.7667' W; running westerly to shore to a point 35° 25.6787' N - 76° 35.4654' W; running northwesterly along shore to the beginning point. |
| (v) | Durants Point - beginning on shore east of Durants Point at a point 35° 30.4660' N - 76° 33.4513' W; running northwesterly to a point 35° 30.7666' N - 76° 33.6500' W; running easterly along the six foot depth to a point 35° 30.8347' N - 76° 32.6529' W; running southwesterly to shore to a point 35° 30.4400' N - 76° 32.7897' W; running | (ix) | Long Point - beginning on shore at a point 35° 22.4833' N - 76° 43.4167' W; running northwesterly to a point 35° 22.6500' N - 76° 43.4333' W; running |

- W; running easterly along the six foot depth to a point 35° 22.7333' N - 76° 42.7333' W; running to shore to a point 35° 22.4000' N - 76° 43.0833' W; running westerly along shore to the beginning point.
- (x) Pamlico River Mainstream Channel - beginning at a point 250 yards north of Marker "7" at a point 35° 27.2953' N - 76° 55.1351' W; running westerly to a point near Marker "8" at a point 35° 27.4217' N - 76° 56.0917' W; running westerly along the north side of the marked channel to a point 100 yards north of Marker "9" at a point 35° 27.7472' N - 76° 57.5392' W; running westerly along the north side of the marked channel to a point near Marker "16", north of Whichard's Beach at a point 35° 30.4750' N - 77° 01.2217' W; running southwesterly across the channel to a point 35° 30.4373' N - 77° 01.2614' W; running southeasterly along the south side of the marked channel at a distance of 100 yards from the north side of the marked channel to a point near Marker "7" at a point 35° 27.1722' N - 76° 55.1380' W; running northerly to the beginning point.
- (xi) Chocowinity Bay Channel - beginning at a point near the Wildlife Resources Commission (WRC) red marker in Chocowinity Bay at a point 35° 29.5501' N - 77° 01.4335' W; running easterly to the south side of the marked navigation channel in Pamlico River, at a point 35° 29.0408' N - 76° 59.5437' W; running southeasterly to a point 35° 28.9236' N - 76° 59.3109' W; running westerly to the WRC green buoy in Chocowinity Bay at a point 35° 29.5004' N - 77° 01.4339' W; running northerly to the beginning point.
- (xii) Whichards Beach Channel - beginning on shore at a point 35° 30.2364' N - 77° 01.3679' W; running easterly to the south side of the marked navigation channel in Pamlico River at a point 35° 30.1952' N - 77° 01.0252' W; running southeasterly to a point 35° 30.1373' N - 77° 00.9685' W; running westerly to shore at a point 35° 30.2002' N - 77° 01.4518' W; running northeasterly to the beginning point.
- (xiii) Broad Creek Channel - beginning near Marker "3" in Broad Creek at a point 35° 29.0733' N - 76° 57.2417' W; running southwesterly near Marker "1" at a point 35° 28.8591' N - 76° 57.3823' W; running southerly to the marked navigation channel in Pamlico River at a point 35° 27.8083' N - 76° 57.6250' W; running southeasterly to a point 35° 27.7344' N - 76° 57.4822' W; running northerly to the six foot depth at a point 35° 28.5779' N - 76° 57.2924' W; running northerly to the six foot depth at a point 35° 28.7781' N - 76° 57.3508' W; running northerly along the six foot depth to a point near Marker "4" at a point 35° 29.0933' N - 76° 57.1967' W; running southwesterly to the beginning point.
- (xiv) Blounts Bay - from June 1 through September 15, on the south side of Pamlico River beginning near Marker "7" at a point 35° 27.1722' N - 76° 55.1381' W; running westerly and along the south side of the marked navigation channel to a point near Marker "9" at a point

- 35° 27.7070' N - 76° 57.5739' W; running northwesterly along the south side of the marked channel to the intersection of the Chocowinity Bay Channel at a point 35° 28.9236' N - 76° 59.3109' W; running westerly along the south side of the Chocowinity Bay Channel to a point 35° 29.0206' N - 76° 59.6678' W; running southerly to the eight foot depth at a point 35° 28.6667' N - 76° 59.6667' W; running southeasterly along the eight foot depth to a point 35° 27.0833' N - 76° 55.1667' W; running northerly to the beginning point.
- (B) Pots may be set within the following areas described by lines:
- (i) Durants Point - beginning on Durants Point at a point 35° 30.5197' N - 76° 35.1521' W; running northwesterly to a point 35° 31.1333' N - 76° 35.5833' W; running northeasterly 200 yards south of Marker "10" to a point 35° 31.2032' N - 76° 35.5558' W; running easterly parallel to the marked navigation channel at a distance of 200 yards to a point southwest of Marker "12" to a point 35° 31.1492' N - 76° 33.8997' W; running southeasterly to shore to a point 35° 30.4660' N - 76° 33.4513' W; running westerly along shore to the beginning point.
- (ii) South shore, upper Pungo River - beginning on shore west of Durants Point at a point 35° 30.4400' N - 76° 32.7897' W; running northeasterly to a point southeast of Marker "14" to a point 35° 31.0833' N - 76° 32.5667' W; running easterly parallel to the marked navigation channel at a distance of 200 yards to the shore south of Wilkerson Creek to a point 35° 33.0493' N - 76° 27.2752' W; running southerly and westerly along the shoreline and following the Inland/Coastal lines of Horse Island, Tarklin, Scranton, and Smith Creeks to the beginning point.
- (iii) North shore, upper Pungo River - beginning on shore east of Lower Dowry Creek at a point 35° 32.4740' N - 76° 35.1017' W; running southerly to a point 35° 31.5167' N - 76° 35.1000' W; running easterly parallel to the marked navigation channel at a distance of 200 yards to the north shore of Wilkerson Creek to a point 35° 33.2339' N - 76° 27.5449' W; running northwesterly along the shoreline to the east end of the US 264 bridge; running westerly along the bridge and following the Inland/Coastal line to the western shore; running southerly and westerly along the shoreline and following the Inland/Coastal lines of Crooked Creek and Upper Dowry Creek to the beginning point.
- (iv) Tooleys Point - beginning at the "Breakwater" 200 yards northeast of Beacon "6", at a point 35° 31.7833' N - 76° 36.8500' W; running southeasterly to a point 200 yards from Marker "4" at a point 35° 31.5167' N - 76° 36.3500' W; running easterly to a point 35° 31.4667' N - 76° 35.9833' W; running northerly near Beacon "1" to a point 35° 32.1100' N - 76° 35.9817' W; running northeasterly to shore to a point 35° 32.4334' N - 76° 35.6647' W; running westerly and along the shoreline of Battalina and Tooley Creeks; running along the river shore to the "Breakwater" to a point 35° 31.9908' N - 76° 36.6105' W.

- W; running southwesterly along the "Breakwater" to the beginning point.
- (v) Pungo Creek - beginning on Windmill Point at a point 35° 30.7444' N - 76° 38.2869' W; running northeasterly to a point 200 yards west of Marker "3" to a point 35° 31.3500' N - 76° 36.6167' W; running northwesterly to the "Breakwater" to a point 35° 31.6296' N - 76° 37.1201' W; running westerly along the "Breakwater" to shore to a point 35° 31.5653' N - 76° 37.3832' W; running westerly along shore and into Pungo Creek following the shoreline and the Inland/Coastal lines of Vale, Scott, and Smith creeks to the north end of the NC 92 bridge over Pungo Creek; running southerly along the bridge and following the Inland/Coastal line to the southern shore; running easterly along shore to the beginning point.
- (vi) Upper Pamlico - in coastal fishing waters west of a line beginning on the north shore of Gum Point at a point 35° 25.1699' N - 76° 45.5251' W; running southwesterly to a point on the south shore of Pamlico River to a point 35° 23.4453' N - 76° 46.4346' W, except as described in Parts (a)(5)(A)(x)-(xiv) of this Rule.
- (vii) South Creek - in coastal fishing waters of South Creek and tributaries west of a line beginning on Hickory Point at a point 35° 21.7385' N - 76° 41.5907' W; running southerly to Fork Point to a point 35° 20.7534' N - 76° 41.7870' W.
- (6) In Bay River west of a line beginning on Bay Point at a point 35° 11.0750' N - 76° 31.6080' W; running southerly to Maw Point to a point 35° 09.0407' N - 76° 32.2348' W; pots may be used within an area bound by the shoreline to the depth of six feet, except areas listed in
- Paragraph (b) of this rule that may be opened to the use of pots by proclamation, and pots shall not be set within the following areas described by lines:
- (A) Vandemere - beginning on the west shore of Vandemere Creek at a point 35° 11.2280' N - 76° 39.6046' W; running southeasterly to the east shore to a point 35° 11.0920' N - 76° 39.3240' W; running southerly to a point 35° 10.9390' N - 76° 39.4426' W; running southwesterly to a point 35° 10.8567' N - 76° 39.6212' W; running northwesterly to shore west of Vandemere Creek to a point 35° 10.8983' N - 76° 39.7307' W; running northerly along shore to the beginning point.
- (B) Moore Bay - beginning on shore west of Bell Point at a point 35° 09.6712' N - 76° 39.9651' W; running northwesterly to a point 35° 09.7331' N - 76° 40.0928' W; running southerly along the six foot depth to a point 35° 09.0045' N - 76° 40.3141' W; running southeasterly to the north shore of Moore Creek to a point 35° 08.9640' N - 76° 40.2000' W; running northerly along shore to the beginning point.
- (7) In the Neuse River and Point of Marsh area south and west of a line beginning on Maw Point at a point 35° 09.0407' N - 76° 32.2348' W; running southeasterly near the Maw Point Shoal Marker "2" to a point 35° 08.1250' N - 76° 30.8532' W; running southeasterly near the Neuse River Entrance Marker "NR" to a point 35° 06.6212' N - 76° 28.5383' W; running southeasterly to a point 35° 04.7670' N - 76° 25.7920' W; running southwesterly to shore to a point 35° 03.9387' N - 76° 27.0466' W; pots may be used in coastal fishing waters bound by the shoreline to the depth of six feet, except areas listed in Paragraph (b) of this Rule that may be opened to the use of pots by proclamation and except;
- (A) Pots shall not be set within the following areas described by lines:
- (i) Oriental - in that area including Greens Creek and tributaries downstream of the bridge on State Secondary Road 1308, and Whittaker Creek north of a line beginning on the west shore at the Whittaker Creek primary nursery area (PNA) line; running easterly along

- the Whittaker Creek PNA line to the east shore; running southerly to a point 35° 01.3833' N – 76° 40.9500' W; running westerly following the six foot depth to a point 35° 01.1666' N – 76° 41.8833' W; running southerly across the channel to a point 35° 01.1339' N – 76° 41.9589' W; running westerly to Windmill Point to the south shore of the Shop Gut Creek PNA line; running northerly along the Shop Gut Creek PNA line to the north shore of the Shop Gut Creek PNA line.
- (ii) Greens Creek - more than 75 yards from shore in the area beginning on the south shore of Greens Creek primary nursery area (PNA) line; following the PNA lines of Greens Creek and Kershaw Creek to the east shore of Kershaw Creek; running easterly along the shore of Greens Creek, and running along the shore of Smith Creek and its tributaries to the bridge on State Secondary Road 1308; running southwesterly along the bridge to the south shore of Greens Creek; running westerly along the shore to the beginning point.
- (iii) Wilkerson Point - beginning on the west side of the Minnesott Beach Yacht Basin Channel at a point 34° 58.2682' N – 76° 49.1903' W; running southerly to a point 34° 58.1403' N – 76° 49.2253' W; running easterly along the six foot depth to a point 34° 58.4000' N – 76° 46.5667' W; running northerly to shore to a point 34° 58.5333' N – 76° 46.6333' W; running westerly along shore to the beginning point.
- (iv) Beard Creek - beginning on shore west of Beard Creek at a point 35° 00.1902' N – 76° 52.2176' W; running southerly to a point 34° 59.8883' N – 76° 52.3594' W; running easterly along the six foot depth to a point 34° 59.4167' N – 76° 51.2333' W; running northeasterly to shore to a point 34° 59.5989' N – 76° 51.0781' W; running westerly along shore to the Beard Creek tributary primary nursery area (PNA) line; running northeasterly along the PNA line to the Inland/Coastal line in Beards Creek; running westerly along the Inland/Coastal line to the western shore; running southerly along shore to the beginning point.
- (v) Clubfoot Creek - more than 50 yards from shore in the area south of a line beginning at a point 34° 54.9327' N - 76° 45.6506' W on the west shore; running northerly to a point 34° 55.1501' N - 76° 45.6221' W; running northeasterly to a point 34° 55.1812' N - 76° 45.5172' W near Marker "5"; running northeasterly to a point 34° 55.2994' N - 76° 45.1180' W on the east shore and north of line beginning at a point on the west shore 34° 54.5424' N - 76° 45.7252' W; running easterly to a point 34° 54.4853' N - 76° 45.4022' W on the east shore.
- (B) Pots may be set in coastal fishing waters west of a line beginning on shore west of Beards Creek at a point 35° 00.1902' N – 76° 52.2176' W; running southwesterly to shore west of Slocum Creek to a point 34° 57.0333' N – 76° 53.7252' W.
- (8) In the West Bay and Long Bay area south and west of a line beginning on shore at a point 35° 03.9387' N – 76° 27.0466' W; running northeasterly to a point 35° 04.7670' N – 76° 25.7920' W; running southeasterly to the eastern shore of West Bay to a point 35° 02.1203' N - 76° 21.8122' W; areas described by lines:

- (A) Raccoon Island, northern shore - beginning at the western point at a point 35° 04.3696' N - 76° 26.1815' W; running southeasterly along the north shore to a point 35° 03.9814' N - 76° 25.5862' W; running easterly 150 yards to a point 35° 03.9777' N - 76° 25.4910' W; running northwesterly at a distance of 150 yards from shore to a point 35° 04.4417' N - 76° 26.2150' W; running easterly to the beginning point.
- (B) Raccoon Island, southern shore - beginning at the western point at a point 35° 04.3696' N - 76° 26.1815' W; running southeasterly along the south shore to a point 35° 03.9814' N - 76° 25.5862' W; running easterly 50 yards to a point 35° 03.9800' N - 76° 25.5513' W; running westerly at a distance of 50 yards from shore to a point 35° 04.3955' N - 76° 26.1934' W; running easterly to the beginning point.
- (C) West Bay:
 (i) Point of the Narrows: beginning on shore at a point 35° 03.5421' N - 76° 26.3909' W; running northeasterly to a point 35° 03.5980' N - 76° 26.3894' W; running southeasterly parallel to shore at a distance of 100 yards to a point 35° 02.4740' N - 76° 26.1280' W; running northwesterly to shore to a point 35° 02.5440' N - 76° 26.1486' W; running northerly along shore to the beginning point.
 (ii) Point of Island Bay, Dowdy Bay; beginning on shore at a point 35° 01.5271' N - 76° 26.2836' W; running southeasterly to a point 35° 01.4684' N - 76° 26.2450' W; running southeasterly parallel to shore at a distance of 100 yards to a point 35° 00.0701' N - 76° 25.4414' W; running southerly to a point 35° 00.0620' N - 76° 25.5074' W on Dowdy Point; running westerly and northerly along shore to the beginning point.
- (iii) Beginning on Dowdy Point at a point 35° 00.0620' N - 76° 25.5074' W; running easterly to a point 35° 00.1000' N - 76° 25.2000' W; running southerly to a point 34° 58.7500' N - 76° 24.7000' W; running westerly to Jack's Bay Point to a point 34° 58.6886' N - 76° 25.3683' W; running northerly along shore to the beginning point.
- (D) Long Bay:
 (i) Jack's Bay, Stump Bay; beginning on Jack's Bay Point at a point 34° 58.6886' N - 76° 25.3683' W; running southwestly to a point 34° 57.6500' N - 76° 25.8500' W; running westerly to shore to a point 34° 57.2089' N - 76° 27.2292' W; running northerly along shore to the boundary of the military restricted area (having its center at a point 34° 58.8000' N - 76° 26.2000' W) in Jack's Bay to a point 34° 58.4208' N - 76° 25.9417' W; running northeasterly along the boundary of the military restricted area to a point 34° 58.7746' N - 76° 25.6733' W; running easterly along shore to the beginning point.
 (ii) Long Bay; beginning on the east point of the southern shore of Stump Bay at a point 34° 57.2089' N - 76° 27.2292' W; running southeasterly to Swimming Point to a point 34° 56.7619' N - 76° 26.3838' W; running southerly along shore to the head of Long Bay; running northerly along the west shore to the beginning point.
 (iii) Owens Bay; beginning on Swimming Point at a point 34° 56.7619' N - 76° 26.3838' W; running northwesterly to a point 34° 56.8470' N - 76° 26.5363' W; running northeasterly

- parallel to shore at a distance of 300 yards to a point $34^{\circ} 57.9394' \text{ N} - 76^{\circ} 24.1326' \text{ W}$; running southwesterly to Long Bay Point at a point $34^{\circ} 57.7863' \text{ N} - 76^{\circ} 24.1837' \text{ W}$; running southwesterly along shore to the beginning point.
- (E) West Thorofare Bay, Merkle Bay; beginning on Long Bay Point at a point $34^{\circ} 57.7863' \text{ N} - 76^{\circ} 24.1837' \text{ W}$; running northeasterly near Marker "8WB" to a point $34^{\circ} 58.4600' \text{ N} - 76^{\circ} 23.9600' \text{ W}$; running easterly to Tump Point to a point $34^{\circ} 58.7000' \text{ N} - 76^{\circ} 22.8166' \text{ W}$; running southerly along the shore of Merkle Bay and West Thorofare Bay back to the beginning point.
- (F) West Bay, North Bay; beginning on the eastern shore of West Bay at a point $35^{\circ} 02.1203' \text{ N} - 76^{\circ} 21.8122' \text{ W}$; running northwesterly to a point $35^{\circ} 02.5412' \text{ N} - 76^{\circ} 22.4445' \text{ W}$; running southwesterly near Marker "5WB" to a point $35^{\circ} 02.0798' \text{ N} - 76^{\circ} 22.8729' \text{ W}$; running southerly to a point $35^{\circ} 00.5666' \text{ N} - 76^{\circ} 21.8333' \text{ W}$; running southerly to Deep Bend Point to a point $34^{\circ} 58.5923' \text{ N} - 76^{\circ} 21.7325' \text{ W}$; running easterly and northerly along shore to the beginning point.
- (9) Core Sound, Back Sound and the Straits and their tributaries.
- (10) North River:
- (A) Goose Bay; beginning on shore west of South Leopard Creek at a point $34^{\circ} 45.4517' \text{ N} - 76^{\circ} 35.1767' \text{ W}$; running northerly to a point $34^{\circ} 45.6409' \text{ N} - 76^{\circ} 35.2503' \text{ W}$; running southwesterly to a point $34^{\circ} 45.3333' \text{ N} - 76^{\circ} 35.7500' \text{ W}$; running southerly to a point $34^{\circ} 43.4667' \text{ N} - 76^{\circ} 35.2333' \text{ W}$; running easterly to shore at a point $34^{\circ} 43.5833' \text{ N} - 76^{\circ} 34.9167' \text{ W}$; running northerly along shore to the beginning point.
- (B) Ward Creek; coastal fishing waters north and east of a line beginning on the north shore at a point $34^{\circ} 46.2667' \text{ N} - 76^{\circ} 35.4933' \text{ W}$; running southerly to south shore to a point $34^{\circ} 45.4517' \text{ N} - 76^{\circ} 35.1767' \text{ W}$.
- (C) Upper North River; coastal fishing waters north of a line beginning on the west shore at a point $34^{\circ} 46.0383' \text{ N} - 76^{\circ} 37.0633' \text{ W}$; running easterly to shore to a point $34^{\circ} 46.2667' \text{ N} - 76^{\circ} 35.4933' \text{ W}$.
- (D) Newby Creek, Gibbs Creek; beginning on Marsh Hen Point at a point $34^{\circ} 45.2004' \text{ N} - 76^{\circ} 37.0639' \text{ W}$; running southwesterly to a point $34^{\circ} 44.5833' \text{ N} - 76^{\circ} 36.6000' \text{ W}$; running southeasterly to shore near Holland's Rocks to a point $34^{\circ} 43.6667' \text{ N} - 76^{\circ} 37.3333' \text{ W}$; running northerly along shore to the beginning point.
- (E) North River Marshes; beginning near Marker "6" at a point $34^{\circ} 43.4833' \text{ N} - 76^{\circ} 37.3500' \text{ W}$; running northeasterly to a point $34^{\circ} 44.1333' \text{ N} - 76^{\circ} 36.8667' \text{ W}$; running southeasterly to a point $34^{\circ} 43.8000' \text{ N} - 76^{\circ} 36.1333' \text{ W}$; running southeasterly to a point $34^{\circ} 43.5000' \text{ N} - 76^{\circ} 35.7833' \text{ W}$; running southerly near Marker "56" to a point $34^{\circ} 42.2391' \text{ N} - 76^{\circ} 35.8498' \text{ W}$; running westerly to a point $34^{\circ} 42.2333' \text{ N} - 76^{\circ} 36.7167' \text{ W}$; running northerly to a point $34^{\circ} 42.7500' \text{ N} - 76^{\circ} 36.9667' \text{ W}$; running northerly to a point $34^{\circ} 43.2333' \text{ N} - 76^{\circ} 36.9667' \text{ W}$; running northwesterly to the beginning point.
- (11) Newport River:
- (A) Lower portion; beginning on shore east of Penn Point at a point $34^{\circ} 45.4397' \text{ N} - 76^{\circ} 43.0638' \text{ W}$; running northeasterly to shore east of Oyster Creek to a point $34^{\circ} 46.5480' \text{ N} - 76^{\circ} 41.9910' \text{ W}$; running easterly along shore to a point on the western shore of Core Creek to a point $34^{\circ} 47.0816' \text{ N} - 76^{\circ} 41.2605' \text{ W}$; running easterly to the eastern shore at a point $34^{\circ} 46.9867' \text{ N} - 76^{\circ} 41.0437' \text{ W}$; running southerly along shore to Gallant Point to a point $34^{\circ} 43.9911' \text{ N} - 76^{\circ} 40.2762' \text{ W}$; running westerly near Marker "2" to a point $34^{\circ} 44.0031' \text{ N} - 76^{\circ} 40.5038' \text{ W}$; running southeasterly near Marker "4" to a point $34^{\circ} 43.7064' \text{ N} - 76^{\circ} 40.1627' \text{ W}$; running southerly to the west side of Gallant's Channel at the drawbridge to a point $34^{\circ} 43.3500' \text{ N} - 76^{\circ} 40.1833' \text{ W}$;

running westerly along the US 70 and the US 70 bridge to its terminus at the State Port Terminal; running westerly and northerly along the western shore of Newport River and its tributaries to the beginning point.

- (B) Upper portion; the coastal fishing waters west of a line beginning on shore east of Harlowe Creek at a point 34° 46.5730' N – 76° 42.6350' W; running southerly to shore east of Penn Point to a point 34° 45.6970' N - 76° 43.5180' W.

(12) Bogue Sound:

- (A) South of the IWW; beginning on Archer Point at a point 34° 40.5500' N – 77° 00.8000' W; running northerly near Marker “37” to a point 34° 41.2500' N – 77° 00.7167' W; running easterly along the south side of the IWW channel to the Atlantic Beach bridge to a point 34° 43.0320' N – 76° 44.1300' W; running easterly to the northeastern shore of Tar Landing Bay to a point 34° 42.5000' N – 76° 42.2000' W; running easterly along shore to a point 34° 42.1990' N - 76° 41.3873' W; running southeasterly to a point 34° 42.1631' N - 76° 41.3491' W; running southeasterly and westerly along shore to the beginning point.

- (B) North of the IWW; beginning on the north shore at the NC 58 bridge at a point 34° 40.7780' N - 77° 04.0010' W; running southerly along the bridge to the north side of the IWW channel to a point 34° 40.4640' N – 77° 03.9090' W; running easterly along the north side of the IWW channel to the Atlantic Beach bridge to a point 34° 43.0620' N – 76° 44.1240' W; running northerly along the bridge to shore to a point 34° 43.2780' N – 76° 44.0700' W; running westerly along shore to the beginning point.

(13) Designated primary nursery areas in all coastal fishing waters which are listed in 15A NCAC 03R .0103, except Burton Creek off Lower Broad Creek in Pamlico County.

(b) The pot areas referenced in 15A NCAC 03J .0301(a)(2)(B) to be opened by proclamation are delineated in the following coastal fishing waters:

(1) Wysocking Bay:

- (A) Lone Tree Creek - beginning on shore at a point 35° 25.9705' N - 76° 02.7799' W; running easterly along

the shoreline to the primary nursery area (PNA) line on the north shore of Lone Tree Creek; running southeasterly along the PNA line to the south shore; running southwesterly to a point 35° 24.7666' N - 76° 02.5333' W; running northwesterly to a point 35° 25.7000' N - 76° 03.2666' W; running northeasterly to the beginning point.

- (B) Mt. Pleasant Bay - beginning on shore west of Green Point at a point 35° 24.6160' N - 76° 03.9690' W; running easterly to a point 35° 24.4500' N - 76° 03.2000' W; running southerly to a point 35° 23.2833' N - 76° 03.5333' W; running southwesterly to shore to a point 35° 23.1166' N - 76° 04.2000' W; running westerly and northerly along shore to the primary nursery area (PNA) line on the western shore of Hickory Creek Bay; running northeasterly along the PNA line to Browns Island; running along the eastern shore of Browns Island to the PNA line on the south shore of Old Hill Bay; running northerly along the PNA line to shore; running northeasterly along shore to the beginning point.

- (2) Juniper Bay - beginning on shore at a point 35° 21.7957' N - 76° 14.3545' W; running southeasterly along shore to the primary nursery area (PNA) line on the western shore of Buck Creek; running southeasterly along the PNA line to the eastern shore; running southeasterly along shore to the PNA line on the north shore of Laurel Creek; running southerly to the south shore; running southerly along shore to Juniper Bay Point to a point 35° 20.4420' N - 76° 13.2680' W; running westerly to a point 35° 20.2500' N - 76° 14.7500' W; running northerly near Marker “3” to a point 35° 21.5360' N - 76° 14.8040' W; running northeasterly to the beginning point.

- (3) Swanquarter Bay - beginning in Caffee Bay on the north shore at a point 35° 21.9928' N - 76° 17.6720' W; running southerly to the south shore at a point 35° 21.5240' N - 76° 17.8130' W; running westerly along shore to Drum Point to a point 35° 21.5920' N - 76° 18.3560' W; running westerly to a point 35° 21.2833' N - 76° 19.0500' W; running northwesterly to a point 35° 21.8500' N - 76° 19.4500' W; running easterly to Sandy Point to a point 35° 22.1080' N - 76° 18.7440' W; running easterly along shore and following the PNA line of the

- northern tributary in Caffee Bay to the beginning point.
- (4) Deep Cove - beginning on the north shore at a point 35° 21.5784' N - 76° 22.7505' W; running easterly along shore to a point 35° 21.5002' N - 76° 22.1112' W; running southerly to shore to a point 35° 20.6851' N - 76° 22.0524' W; running westerly along shore to a point 35° 20.5390' N - 76° 22.7790' W; running northerly to the beginning point.
- (5) Rose Bay - beginning on shore south of Swan Point at a point 35° 23.9650' N - 76° 23.5530' W; running southeasterly along shore to a point 35° 23.5060' N - 76° 23.2090' W; running westerly to a point 35° 23.3166' N - 76° 24.0666' W; running northwesterly to a point 35° 24.0500' N - 76° 24.5500' W; running easterly to the beginning point.
- (6) Spencer Bay - beginning on Roos Point at a point 35° 22.3590' N - 76° 28.1850' W; running northeasterly to a point 35° 22.9500' N - 76° 27.2166' W; running northwesterly to a point 35° 23.4166' N - 76° 27.9500' W; running southwesterly to shore to a point 35° 23.0209' N - 76° 28.5060' W; running southeasterly along shore and the primary nursery area line of the unnamed western tributary of Spencer Bay to the beginning point.
- (7) Pamlico River:
- (A) Lee Creek - beginning on shore at a point 35° 22.8779' N - 76° 45.7149' W; running northerly to a point 35° 23.1011' N - 76° 45.7371' W; running easterly along the six foot depth to a point 35° 22.9450' N - 76° 44.8403' W; running southwesterly to shore to a point 35° 22.7667' N - 76° 45.2333' W; running westerly along shore to the beginning point.
- (B) Huddy Gut - beginning on shore at a point 35° 22.5000' N - 76° 44.4500' W; running northerly to a point 35° 22.7166' N - 76° 44.5000' W; running easterly along the six foot depth to a point 35° 22.7170' N - 76° 43.9500' W; running southwesterly to shore to a point 35° 22.4657' N - 76° 44.0536' W; running westerly along shore to the beginning point.
- (C) Indian Island - beginning on shore at the west end of Indian Island at a point 35° 21.6240' N - 76° 39.4090' W; running westerly to a point 35° 21.7667' N - 76° 40.2667' W; running easterly along the six foot depth to a point 35° 21.6107' N - 76° 38.2202' W; running westerly to the east end of Indian Island to a point 35° 21.6100' N - 76° 38.6290' W; running westerly along the northern shore to the beginning point.
- (D) Old Field Point, Goose Creek - beginning on shore at a point 35° 20.2297' N - 76° 37.3456' W; running southeasterly to a point 35° 20.1500' N - 76° 37.1000' W; running southerly along the six foot depth to a point 35° 19.9031' N - 76° 37.2308' W; running westerly to shore to a point 35° 19.9812' N - 76° 37.4917' W; running northerly along shore to the beginning point.
- (8) Big Porpoise Bay - beginning on the north shore at a point 35° 16.0028' N - 76° 29.1708' W; running southerly to Sage Point at a point 35° 15.5930' N - 76° 29.1270' W; running easterly to a point 35° 15.4660' N - 76° 28.6000' W; running northerly to shore to a point 35° 15.8120' N - 76° 28.4270' W; running westerly along shore to the beginning point.
- (9) Middle Bay - beginning on Middle Bay Point at a point 35° 14.8310' N - 76° 28.7500' W; running southerly to Sow Island Point at a point 35° 13.2876' N - 76° 29.5585' W; running westerly along shore to Big Fishing Point at a point 35° 14.0285' N - 76° 29.9336' W; running northerly to Oyster Creek Point at a point 35° 14.6042' N - 76° 29.8544' W; running easterly along shore to the beginning point.
- (10) Jones Bay - beginning on Sow Island Point at a point 35° 13.1811' N - 76° 29.6096' W; running southerly near Marker "3" to a point 35° 12.0250' N - 76° 29.9660' W; running northwesterly to a point 35° 12.8000' N - 76° 30.9666' W; running southwesterly to shore at the east shore of the Little Drum Creek primary nursery area (PNA) line; running westerly along the PNA line to the west shore of the Little Eve Creek PNA; running westerly along shore to a point 35° 12.6000' N - 76° 32.0166' W; running northeasterly to a point 35° 12.8666' N - 76° 31.7500' W; running northwesterly to a point 35° 13.1833' N - 76° 32.1166' W; running northerly to a point 35° 13.6500' N - 76° 31.9000' W; running southeasterly to a point 35° 13.1500' N - 76° 30.8000' W; running northerly to shore at a point 35° 13.4886' N - 76° 30.7785' W; running easterly along shore to the beginning point.
- (11) Bay Point - beginning on Boar Point at a point 35° 12.1450' N - 76° 31.1150' W; running easterly near Marker "5" to a point 35°

- 12.0250' N - 76° 29.9660' W; running southerly to a point 35° 10.9333' N - 76° 30.1666' W; running westerly to Bay Point to a point 35° 11.0750' N - 76° 31.6080' W; running northerly along shore to the beginning point.
- (12) Bay River:
- (A) Rockhole Bay - beginning on the western shore of Dump Creek at a point 35° 11.6708' N - 76° 33.4359' W; running southerly to a point 35° 11.3833' N - 76° 33.3166' W; running southeasterly along the six foot depth to a point 35° 10.8333' N - 76° 32.1333' W; running northerly to shore at a point 35° 11.1250' N - 76° 32.1340' W; running northwesterly along shore to the southeast shore of the Rockhole Bay PNA line; running northwesterly along the PNA line to the western shore; running westerly along shore to the east shore of PNA line in Dump Creek; running southwesterly along the PNA line to the western shore; running southerly along shore to the beginning point.
- (B) Hogpen Creek - beginning on shore north of Bonner Bay at a point 35° 10.4174' N - 76° 34.7041' W; running northerly to a point 35° 10.7500' N - 76° 34.7333' W; running easterly along the six foot depth to a point southwest of Marker "3" to a point 35° 10.8137' N - 76° 33.5120' W; running southwesterly to shore to a point 35° 10.3195' N - 76° 34.0876' W; running westerly along shore to the beginning point.
- (C) Fisherman Bay - beginning on the western shore of Fisherman Bay at a point 35° 09.2345' N - 76° 33.0199' W; running northwesterly to a point 35° 09.9892' N - 76° 33.2213' W; running easterly along the six foot depth to a point southwest and near Marker "1" to a point 35° 09.7951' N - 76° 32.0099' W; running southwesterly to shore to a point 35° 09.2668' N - 76° 32.3668' W; running westerly along shore to the beginning point.
- (13) Neuse River:
- (A) Swan Creek - beginning at a point on shore south of Maw Bay at a point 35° 08.5760' N - 76° 32.6320' W; running southerly along shore to a point north of Swan Creek to a point 35° 07.3182' N - 76° 33.4620' W; running southeasterly to the six foot depth to a point 35° 07.2524' N - 76° 33.2078' W; running northeasterly along the six foot depth to a point 35° 08.3214' N - 76° 31.9971' W; running westerly to the beginning point.
- (B) Broad Creek - beginning on Tonney Hill Point at a point 35° 05.5505' N - 76° 35.7249' W; running southeasterly along shore and following the primary nursery area line of Cedar Creek; running southerly along shore to a point north of Gum Thicket Creek to a point 35° 04.6741' N - 76° 35.7051' W; running southeasterly to a point 35° 04.5786' N - 76° 35.4808' W; running northerly near Marker "1" to a point 35° 05.4809' N - 76° 34.9734' W; running westerly along the six foot depth near Marker "3" to a point 35° 05.6400' N - 76° 35.6433' W; running southwesterly to the beginning point.
- (C) Gum Thicket Shoal - beginning on shore west of Gum Thicket Creek at a point 35° 04.2169' N - 76° 36.2119' W; running southwesterly along shore to a point 35° 04.0634' N - 76° 36.6548' W; running southerly to a point 35° 03.6833' N - 76° 36.7166' W; running easterly along the six foot depth to a point 35° 03.9166' N - 76° 35.8000' W; running northwesterly to the beginning point.
- (D) Orchard Creek - beginning on the eastern shore at and running southwesterly along the Orchard and Old House Creeks primary nursery area line to Cockle Point; running easterly to a point 35° 03.3000' N - 76° 37.8833' W; running northerly to the beginning point.
- (E) Dawson Creek - beginning on the eastern shore of Dawson Creek at a point 34° 59.5863' N - 76° 45.3907' W; running westerly along the bridge to the western shore to a point 34° 59.5994' N - 76° 45.4624' W; running southwesterly along shore to a point 34° 59.0667' N - 76° 45.9000' W; running southeasterly to a point 34° 58.7833' N - 76° 45.6500' W; running northerly along the six foot depth to a point 34° 59.3666' N - 76° 45.3166' W; running northwesterly near Marker "4" to a point 34° 59.4430' N - 76°

- 45.4521' W; running northerly to the beginning point.
- (F) Pine Cliff Recreation Area - beginning on shore at a point 34° 56.4333' N - 76° 49.5833' W; running easterly along shore to a point 34° 56.3422' N - 76° 49.1158' W; running northeasterly near Marker "2" to a point 34° 56.7650' N - 76° 48.5778' W; running northerly to a point 34° 56.8333' N - 76° 48.6000' W; running southwesterly along the six foot depth to a point 34° 56.6067' N - 76° 49.6190' W; running southerly to the beginning point.

Authority G.S. 113-134; 113-182; 113-221; 143B-289.52.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Soil and Water Conservation Commission intends to amend the rules cited as 15A NCAC 06E .0103, .0106.

Proposed Effective Date: July 1, 2005

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Any person requesting that the Soil and Water Conservation Commission conduct a public hearing on any portion of these proposed rules must submit a written request to Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614. The request must specify which rule the hearing is being requested on.*

Reason for Proposed Action: *The Soil and Water Conservation Commission formed a committee to study its allocation formula and parameters to ensure that program funds for both financial assistance and technical assistance are allocated equitably to districts on the basis of each district's need and performance. The committee is recommending the proposed changes to the allocation methodologies in response to the Commission's request.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections to the proposed permanent rules by contacting Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614, voice mail (919)715-6109, fax (919)715-3559, or email Vernon.Cox@ncmail.net*

Written comments may be submitted to: *Vernon Cox, Division of Soil and Water Conservation, 1614 Mail Service Center, Raleigh, NC 27699-1614, phone (919)715-6109, fax (919)715-3559, or email Vernon.Cox@ncmail.net*

Comment period ends: May 2, 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 6 - SOIL AND WATER CONSERVATION COMMISSION

SUBCHAPTER 06E - AGRICULTURE COST SHARE PROGRAM FOR NONPOINT SOURCE POLLUTION CONTROL

SECTION .0100 - AGRICULTURE COST SHARE PROGRAM

15A NCAC 06E .0103 ALLOCATION GUIDELINES AND PROCEDURES

(a) The Commission shall allocate the cost share funds to the districts in the designated program areas. To receive fund allocations, each district designated eligible by the Commission shall submit an annual strategy plan to the Commission at the beginning of each fiscal year. Funds may be allocated to each district for any or all of the following purposes: cost share payments, cost share incentive payments, technical assistance, or administrative assistance. Use of funds for technical and administrative assistance must follow the guidelines set forth in Rule .0106 of this Subchapter.

(b) Funds shall be allocated to the districts at the beginning of the fiscal ~~year-year~~ and whenever significant unspent funds become available for reallocation. Districts shall be allocated monies based on the identified level of ~~agricultural-related agriculture-related nonpoint source pollution problems~~ and the respective district's BMP installation goals and available technical services—as demonstrated in the district annual strategy plan-plan, and the district's record of performance to affect BMP installation by cooperating farmers. The allocation method used for disbursement of funds is based on the relative position of each respective district for those parameters approved by the Commission pursuant to Paragraph (g) of this Rule. ~~These parameters are designed to reflect the agricultural nonpoint source problems, the conservation needs,~~

and the technical assistance available in the area of the state included in the current program year funding. Each district is assigned points for its relative position for each parameter, and the points are totaled and proportioned to the total dollars available under the current program year funding. funding according to the following formula:

$$\begin{aligned} (1) \quad & \frac{\text{Sum of Parameter Points}}{\text{Total Points}} = \\ (2) \quad & \frac{\text{Percentage Total}}{\text{Total Dollars Available}} \times \\ & \frac{\text{Points Each District}}{\text{Dollars Available Each District}} = \text{to} \end{aligned}$$

(3) ~~Because of other program restraints or increased demands for funds a district may request fewer (Group A) or more (Group B) dollars than are available.~~

Thus,

$$\begin{aligned} & \frac{\text{Dollars Available Per District, (2)}}{\text{the District}} = \\ & \frac{\text{(A) Group A Districts request less than amount (2)}}{\text{(B) Group B Districts request more than amount (2)}} \\ (3) \quad & \text{The minimum allocated to a particular district shall be twenty thousand dollars (\$20,000) per program year, unless the district requests less than twenty thousand dollars (\$20,000).} \\ (4) \quad & \text{The dollars in excess of Group A District requests are apportioned to Group B Districts in the following manner:} \\ & \frac{\text{Total of Those Excess Requests by Group B}}{\text{Percentage of Total Excess Requests by Group B}} \times \\ & \frac{\text{Amount of that each Group B Requested by District}}{\text{Group B Group A Districts Request}} = \text{to} \end{aligned}$$

(4) If a district requests less than the dollars available to that district in Subparagraph (b)(2) of this Rule, then the excess funds beyond those requested by the district will be allocated to the districts who did not receive their full requested allocation using the same

methodology described in Subparagraph (b)(2) of this Rule.

(5) ~~Therefore, there are two categories of districts in the allocation method:~~

(A) ~~Those receiving 100 percent of request (Group A).~~

(B) ~~Those receiving less than 100 percent of requests (Group B) who receive amounts (2) plus (4).~~

(c) 95 percent of the total program funding shall be ~~allotted~~ allocated to the district accounts in the initial allocation. The Division shall retain five percent of the total funding in a contingency fund to be used to respond to an emergency or natural disaster. If the funds are not needed to respond to an emergency, then the contingency fund shall be allocated at the March meeting of the Commission.

(d) The Commission may recall funds allocated to a district during a fiscal year that have not been encumbered to an agreement at any time if it determines the recalled funds are needed to respond to an emergency or natural disaster.

(e) At any time a district may submit a revised strategy plan and apply to the Commission for additional funds.

(f) CPO's that encumber funds under the current year must be submitted to the Division by 5:00 p.m. on the first Wednesday in June.

(g) Districts shall be allocated funds based on their relative ranking respective data for each of the following parameters:

- (1) ~~Number of acres of agricultural land in the district (including cropland, hayland, and pasture land) as reported in the most recent edition of the North Carolina Agricultural Statistics.~~
- (2) ~~Number of acres of cultivated cropland in the district as reported in the most recent edition of the North Carolina Agricultural Statistics.~~
- (3) ~~Number of confined animal operations and number of animals by type that are eligible for cost share as reported in the district's Annual Strategy Plan.~~
- (4) ~~Number of stream protection systems needed by agricultural operations in the district that are eligible for cost share as reported in the district's Annual Strategy Plan.~~
- (5) ~~Number of water control structures needed in the district by agricultural operations that are eligible for cost share as reported in the district's Annual Strategy Plan.~~
- (6) ~~Number of miles of stream identified as less than fully supporting due to agricultural nonpoint source pollution as reported in the state's 303(d) list, 305(b) report, and basin plan.~~
- (7) ~~Percentage of the county draining to waters classified as Primary Nursery Areas, Outstanding Resource Waters, High Quality Waters, Trout, Shellfishing, and Critical Water Supply on the current schedule of Water Quality Standards and Classifications.~~

- ~~(8) The number of full time equivalent positions available to provide technical assistance to cooperators in planning and installing best management practices as reported in the district's Annual Strategy Plan.~~
- ~~(9) Percentage of cost share funds encumbered to contracts over the last three program years that are actually paid out in installed BMPs as reported on the NC Agriculture Cost Share Program Database.~~
- ~~(10) Cumulative funds encumbered into existing cost share contracts for which BMPs have not yet been installed as reported on the NC Agriculture Cost Share Program Database.~~
- (1) Percentage of total acres of agricultural land in North Carolina that are in the respective district (including cropland, hayland, pasture land, and orchards/vineyards) as reported in the most recent edition of the North Carolina Agricultural Statistics. The actual percentage will be normalized to a 1-100 scale. (20%)
- (2) Percentage of total number of animal units in North Carolina that are in the respective district as reported in the most recent edition of the North Carolina Agricultural Statistics and converted to animal units using the conversion factors approved by the USDA-Natural Resources Conservation Service. The actual percentage will be normalized to a 1-100 scale. (20%)
- (3) Relative rank of the number of miles of stream identified as less than fully supporting due to agricultural nonpoint source pollution as reported in the state's 303(d) list, 305(b) report, and basin plan. (20%)
- (4) Relative rank of the percentage of the county draining to waters classified as Primary Nursery Areas, Outstanding Resource Waters, High Quality Waters, Trout, Shellfishing, and Critical Water Supply on the current schedule of Water Quality Standards and Classifications. (20%)
- (5) The percentage of cost share funds allocated to a district that are encumbered to contracts in the most recent three completed program years as reported on the NC Agriculture Cost Share Program Database. (10%)
- (6) Percentage of program funds encumbered to contracts that are actually expended for installed BMPs in the most recent three-year period for which the allowed time for implementing contracted BMPs has expired as reported on the NC Agriculture Cost Share Program Database. (10%)

FUNDS

(a) The funds available for technical assistance shall be allocated by the commission based on the recommendation of the division and the needs as expressed by the district and needs to accelerate the installation of BMP's in the respective district. Each district may use these monies to fund new positions or to accelerate present technical assistance positions. Districts must provide an itemized budget to the division in order to qualify for technical assistance funds. Matching funds for district technical assistance shall be approved by the commission prior to any expenditure of funds. Budget revisions submitted by the districts can be approved by the NPS Section based on Paragraph (b) of this Rule. N.C. Agriculture Cost Share technical assistance funds may be used for each FTE technical position with the district matching at least 50 percent of the total. Priorities for funding positions are assigned based on the rating system as follows:

- ~~(1) Position presently funded by program technical assistance funds 50 pts.~~
- ~~(2) Position needed in district not presently receiving technical assistance monies~~
 - ~~(A) Position needed to qualify for cost share allocation 15 pts.~~
 - ~~(B) Position needed to further accelerate program 10 pts.~~
- ~~(3) Position needed to further accelerate program in district presently receiving technical assistance monies for another position 5 pts.~~
- ~~(4) Position needed to further accelerate treatment of identified critical nonpoint source pollution problem (i.e., intense animal waste, PNA drainage area, Nutrient Sensitive Watershed, etc.) 15 pts.~~
- (1) Subject to availability of funds and local match, provide support for one FTE technical position for every district.
- (2) Subject to availability of funds and local match, provide support for one additional FTE technical position if the position is needed to further support program implementation. Priority for funding positions beyond 1 FTE per district shall be based on the following parameters:
 - (A) Whether the position is presently funded by program technical assistance funds;
 - (B) The number of program dollars encumbered to contracts in each of the previous three completed program years; and
 - (C) The number of program dollars actually expended for installed BMPs in the most recent three-year period for which the allowed time for implementing contracted BMPs has expired as reported on the NC Agriculture Cost Share Database.

Authority G.S. 139-4; 139-8; 143-215.74; 143B-294.

15A NCAC 06E .0106 TECHNICAL ASSISTANCE

- (3) Subject to availability of funds and local match, provide support for additional FTE technical position if the position is needed to further accelerate treatment of identified critical nonpoint source pollution problem(s).

(b) Technical assistance funds may be used for salary, benefits, social security, field equipment and supplies, office rent, office equipment and supplies, postage, telephone service, travel and mileage. A maximum of two thousand five hundred dollars (\$2,500) per year for each FTE technical position is allowed for mileage charges.

(c) Minimum requirements for technical positions shall be one of the following:

- (1) associated degree in engineering, agriculture, forestry or related field; or
- (2) high school diploma with two years experience in the fields listed in Rule .0106(c)(1) of this Subchapter, Subchapter.
- (3) ~~appropriate experience in the fields listed in Rule .0106(c)(1) of this Subchapter.~~

(d) Cost shared positions must be used to accelerate the program activities in the district. A district technician cost shared with program funds may work on other activities as delegated by the field office supervisor but the total hours charged to the program by field office personnel must equal or exceed those hours funded through the program. Also, these hours must be in addition to those hours normally spent in BMP planning and installation by district personnel.

(e) District technicians may be jointly funded by more than one district to accelerate the program in each participating district. Each district must be eligible for cost sharing in the program. Requests for funding (salary, FICA, insurance, etc.) of a shared position must be presented to the division by all concerned districts and the division will cost share to the billing district at a 50-50 rate based on the portion of the FTE provided each respective district. A shared position must be officially housed in one specific district and cost share for support items (office rent, telephone, etc.) will be paid to one district only.

(f) Funds, if available, will be allocated to each participating district to provide for administrative costs under this program. These funds shall be used for clerical assistance and other related program administrative costs and will be matched with in-kind funds of an equal amount from the district.

Authority G.S. 139-4; 139-8; 143-215.74; 143B-294.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Health Services intends to adopt the rule cited as 15A NCAC 18A .2836, amend the rules cited as 15A NCAC 18A .2801-.2804, .2806-.2810, .2812, .2814-.2827, .2829-.2835 and repeal the rules cited as 15A NCAC 18A .2805, .2811, .2813, .2828.

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: April 27, 2005

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

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

Reason for Proposed Action: *The Children's Environmental Health Branch recognized a need to revise the Child Care Sanitation Rules to improve the practices and methods used in child care centers. These proposed amendments, adoption, repeals will update the child care sanitation rules using evidenced-based health guidance and the latest environmental health science to help ensure that North Carolina's children continue to receive safe and sanitary child care.*

Procedure by which a person can object to the agency on a proposed rule: *Ed Norman, Program Supervisor, DENR Environmental Health Service Section, 1632 Mail Service Center, Raleigh, NC 27699-1632, email ed.norman@ncmail.net.*

Written comments may be submitted to: *Ed Norman, 1632 Mail Service Center, Raleigh, NC 27699-1632, phone (919)715-3293, fax (919) 715-4739, email ed.norman@ncmail.net.*

Comment period ends: May 2, 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 18 - ENVIRONMENTAL HEALTH

SUBCHAPTER 18A – SANITATION

SECTION .2800 - SANITATION OF CHILD CARE CENTERS

15A NCAC 18A .2801 DEFINITIONS

The following definitions shall apply throughout this Section:

- (1) "Adequate" means determined by the Department to be of sufficient size, volume, or

- technical specifications, to effectively accommodate and support the planned, current, or projected workloads for a specified operational area.
- (2) ~~"Approved" means procedures and domestic or commercial equipment determined by the Department to be in compliance with this Section. Food service equipment and utensils which meet and are installed in accordance with National Sanitation Foundation (NSF) standards shall be approved.~~
- (3) "Communicable Condition" means the state of being infected with a communicable agent but without symptoms.
- (4) "Communicable Disease" means any disease that can be transmitted from one person to another directly, by contact with excrement, other body fluids, or discharges from the body; or indirectly, via substances or inanimate objects, such as contaminated food, drinking glasses, toys or water; or via vectors, such as flies, mosquitoes, ticks, or other insects.
- (5) "Department" or "DENR" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department.
- (6) "Designated Emergency Medication" means any medication used or needed for the immediate recovery from a life-threatening event.
- (7) "Disinfecting Solution" means in a child care center a solution containing 500 to 800 parts per million (ppm) of available chlorine made by mixing a solution of one-quarter cup (2 fluid ounces) liquid chlorine bleach with one gallon of tap water and prepared fresh daily.
- (6)(8) ~~"Division of Child Development" means the Division of Child Development of child care licensing agency in the N.C. Department of Health and Human Services.~~
- (7) ~~"Eating and Cooking Utensils" means and includes any kitchenware, tableware, glassware, cutlery, utensils, containers, or other equipment with which food or drink comes in contact during storage, preparation, or serving.~~
- (8) ~~"Environmental Health Specialist" means a person authorized to represent the Department.~~
- (9) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (10) "Food Preparation" means the handling of foods or utensils in the preparation of meals, including opening and closing of baby bottles, baby food jars and cereal boxes, as well as the opening and closing of any other food items
- intended for the assembly of ingredients for human consumption.
- (11) "Food Service" means the distribution of prepared foods for consumption, including those food items prepared at the child care center; received by the center from approved catering food establishments; milk placed in a pitcher or other serving container; ice transported, stored and dispensed; bagged lunches sent from home; and the use of utensils to minimize direct food contact.
- (40)(12) "Frying" means to cook over direct heat in hot oil or fat. This includes the oil or fat that is generated by the food or added to the cooking utensil.
- (14)(13) "Hermetically Sealed" means a container designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.
- (12) ~~"Hygroscopic Food" means food which readily takes up and retains moisture, such as bean sprouts.~~
- (13) ~~"Impervious" means that which will not allow entrance or passage, such as an airtight plastic container that will not allow the entrance of moisture or vermin.~~
- (14) "Lavatory" means a sink that is equipped with hot and cold water under pressure for the primary purpose of handwashing.
- (14)(15) "Multi-Service Articles" means tableware, including flatware and holloware which holloware that are designed, fabricated, and intended by the manufacturer to be washed, rinsed, sanitized, and re-used.
- (15)(16) "Multi-Use Articles" means bulk food containers and utensils designed, fabricated, and intended by the manufacturer to be washed, rinsed, sanitized, and re-used. The term includes items such as food storage containers, beverage pitchers, serving spoons and bowls, tongs, and spatulas. The term does not include multi-service articles as defined in this Section.
- (16)(17) "Potable Water" means water from an approved source which is suitable for drinking.
- (17)(18) "Potentially Hazardous Food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including Clostridium botulinum. This term includes raw or ~~heat-treated~~ heat-treated food of animal origin, raw seed sprouts, and ~~heat-treated~~ treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity value of 0.85 or less.

- (18)(19) "Putrescible Materials" means materials likely to rot or putrefy, such as fruit, vegetables, meats, dairy products, or similar items.
- (19)(20) "Sanitary Sewage System" means a complete system of sewage collection, treatment, and disposal and includes septic tank systems, connection to a public or community sewage system, sewage reuse or recycle systems, mechanical or biological treatment systems, or other such systems.
- (20) "Sanitize" means the approved bactericidal treatment by a process which meets the temperature and chemical concentration levels in 15A NCAC 18A .2812.
- (21) "Sewage" means the liquid and solid human body waste and liquid waste generated by water using fixtures and appliances, including those associated with foodhandling. The term does not include industrial process wastewater or sewage that is combined with industrial process wastewater.
- (21) "Sanitizing Solution" means in a child care center a solution containing 50 to 200 parts per million (ppm) of available chlorine made by mixing a tablespoon of liquid chlorine bleach with one gallon of water and prepared fresh daily.
- (22) "School Age" means any child who is at least five years old on or before October 16 of the current school year and who is attending, or has attended, a public or private grade school or kindergarten; or any child who is not at least five years old on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before moving to and becoming a resident of North Carolina; or any child who is at least five years old on or before April 16 of the current school year, is determined by the principal of the school to be gifted and mature enough to justify admission to the school and is enrolled no later than the end of the first month of the school year.
- (22)(23) "Single-Service Articles" means tableware, including flatware and hollowware, carry-out utensils and other items such as bags, containers, stirrers, straws, toothpicks, and wrappers which that are designed, fabricated and intended by the manufacturer for one-time use.
- (23)(24) "Single-Use Articles" means bulk food containers and utensils intended by the manufacturer to be used once and discarded. The term includes items such as formed buckets, bread wrappers, pickle barrels, and No. 10 cans. The term does not include

single-service articles as defined in this Section.

- (25) "Tempered Water" means water that has been mixed by means of an anti-scald valve or faucet that is equipped with an anti-scald device to keep the water temperature between 80°F and 110°F.
- (26) "Utensils" means and includes any kitchenware, tableware, glassware, cutlery, containers or other equipment that food or drink comes in contact during storage, preparation or serving.
- (27) "Work Surfaces" means the following locations in the kitchen: food service areas; stove top surfaces; food preparation surfaces; utensil and dishwashing areas; surfaces used for air drying; drain boards; and counter top surfaces. In child care rooms, work surfaces include food preparation areas, diaper changing surfaces, counter top surfaces, children work tables, desks and easels.

Authority G.S. 110-91.

15A NCAC 18A .2802 APPROVAL OF CONSTRUCTION AND RENOVATION PLANS

- (a) Plans drawn to scale and specifications for new child care centers shall be submitted to the local health department for review and approval prior to initiating construction. Plans drawn to scale and specifications for changes to building dimensions, kitchen specifications, or other modifications to existing child care centers shall also be submitted to the local health department for review and approval prior to construction. Plans drawn to scale and specifications for prototype "franchise" or "chain" child care centers shall be submitted to DENR, Division of Environmental Health, Environmental Health Services Section, Children's Environmental Health Branch. When requested by an operator of a center or by the Secretary of the Department of Health and Human Services, it shall be the duty of the local health department to visit or inspect an existing or proposed center, within 30 days of the request, to determine compliance with this Section. Branch, PO Box 29534, Raleigh, North Carolina 27626-0534. The initial inspection for new construction or the first inspection following modifications to existing child care centers shall not be made by the local health department unless these plans have been approved. For new or proposed child care centers licensed for fewer than 13 children and located in a residence, a site visit to evaluate and assist in meeting the requirements of this Section may be requested by the child care operator prior to submission of plans and shall be conducted by the local health department within 30 days of the request.
- (b) Review of the plans by the local health department or the Environmental Health Services Section shall be based on the requirements of this Section.
- (c) Construction and modifications shall comply with the approved plans.

Authority G.S. 110-91.

15A NCAC 18A .2803 HANDWASHING

(a) ~~Unannounced inspections of child care centers shall be made by an Environmental Health Specialist at least once each six months. An original and two copies of the Sanitation Standards Evaluation Form for Child Care Centers shall be completed by the Environmental Health Specialist. The original shall be submitted to the Division of Child Development by the Environmental Health Specialist. The child care center operator and the Environmental Health Specialist shall each retain a copy.~~

(b) ~~If the Environmental Health Specialist determines that conditions found at the child care center at the time of any inspection are dangerous to the health of the children, the Environmental Health Specialist shall notify the Division of Child Development within 24 hours by verbal contact. The original of the inspection report documenting the dangerous conditions shall be sent to the Division of Child Development within two working days following the inspection.~~

(c) ~~An Environmental Health Specialist may conduct an inspection of any child care center as frequently as necessary in order to ensure compliance with applicable sanitation standards.~~

(a) Employees shall be instructed that handwashing is the single most important line of defense in preventing the transmission of disease-causing organisms. Employees shall wash hands upon reporting for work; before and after handling food; before bottle feeding or serving to other children; before handling clean utensils or equipment; after toileting or handling of body fluids (e.g., saliva, nasal secretions, vomitus, feces, urine, blood, secretions from sores, pustulant discharge); after diaper changing; after handling soiled items such as garbage, mops, cloths and clothing; after being outdoors; after handling animals or animal cages; and after removing disposable gloves. The use of hand sanitizing products does not replace the requirement for handwashing.

(b) Children shall wash hands upon arrival at the child care center; after each diaper change or visit to the toilet; before eating meals or snacks; before and after water play; after outdoor activity; and after handling animals or animal cages.

(c) Proper handwashing procedures shall include:

- (1) using liquid soap and tempered water;
- (2) rubbing hands vigorously with soap and tempered water for 15 seconds;
- (3) washing all surfaces of the hands, to include the backs of hands, palms, wrists, under fingernails and between fingers;
- (4) rinsing well for 10 seconds;
- (5) drying hands with a paper towel or other approved hand-drying device; and
- (6) turning off faucet with a paper towel or other method without recontaminating hands.

Note: Refer to Rule .2828 of this Section for history.

Authority G.S. 110-91.

15A NCAC 18A .2804 FOOD SUPPLIES

(a) Food shall be in good condition, free from spoilage, filth, or other contamination and shall be safe for human consumption.

Potentially hazardous ~~foods~~ foods, including foods packaged in hermetically sealed containers, shall only be obtained from sources that are permitted or inspected by a local health department ~~department~~, or the North Carolina Department of Agriculture. ~~Agriculture or other government regulatory agency.~~ The use of food packaged in hermetically sealed containers that was not prepared in a commercial food processing establishment is prohibited. Food prepared and sent from home to be shared with other children shall be limited to non-potentially hazardous baked goods.

(b) Milk products that are used shall be Grade "A" pasteurized fluid milk and fluid milk products or evaporated milk. The term "milk products" means those products as defined in 15A NCAC 18A .1200. Copies of 15A NCAC 18A .1200 may be obtained from the Environmental Health Services Section, Division of Environmental ~~Health~~ Health, DENR, P.O. Box 29534, Raleigh, North Carolina 27626-0534. Unless prescribed by a physician, dry milk and dry milk products may be used only for cooking purposes, including cooked pudding desserts and flavored hot beverages.

(c) ~~Fresh and frozen shucked shellfish (oysters, clams, or mussels) shall be packed in nonreturnable packages identified with the name and address of the original shell stock processor, shucker, packer, or repacker, and the interstate certification number issued according to law. Shell stock and shucked shellfish shall be kept in the container in which they were received until they are used. Each container of unshucked shell stock (oysters, clams, or mussels) shall be identified by an attached tag that states the name and address of the original shell stock processor, the kind and quantity of shell stock, and an interstate certification number issued by the State or foreign shellfish control agency. After each container of shellstock has been emptied, the management shall remove the stub of the tag and retain it for a period of at least 90 days.~~

(d)(c) Raw Steamed and uncooked shellfish, raw eggs, and eggs or products containing raw eggs shall not be consumed, including raw cookie dough, cake batter, brownie mix, milkshakes, ice cream and other food products. A pasteurized egg product may be used as a substitute for raw eggs.

(e)(d) Formula, ~~mother's~~ breast milk, and other bottled beverages, ~~beverages~~ including beverages in sippy cups, sent from home shall be fully prepared, dated, and identified for the appropriate child at the child's home. All ~~formula, mother's milk,~~ formula and other bottled beverages shall be returned to the child's home or discarded at the end of each day. Frozen breast milk may be stored in a freezer for up to seven days. Frozen breast milk shall be labeled with the date received and date thawed for use. Microwaves shall not be used to thaw or warm breast milk, formula or other bottled beverages. Bottle warming equipment shall be inaccessible to children when in use and shall be emptied, cleaned and sanitized daily. Unused breast milk may not be refrozen for storage. Formula provided by the child care center shall be commercially pre-packaged, ready-to-feed, fully prepared, and packaged in single-use containers. However, formula that does not meet these requirements may be provided by the child care center as prescribed by the child's physician or instructed by parent or guardian in writing. Bottles and other drinking utensils provided

by the child care center shall be sanitized in accordance with this Section. Formula and other beverages which require refrigeration, baby food after opening, and ~~mother's breast milk~~ shall be identified for the appropriate child and shall be refrigerated at 45°F (7°C) or below. Commercially prepared baby foods shall be served from a serving dish rather than the food jar. Upon ~~opening~~ opening, jars of baby food shall be covered, ~~dated with the date of opening~~ dated, refrigerated, and used within two days ~~48 hours~~. However, baby food may be served directly from the jar to one child if unused portions of the food are discarded after each feeding. After the completion of each feeding, leftover formula, breast milk, and other bottled beverages shall be discarded or returned to the child's home at the end of each day.

~~(f)(e)~~ Child care centers receiving ~~prepared, ready-to-eat prepared meals~~ from outside sources shall use only ~~eatered meals obtained from a-permitted food handling establishment permitted establishments, or other child care centers inspected by a local health department.~~ Child care centers may also receive prepared meals from organizations not licensed as child care centers only when these organizations are providing prepared meals to licensed child care centers. These organizations shall be inspected as child care centers by the local health department in the county where the meal is prepared. The inspection of these organizations shall be made by the local health department at the same time the inspection of the licensed child care center receiving these prepared meals is done. The inspection report of the organization providing these meals shall be a part of the inspection of the licensed child care center receiving the prepared meals, unless the organization is a permitted food handling establishment. During transportation, food shall meet the requirements of these the rules of this Section relating to food protection and storage.

~~(g)(f)~~ All bag lunches Lunches and other meals brought from home shall be dated and identified for the appropriate child at the child's home and shall be returned to the child's home or discarded at the end of each day. Meals containing potentially hazardous foods shall be refrigerated at 45°F (7°C) or below. in accordance with this Section.

(g) Nothing in the rules of this Section shall prohibit the use of fresh garden fruits and vegetables, including those grown at the child care center, so long as they are thoroughly washed before being served.

Authority G.S. 110-91.

15A NCAC 18A .2805 FOOD PROTECTION

~~(a) Food shall be protected at all times from potential contamination, including dust, insects, rodents, unclean equipment and utensils, unnecessary handling, coughs and sneezes, flooding, drainage, and overhead leakage or overhead drippage from condensation. The temperature of potentially hazardous food shall be 45°F (7°C) or below, or 140°F (60°C) or above at all times, including field trips, and as otherwise provided in these Rules.~~

~~(b) In the event of a fire, flood, power outage, or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at required~~

~~temperatures, the person in charge shall immediately contact the local health department.~~

Authority G.S. 110-91.

15A NCAC 18A .2806 FOOD STORAGE AND PROTECTION

~~(a) Food products shall be stored in approved, clean, tightly covered, storage containers once the original package is opened. Approved containers include, but are not limited to, resealable bags and other containers made of plastic or glass. Reusable containers that come in direct contact with food must be easy to clean, in good repair and intended for food storage. Container covers shall be impervious and nonabsorbent.~~

~~(b) Food items, that are stored in classrooms or other rooms intended for child care use, shall be limited to those food items which are individually packaged. Provisions shall be made to store and protect these food items from all potential sources of contamination and other nonfood items stored in the classroom, unless the classroom is equipped with a food preparation area.~~

~~(b)(c) Foods not Dry foods that are not readily identifiable and are stored in containers shall be labeled. the product container or package, in which it was obtained, shall be stored in a tightly covered, approved food storage container identifying the food by common name.~~

~~(e)(d) Food shall be stored above the floor in a manner that protects the food from splash and other contamination and that permits easy cleaning of the storage area.~~

~~(d)(e) Food and containers of food shall not be stored under exposed sewer lines. or unprotected sewer lines or water lines, except for automatic fire protection sprinkler heads that may be required by law. Food shall not be stored in toilet or laundry rooms. rooms, or other areas where there is a potential for contamination. Child care centers licensed for fewer than 13 children and located in a residence may store food in laundry rooms if protected as required in Paragraph (e)(f) of this Rule.~~

~~(e)(f) All food shall be stored in a manner to protect it from dust, rodents, insects, drip, splash and other contamination. Raw meats, poultry, fish, shellfish and eggs shall be stored on shelving beneath and separate from other foods. The temperature of potentially hazardous food provided by the center shall be 45°F (7°C) or below, or 140°F (60°C) or above at all times, including field trips, catering events, outdoor service, except during necessary periods of preparation and service, and as otherwise provided in the rules of this Section.~~

~~(f)(g) Packaged food such as milk or other fluid containers may be stored in undrained ice as long as any individual units are not submerged in water. Wrapped sandwiches shall not be stored in direct contact with ice.~~

~~(g)(h) Refrigerated storage:~~

- (1) Refrigeration equipment shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at required temperatures during storage. Each refrigerator shall be provided with a numerically scaled indicating thermometer, accurate to $\pm 3^{\circ}\text{F}$, $\pm 3^{\circ}\text{F}$ ($\pm 1.5^{\circ}\text{C}$) located to measure the air temperature in the warmest

part of the refrigerator and located to be easily readable. Recording thermometers, accurate to $\pm 3^{\circ}\text{F}$ ($\pm 1.5^{\circ}\text{C}$), may be used in lieu of indicating ~~thermometers; thermometers.~~

- (2) Potentially hazardous food requiring refrigeration after preparation shall be rapidly cooled to an internal temperature of 45°F (7°C), or below. Cooling of potentially hazardous foods shall be initiated upon completion of preparation or a period of hot storage. Methods such as shallow pans, agitation, quick chilling or water circulation external to the food containers shall be used to cool large quantities of potentially hazardous food. Potentially hazardous food to be transported cold shall be prechilled and held at a temperature of 45°F (7°C) or ~~below; below.~~
- (3) Ice used for cooling stored food and food containers shall not be used for human consumption.

~~(h)~~(i) Hot storage:

- (1) Hot food storage equipment shall be provided in ~~such~~ sufficient number and ~~of such~~ capacity to assure the maintenance of food at the required temperature during storage. Each hot food unit shall be provided with a numerically scaled indicating thermometer, accurate to $\pm 3^{\circ}\text{F}$ ($\pm 1.5^{\circ}\text{C}$), located to measure the air temperature in the coolest part of the unit and located to be easily readable. Recording thermometers, accurate to $\pm 3^{\circ}\text{F}$ ($\pm 1.5^{\circ}\text{C}$), may be used in lieu of indicating thermometers. Where it is impractical to install thermometers on equipment such as steam tables, steam kettles, heat lamps, cal-rod units, or insulated food transport carriers, a metal stem-type numerically scaled indicating product thermometer shall be available and used to check internal food ~~temperature;~~ temperature.
- (2) The internal temperature of potentially hazardous foods requiring hot storage shall be 140°F (60°C) or above except during necessary periods of preparation and service. Potentially hazardous food to be transported hot shall be held at a temperature of 140°F (60°C) or above.

(j) In the event of a fire, flood, water supply interruption, power outage, or similar event that might result in the contamination of food, or that might prevent potentially hazardous food from being held at required temperatures, the person in charge shall contact the local health department.

Authority G.S. 110-91.

15A NCAC 18A .2807 FOOD PREPARATION

(a) The preparation of food shall take place only in the approved facilities or space equipped as required in Rule .2810 of this Section.

~~(a)(b)~~ Food shall be prepared with the least possible manual contact, with appropriate utensils, and on surfaces that have been cleaned, rinsed, and sanitized prior to use in order to prevent cross-contamination.

~~(b)(c) Whenever there is a change in processing from raw to ready-to-eat foods, the new operation shall begin with food contact—~~ Food contact surfaces and utensils shall be cleaned and sanitized after preparing raw foods, prior to preparing ready-to-eat foods and after any interruption of operations in which contamination may have occurred. ~~which are clean and have been sanitized.~~

~~(e)(d)~~ Raw fruits and raw vegetables shall be thoroughly washed with potable water before being cooked or served.

~~(d)(e)~~ Potentially hazardous foods requiring cooking shall be cooked to heat all parts of the food to a temperature of at least 140°F (60°C), except that:

- (1) ~~Poultry,~~ poultry, poultry stuffings, stuffed meats and stuffings containing meat shall be cooked to heat all parts of the food to at least 165°F (74°C) with no interruption of the cooking process;
- (2) ~~Pork,~~ pork and any food containing pork shall be cooked to heat all parts of the food to at least ~~155°F (68°C)—~~ 150°F (66°C) ~~for 15 seconds—~~ with no interruption in the cooking process;
- (3) ~~Ground,~~ ground beef and foods containing ground beef shall be cooked to an internal temperature of at least 155°F (~~68°C ;~~ 68°C) with no interruption in the cooking process; and
- (4) ~~Rare,~~ rare roast beef shall be cooked to an internal temperature of at least 130°F (54°C) with no interruption in the cooking process.

~~(e)(f) Raw animal products—~~ Potentially hazardous foods requiring cooking and cooked in a microwave oven shall be rotated during cooking to compensate for uneven heat distribution and shall be heated an additional 25°F (13.9°C) to compensate for shorter cooking times.

~~(f)(g)~~ Potentially hazardous foods that have been cooked and then refrigerated, if served above 45°F (7°C), shall be reheated rapidly to an internal temperature of 165°F (74°C) or higher before being served or before being placed in a hot food storage unit except that, food in intact packages from regulated food manufacturing plants may initially be reheated to 140°F (60°C). Steam tables, warmers, and similar hot food holding units are prohibited for ~~the rapid~~ reheating of potentially hazardous foods. Potentially hazardous foods reheated in a microwave oven shall be heated an additional 25°F (13.9°C).

~~(g)(h)~~ Metal stem-type numerically scaled indicating product thermometers, accurate to 2°F (1°C), shall be provided and used to assure the attainment and maintenance of proper internal cooking, holding, or refrigeration temperatures of all potentially hazardous foods.

~~(h)(i)~~ Potentially hazardous foods shall be thawed:

- (1) ~~In~~ in refrigerated units at a temperature not to exceed 45°F (7°C);
- (2) ~~Under~~ under potable ~~running~~ water of a temperature of 70°F (21°C) or below, with sufficient water velocity to agitate and float off loose food particles into the overflow;
- (3) ~~In~~ in a microwave oven only when the food will be immediately transferred to conventional cooking equipment as part of a continuous cooking process or when the entire, uninterrupted cooking process takes place in the microwave oven; or
- (4) ~~As~~ as part of the conventional cooking process.

Authority G.S. 110-91.

15A NCAC 18A .2808 FOOD SERVICE

- (a) Milk and milk products for drinking purposes shall be ~~served from a stored in the original~~ served from a stored in the original commercially filled container. Serving containers may be used for food service provided the unused milk is discarded. container of not more than one gallon capacity or drawn from a commercially filled container stored in a mechanically refrigerated bulk milk dispenser directly into the drinking utensil.
- (b) Ice shall be made, handled, transported, stored and dispensed in such a manner as to be protected against contamination. Ice shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored to protect them from dust, drip, splash and other contamination. Ice storage bins shall be drained through an air gap.
- (c) Employees preparing or serving food shall wash their hands in accordance with the procedures in Rule .2803(c) of this Section. ~~15A NCAC 18A .2828 and~~ Employees shall either use antibacterial soap, dips, or hand sanitizers immediately prior to food preparation or service or use clean, disposable gloves during food preparation or service. Employees engaged in food preparation in the kitchen shall wear effective hair restraints, keep their fingernails trimmed, clean and shall not wear fingernail polish or artificial fingernails unless wearing intact gloves. Hair spray is not considered an effective hair restraint. This requirement is in addition to all handwashing requirements in Rule .2828 of this Section.
- (d) Once served, portions of leftover food shall not be served again unless the package is intact and the food is not potentially hazardous. Foods, including milk, placed on the table for family style food service are considered served.
- (e) Between uses during service, dispensing utensils shall be stored in the food with the dispensing utensil handle extended out of the ~~food~~ food, in a container of water if the water is maintained at a temperature of at least 140°F, or stored clean and dry.

- (f) Children attending child care centers shall not ~~have access to be in~~ the kitchen except ~~for emergencies or~~ when participating in a supervised activity.
- (g) Nothing in these Rules shall be construed as prohibiting family style food service at child care centers so long as supervision of the children is maintained throughout each meal except that family style food service may be prohibited during the outbreak and investigation of communicable diseases.

Authority G.S. 110-91.

15A NCAC 18A .2809 FOOD SERVICE EQUIPMENT AND UTENSILS

(a) ~~Material and Construction:~~

Material and construction of food service equipment and utensils as follows:

- (1) Materials used in the construction of utensils and equipment ~~shall, under normal use conditions,~~ shall be durable; corrosion-resistant; nonabsorbent; non-toxic; ~~of sufficient weight and thickness to permit cleaning and sanitizing by normal warewashing methods;~~ finished to have a smooth, easily cleanable surface; and resistant to pitting, chipping, cracking, scratching, ~~searing,~~ distortion, and ~~decomposition;~~ decomposition.
- (2) Food-contact surfaces shall be smooth; free of breaks, open seams, cracks, chips, pits and other imperfections; free of sharp internal angles, corners and crevices; and accessible for cleaning and inspection without being disassembled or by easy disassembly.
- (3) Nonfood contact surfaces shall be nonabsorbent with no obstructions to cleaning.
- (2)(4) Solder shall be comprised of approved, non-toxic; corrosion-resistant materials; materials.
- (3)(5) Wood and wicker shall not be used as food-contact surfaces, except hard maple or an equivalent nonabsorbent wood may be used for cutting boards, cutting blocks or bakers' tables; tables.
- (4)(6) Galvanized metal shall not be used for utensils which have general utility or for utensils or food-contact equipment which contacts beverages or moist or hygroscopic food; equipment.
- (5)(7) Linens shall not be used as food-contact surfaces, except that clean linen may be used in contact with bread and rolls; rolls.
- (6)(8) Single-use and single-service articles shall be fabricated from approved, clean and from approved sources, materials;
- (7)(9) Reuse of single-service and single-use articles is prohibited; prohibited.
- (10) Single-use articles such as formed buckets, bread wrappers, aluminum pie plates and cans shall be used only once except that containers

made of plastic, glass or other material intended for food storage, with smooth sides and constructed to be easily cleaned may be reused.

- (8)(11) ~~Equipment, utensils, and single-service articles~~ Equipment and utensils that impart odors, color or taste, or contribute to the contamination of food shall not be used.

(b) ~~Design and Fabrication:~~

- (1) ~~Equipment and utensils shall be designed and fabricated to be durable and sufficiently strong to resist denting and buckling under normal use conditions;~~

- (2)(12) Product thermometers and thermometer probes shall be of metal stem-type ~~construction;~~ construction.

- (3) ~~Multi-use food contact surfaces shall be smooth; free of breaks, open seams, cracks, chips, pits and similar imperfections; free of sharp internal angles, corners and crevices; finished to have smooth welds and joints; and accessible for cleaning and inspection without being disassembled, by disassembling without the use of tools or by easy disassembling with the use of only simple tools such as mallets, screw drivers or wrenches which are kept near the equipment;~~

- (4)(13) Water filters or any other water conditioning devices shall be cleaned and maintained in accordance with the manufacturer's instructions. ~~designed to be disassembled to provide for periodic cleaning or replacement of the active element;~~

- (5) ~~Nonfood contact surfaces shall be nonabsorbent, cleanable, and free of ledges, projections, and crevices that obstruct cleaning;~~

- (6) ~~Interior surfaces of nonfood contact equipment shall be designed and fabricated to allow easy cleaning and to facilitate maintenance operations;~~

- (7)(14) Filters and other grease extracting equipment shall be cleaned and maintained in accordance with the manufacturer's specifications. ~~readily accessible for filter replacement and cleaning.~~

Authority G.S. 110-91.

15A NCAC 18A .2810 SPECIFICATIONS FOR KITCHENS, FOOD PREPARATION AREAS AND FOOD SERVICE AREAS

(a) Each center shall have at least a two-compartment sink, drainboards or countertop space of adequate size, adequate refrigeration equipment and, when needed, adequate cooking equipment, except for centers located in a school that receive all food supplies prepared and ready to serve from a permitted food service establishment, which is located at the same school campus and provides food during all hours of child care

operation. Approved domestic or commercial kitchen equipment may be used. Child care centers using multi-service articles shall also provide a dishwasher. In lieu of a dishwasher and two-compartment sink, a three-compartment sink of sufficient size and depth to wash, rinse and sanitize utensils may be used.

(b) A separate lavatory for handwashing is required in food preparation areas. If the dishwashing area is separate from the food preparation area, an additional lavatory shall be required.

(c) A separate food preparation sink with drainboards or countertop space of adequate size shall be required when plan review indicates that separate facilities are needed based on volume and preparation frequency.

(d) When domestic refrigeration equipment is used, except in child care centers licensed for fewer than 13 children and located in a residence, the following provisions shall apply:

- (1) except for thawing under refrigerated conditions, potentially hazardous foods shall not be prepared prior to the day that such foods are to be served;

- (2) potentially hazardous foods that have been heated shall not be reheated or placed in refrigeration to be used in whole or in part on another day; and

- (3) salads containing potentially hazardous food shall not be prepared on site. Prohibited salads include but are not limited to chicken salad, egg salad, tuna salad and crab salad.

(e) A commercial hood shall be installed when frying is used for food preparation on site. The hood shall be installed in accordance with the North Carolina Building Code and approved by the local building code enforcement agent.

(f) If baby food is prepared in the classroom, a food preparation area shall be provided. This food preparation area shall be used exclusively for the storage or preparation of bottles, utensils and baby food. Water from a handwash lavatory shall not be used to prepare formula or mix dry cereals. Toy cleaning and sanitizing may also be conducted in this food preparation area. This food preparation area shall contain an easily cleanable countertop and a lavatory and, when needed, adequate refrigeration. The food preparation counters, bottle warming equipment if used, food and food contact surfaces shall not be within reach of children and the following shall apply:

- (1) all equipment shall be cleaned at least daily. Warming equipment shall be cleaned and sanitized as required in Rule .2812 of this Section;

- (2) after each use, all multi-service articles provided by the center shall be cleaned and sanitized in the child care center kitchen;

- (3) single-service articles shall be handled as required in Rule .2814 of this Section; and

- (4) counter, shelf or cabinet space shall be provided for food storage. Food supplies shall be stored in accordance with Rule .2806 of this Section.

(a) ~~For child care centers licensed for or serving food to fewer than 30 children:~~

- ~~(1) Domestic kitchen equipment may be used. Domestic kitchen equipment shall include at least a two compartment sink, drainboards or countertop space of adequate size, refrigeration equipment and adequate cooking equipment. Child care centers using multi-service articles shall also provide a dishwasher. In lieu of a dishwasher and two compartment sink, a three compartment sink with drainboards or countertop space of adequate size on each end may be used;~~
 - ~~(2) A separate lavatory for handwashing is required in food preparation areas. If the dishwashing area is separate from the food preparation area, an additional lavatory shall be required in the dishwashing area. These handwashing lavatories shall be used only by food service personnel; and~~
 - ~~(3) A commercial hood shall be installed when foods are fried on site. The hood shall be installed in accordance with the North Carolina Building Code and approved by the local building code enforcement agent.~~
- ~~(b) For child care centers licensed for or serving food to 30 or more children:~~
- ~~(1) Approved food service equipment shall be used. When domestic refrigeration equipment is used the following provisions shall apply:
 - ~~(A) Potentially hazardous foods shall not be prepared prior to the day that such foods are to be served;~~
 - ~~(B) Potentially hazardous foods that have been heated shall not be reheated or placed in refrigeration to be used in whole or in part on another day;~~
 - ~~(C) Salads containing potentially hazardous food shall not be prepared on site; and~~
 - ~~(D) All meats, poultry, and fish shall be purchased in pre-portioned, ready to cook form.~~~~
 - ~~(2) Food service equipment shall include:
 - ~~(A) Where meals are prepared and multi-service articles are used, at least a three compartment sink with drainboards or countertop space of adequate size on each end, refrigeration equipment, and cooking equipment;~~
 - ~~(B) Where meals are prepared and only single-service articles are used, at least a two compartment sink with drainboards or counter top space of adequate size on each end, refrigeration equipment, and cooking equipment; or~~
 - ~~(C) Where no meals are prepared and only single service articles are used,~~~~
- ~~refrigeration equipment, and at least a domestic two compartment sink with drainboards or countertop space of adequate size on each end.~~
- ~~(3) A separate food preparation sink with drainboards shall be provided for the washing and processing of foods except where plan review shows that volume and preparation frequency do not require separate facilities.~~
 - ~~(4) A separate lavatory for handwashing is required in food preparation and food service areas. If the dishwashing area is separate from the food preparation area, an additional lavatory shall be required in the dishwashing area. These handwashing lavatories shall be used only by food service personnel.~~
 - ~~(5) A commercial hood shall be installed when foods are fried on site. The hood shall be installed in accordance with the North Carolina Building Code and approved by the local building code enforcement agent.~~
- ~~(c) If baby food is prepared in the infant or toddler area, an infant/toddler food service area shall be provided. The infant/toddler food service area shall be used exclusively for the storage of infant bottles, warming of bottles, storage of fully prepared baby foods in their containers and the mixing of dry cereals with formula or with potable water from a source other than a lavatory used for handwashing. The food preparation counters, bottle warming equipment, food and food contact surfaces shall not be within reach of children. The infant/toddler food service area shall contain at least an adequate refrigerator, bottle warming equipment, an easily cleanable counter top and a separate lavatory for food service handwashing only. Domestic food service equipment may be used in infant/toddler food service areas regardless of child care center size.~~
- ~~(1) All equipment shall be cleaned at least daily. Warming equipment shall be cleaned and sanitized as required in Rule .2812 or .2813 of this Section.~~
 - ~~(2) After each use, all multi-use and multi-service eating and drinking articles shall be cleaned and sanitized in the child care center kitchen.~~
 - ~~(3) Single-service articles shall be handled as required in Rule .2814 of this Section.~~
 - ~~(4) Counter, shelf or cabinet space shall be provided for food storage. All dry cereal shall be stored in closed, labeled containers. Food supplies shall be stored in accordance with this Section.~~
- ~~(d) Equipment that was installed in a child care center prior to July 1, 1991 that does not meet all the design and fabrication requirements of this Section shall be deemed acceptable if it is in good repair, capable of being maintained in accordance with the rules of this Section and the food-contact surfaces are nontoxic. This exception shall not apply to equipment in Paragraph (c) of this Rule or to commercial hoods that are required for frying foods. Replacement equipment and new equipment acquired after July 1, 1991 shall meet the requirements of Paragraphs (a),~~

(b) and (c) of this Rule. Licensed child care centers that increase the number licensed for or that increase the number of children to whom they serve food, shall comply with all the rules of this Section. Upon change of ownership, or the closing of the operation and the issuance of a new license, the child care center shall comply with all the rules of this Section.

Authority G.S. 110-91.

15A NCAC 18A .2811 CLEANING AND SANITIZING OF EQUIPMENT AND UTENSILS

(a) Multi-use tableware, including highchair feeding trays, shall be washed, rinsed, and sanitized after each use.

(b) Food contact surfaces of equipment and utensils shall be washed, rinsed, and sanitized:

- (1) Each time there is a change from raw to ready-to-eat foods;
- (2) Each time there is a change in processing between types of raw animal products such as beef, fish, lamb, pork, and poultry;
- (3) After any substantial interruption of operations in which contamination may have occurred;
- (4) Whenever necessitated by food temperature, room temperature, type of food, and food particle accumulation;
- (5) After final use each working day.

(c) Nonfood contact surfaces of equipment shall be cleaned as often as is necessary to keep the equipment free of accumulation of dust, dirt, food particles, and other debris.

Authority G.S. 110-91.

15A NCAC 18A .2812 CLEANING AND SANITIZING EQUIPMENT AND UTENSILS

(a) Child care centers licensed for or serving food to 30 or more children, shall provide and use a three-compartment sink with drainboards or counter top space of adequate size on each end if utensils and equipment are manually cleaned and sanitized.

(b) Child care centers licensed for or serving food to fewer than 30 children that use a domestic dishwasher and two compartment sink for sanitizing multi-service articles shall sanitize as required in Subparagraph (c)(4) of this Rule. Sink compartments shall be large enough to submerge the largest items to be washed and each compartment shall be supplied with hot and cold running water.

(c)(a) If required under Rule 18A .2810 of this Section, drainboards or countertop space of adequate size shall be provided for handling of soiled utensils prior to washing and cleaned utensils following sanitizing. For child care centers originally licensed on or after April 15, 1998, drainboards or countertop space shall be no less than 24" long. For child care centers licensed for fewer than 13 children and located in a residence, a domestic dishwasher may be used to provide the equivalent of 24" of drainboard space, space and other designated areas not contiguous with the sink may be utilized to meet drainboard or countertop space requirements. Replacement equipment and new equipment acquired on or after April 15, 1998 shall meet the requirements of this Paragraph. Upon

change of ownership, or the closing of the operation and the issuance of a new license, or the remodeling of an existing kitchen, a child care center shall also comply with this Paragraph.

(d) Equipment and utensils shall be preflushed or prescraped and, when necessary, presoaked to remove gross food particles and soil.

(e)(b) Except for fixed equipment and utensils too large to be cleaned in sink compartments, manual and mechanical washing, rinsing, and sanitizing shall be conducted in the following sequence:

(1) When necessary, equipment and utensils shall be scraped, flushed, or soaked to remove food particles;

(2) For manual cleaning and sanitizing:

(1)(A) Sinks shall be cleaned and sanitized prior to use.

(2)(B) Equipment and utensils shall be thoroughly washed in the first compartment with a hot detergent solution that is changed once visibly soiled.

(3)(C) Equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment.

(4)(D) The food-contact surfaces of equipment and utensils shall be sanitized in the third compartment by the following manner:

(A)(i) Immersion-immersion for at least one minute in clean, hot water at a temperature of at least 170°F (77°C); (77°C) in dish baskets of such size and design to permit complete immersion of the tableware, kitchenware and equipment in the hot water;

(B)(ii) Immersion-immersion for at least two minutes in a clean solution containing at least 50 to 200 parts per million (ppm) of available chlorine at a temperature of at least 75°F (24°C);

(C)(iii) Immersion-immersion for at least two minutes in a clean solution containing at least 12.5 ppm of available iodine and having a pH not higher than 5.0 and at a temperature of at least 75°F (24°C); or

(D)(iv) Immersion-immersion for at least two minutes in a clean solution containing at least 200 to 400 ppm of

quaternary ammonium products and having a temperature of at least 75°F (24°C), provided that the product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being ~~used~~; used; and

- (v) ~~other equivalent sanitizing products and procedures that have been determined to be as effective as the ones mentioned above are acceptable as long as these products are nontoxic to children, used according to the manufacturer's instructions and approved by the Department for use as a sanitizer in place of the sanitizing solution described.~~

- (3) For mechanical cleaning and sanitizing, food-contact surfaces of equipment and utensils shall be sanitized according to the manufacturer instructions. When a domestic dishwashing machine is used according to manufacturer's instructions, additional sanitizing is not required. When commercial dishwashing equipment is used, a temperature indicating device, accurate to 2°F, shall be provided.

~~(f)(c)~~ For utensils and equipment which are either too large or impractical to sanitize in a dishwashing machine or dishwashing sink, a spray-on or wipe-on sanitizer of sufficient chemical strength as indicated in Paragraph (b) of this Rule shall be used. ~~When spray on or wipe on sanitizers are used, the chemical strengths shall be those required for sanitizing multi-use eating and drinking utensils. Spray-on or wipe-on sanitizers shall be prepared daily and kept on hand for bactericidal treatment.~~

(d) Multi-service articles, including highchair feeding trays, shall be washed, rinsed and sanitized after each use.

(e) Nonfood-contact surfaces shall be cleaned to keep equipment free of accumulation of dust, dirt, food particles and other debris.

~~(g) When hot water is used for sanitizing, the following facilities shall be provided and used:~~

- ~~(1) An integral heating device or fixture installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170°F (77°C); and~~
- ~~(2) A numerically sealed indicating thermometer, accurate to $\pm 3^{\circ}\text{F}$ ($\pm 1.5^{\circ}\text{C}$), convenient to the sink for frequent checks of water temperature; and~~
- ~~(3) Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware, and equipment in the hot water.~~

~~(h)(f) An approved~~ A suitable testing method or equipment, used in accordance with the product manufacturer's instructions, shall be made available, convenient, and regularly used to test the strengths of these chemical sanitizing solutions ~~sanitizers to insure ensure the minimum-prescribed strengths. concentrations are met.~~

~~(i)(g) After sanitization, sanitizing,~~ all equipment and utensils shall be air dried.

Authority G.S. 110-91.

15A NCAC 18A .2813 MECHANICAL CLEANING AND SANITIZING

~~(a) Machine or water line mounted numerically sealed indicating thermometers, accurate to 2°F (1.5°C), shall be provided for commercial dishwashing equipment to indicate the temperature of the water in each tank of the machine and the temperature of the final rinse water as it enters the manifold.~~

~~(b) Drainboards or counter top space of adequate size for the proper handling of soiled utensils prior to washing and cleaned utensils following sanitization shall be provided.~~

~~(c) Equipment and utensils shall be flushed or scraped and, when necessary, soaked to remove gross food particles and soil prior to being washed in a dishwashing machine unless a prewash cycle is a part of the dishwashing machine operation. Equipment and utensils shall be placed in racks, trays, or baskets, or on conveyors, in a way that food contact surfaces are exposed to the unobstructed application of detergent wash and clean rinse waters and that permits free draining.~~

~~(d) Machines using chemicals for sanitization may be used provided that a suitable testing method or equipment is available, convenient, and regularly used to test chemical sanitizers to insure minimum prescribed strengths.~~

~~(e) All dishwashing machines shall be thoroughly cleaned at least once a day or more often when necessary to maintain them in a satisfactory operating condition.~~

~~(f) After sanitization, all equipment and utensils shall be air dried.~~

Authority G.S. 110-91.

15A NCAC 18A .2814 FOOD SERVICE EQUIPMENT AND UTENSIL STORAGE

~~(a) Cleaned and sanitized equipment and utensils—utensils, including single-service articles, shall be handled in a way that protects the food-contact surfaces from hand contamination. Spoons, knives, and forks shall be handled with the least amount of contact necessary, touched only by their handles. Cups, glasses, bowls, plates, and similar items shall be handled without contact with inside surfaces or surfaces that contact the user's mouth.~~

~~(b) Cleaned and sanitized utensils and equipment shall be stored above the floor in a clean, dry location in a way that protects them from dust, insects, drip, splash and other contamination and facilitates floor cleaning. The food-contact surfaces of fixed equipment shall also be protected from contamination. Equipment and utensils shall not be placed under exposed sewer~~

~~lines. Lines or water lines, except for automatic fire protection sprinkler heads that may be required by law.~~

~~(e) Single service articles shall be purchased only in clean containers, shall be stored in a clean, dry container until used, and shall be handled in accordance with the rules of this Section.~~

Authority G.S. 110-91.

15A NCAC 18A .2815 WATER SUPPLY

~~(a) Running water under pressure shall be provided in sufficient quantities to meet the needs of cooking, cleaning, drinking, toilets, and outside uses without producing water pressure lower than that required by the North Carolina Plumbing Code.~~

~~(b)(a) The water supply shall meet the requirements of 15A NCAC 18C or 15A NCAC 18A .1700 Protection of Water Supplies. In addition, any center using a groundwater supply that serves 25 or more people shall provide documentation from the Public Water Supply Section that the well meets the requirements of 15A NCAC 18C. Samples of A water sample shall be collected by the Environmental Health Specialist Department and submitted to a state certified laboratory for bacteriological analysis annually if the child care center is not served by a community water supply. annually. Other tests of water quality, as indicated by possible sources of contamination, may be collected by the Department. Environmental Health Specialist.~~

~~(b) Water under pressure shall be provided to meet the needs of cooking, cleaning, drinking, toilets, and outside uses in accordance with the North Carolina Plumbing Code.~~

~~(c) No cross-connections with an unapproved water supply shall exist. If the potential for back flow-backflow conditions exist, an approved back flow-backflow prevention device shall be provided, installed in accordance with the North Carolina Plumbing Code.~~

~~(d) Water heating equipment shall be provided that is sufficient to meet the maximum hot water expected requirements of the child care center. center shall be provided. For child care centers not located in a residence, The capacity and recovery rates of hot water heating equipment shall be based on number and size of sinks, capacity of dishwashing machines, capacity of laundering machines, diaper changing facilities, and other food service and cleaning needs for child care centers not located in a residence. needs. For child- Child care centers licensed for fewer than 13 children and located in a residence, residence may use an existing water heater, or the equivalent replacement, shall be adequate if all required temperatures are maintained. Hot and cold water under pressure shall be easily accessible to provided in all rooms where food is processed or handled, prepared, rooms in which utensils or equipment are washed, and other areas where water is required for cleaning and sanitizing, including lavatories and diaper changing areas.~~

~~(e) Hot water heating equipment used for cleaning and sanitizing food utensils and laundry shall be provided provide hot water at a minimum temperature of 130°F (54°C)-120°F (49°C) at the point of use. use when hot water is not used for sanitizing. When hot water is used for sanitizing, a minimum temperature of 140°F (60°C) shall be provided at the point of use. However, hot water to those- Water in areas accessible to~~

~~children, including lavatories serving diaper changing areas, children shall be no less than 90°F (32°C) and shall not exceed tempered between 80°F (27°C) and 110°F (43°C). For handwash lavatories used exclusively by school-age children, the 80°F (27°C) (43°C), except that for child care centers serving only school aged children the 90°F (32°C) minimum temperature requirement shall not apply. Hot water in an area accessible to any child, which is in excess of 120°F (49°C), shall be considered a burn hazard. Hot water supplied to areas accessible to children shall be regulated by an anti-scald device installed in accordance with the North Carolina Plumbing Code within a year after the effective date of the rules of this Section. Child care centers serving only school-age children are not required to provide hot water in areas accessible to children.~~

~~(f) Drinking fountains, if provided, shall comply with the North Carolina Plumbing Code, shall be separate from handwash lavatories, and kept clean. The pressure shall be regulated so that an individual's mouth does not come in contact with the nozzle and so that water does not splash on the floor. Other approved dispensing devices may be used and shall be kept clean.~~

~~(g) Outdoor drinking fountains shall be constructed to protect the spout from contamination and shall be kept clean. If a hose is used to supply drinking water, the hose shall be of food grade quality. Hoses shall be flushed prior to use.~~

Authority G.S. 110-91.

15A NCAC 18A .2816 LEAD POISONING HAZARDS

~~Areas accessible to children shall be free of identified lead poisoning hazards as defined under G.S. 130A-131.7(7).~~

~~(a) Drinking fountains of an approved type or individual drinking utensils shall constitute approved drinking water facilities.~~

~~(b) Drinking fountains, if provided, shall be of sanitary angle jet design and kept clean. The pressure shall be regulated so that the individual's mouth does not come in contact with the nozzle and so that water does not splash on the floor.~~

~~(c) All multi-use utensils used for drinking purposes shall be easily cleanable, cleaned and sanitized after each use. Single-service articles used for drinking water shall be stored and handled so as not to become contaminated by insects, splash, dust, and other contamination.~~

~~(d) Baby bottles shall be properly labeled with the child's name. Drinking water in baby bottles shall be stored and handled in such a manner as to be protected against contamination.~~

Authority G.S. 110-91.

15A NCAC 18A .2817 TOILETS

~~(a) All toilet fixtures and toilet rooms shall be located to comply with the requirements of these Rules. Toilet tissue shall be available and stored in a clean, dry place. The toilet room shall include or be adjacent to a handwash lavatory. Storage in toilet rooms shall be limited to toileting and diapering supplies. All toilet fixtures shall be easily cleanable, and in good repair. Toilet fixtures shall be child-sized, properly adapted adult toilets or potty chairs. chairs for young toddlers.~~

(b) Toilet fixtures shall be cleaned and ~~sanitized-disinfected~~ at least daily and when visibly soiled. ~~when soiled and at least on a daily basis. A disinfecting solution of one-quarter cup (two fluid ounces) liquid bleach in one gallon of water (or one tablespoon of liquid bleach in one quart of water) containing 500 to 800 parts per million (ppm) of available chlorine mixed daily shall be used for this purpose. A suitable testing method shall be made available for testing this solution. To achieve the maximum germ reduction with bleach, the cleaned surfaces should be left moderately or glistening wet with the bleach solution and allowed to air dry or be dried only after a minimum contact time of at least two minutes has been achieved. A slight chlorine odor should emanate from this solution. If there is no chlorine odor, a new solution needs to be made, even if the solution was prepared fresh that day. Other disinfecting solutions that have been determined to be at least as effective as the chlorine bleach solution are acceptable as long as these products are nontoxic to children, are used according to the manufacturer's instructions and are approved by the Department for use as a disinfectant in place of the bleach solution. A solution of 100 ppm chlorine solution or other equivalent methods approved by the Department shall be used for sanitizing.~~

(c) If potty chairs are used, they shall be located and stored in a toilet room equipped with a ~~spray-rinse-spray-rinse~~ toilet or utility sink. Potty chairs shall be emptied, rinsed, cleaned and disinfected after each use with a chlorine solution as described in Paragraph (b), of this rule ~~sanitized when soiled or at least on a daily basis, with 100 ppm chlorine solution or equivalent method approved by the Department.~~

(d) When cloth diapers are ~~used,~~ used and emptied, the diaper changing area shall be located near proximate to a toilet room, room or flush-rimmed sink.

Authority G.S. 110-91.

15A NCAC 18A .2818 LAVATORIES

(a) Lavatories shall be ~~sized and located to comply with the appropriate handwashing requirements of these Rules, easily cleanable, in good repair, and kept free of storage. Lavatories shall be mounted at an appropriate height to accommodate the children, or otherwise made accessible. Any lavatory may be used for handwashing as specified in 15A NCAC 18A .2803, except for flush-rimmed sinks and those with an attached operable drinking fountain.~~

(b) ~~All lavatories~~ Lavatories shall be equipped with hot and cold ~~running~~ water or tempered water provided through mixing faucets ~~except that automatic mixing faucets or pre-mixing devices which provide water in at the temperature range specified in Rule .2815(e) of this Section. Section may be provided.~~

(c) Lavatories shall be cleaned and ~~sanitized-disinfected~~ with each change of use, as needed and at least daily. on a daily basis. A solution of 100 ppm chlorine or other approved methods shall be used for sanitizing. A disinfecting solution of one-quarter cup (two fluid ounces) liquid bleach in one gallon of water (or one tablespoon of liquid bleach in one quart of water) containing 500 to 800 parts per million (ppm) of available

chlorine mixed daily shall be used for this purpose. A suitable testing method shall be made available for testing this solution. To achieve the maximum germ reduction with bleach, the cleaned surfaces should be left moderately or glistening wet with the bleach solution and allowed to air dry or be dried only after a minimum contact time of at least two minutes has been achieved. A slight chlorine odor should emanate from this solution. If there is no chlorine odor, a new solution needs to be made, even if the solution was prepared fresh that day. Other disinfecting solutions that have been determined to be at least as effective as the chlorine bleach solution is acceptable as long as these products are nontoxic to children, are used according to the manufacturer's instructions and are approved by the Department for use as a disinfectant in place of the bleach solution.

(d) ~~Soap~~ Liquid soap and disposable towels or other approved hand-drying devices shall be provided at every handwash lavatory area.

(e) Handwash signs shall be posted at every handwash lavatory area. ~~each employee handwashing lavatory.~~

Authority G.S. 110-91.

15A NCAC 18A .2819 DIAPERING AND DIAPER CHANGING FACILITIES

(a) ~~Infants and toddlers~~ Children in diapers shall be ~~diapered~~ changed at areas stations designated exclusively for diapering or toileting, diapering. Each diaper changing station shall include a handwash lavatory. For centers licensed for fewer than 13 children and located in a residence and for diaper changing areas designated for older children, a handwash lavatory shall be in or near diaper changing areas.

(b) Diapering surfaces shall be smooth, intact, nonabsorbent, easily cleanable and shall be approved by the Department. Nothing shall be placed on the diapering surface except for those items required for diapering.

(c) Diapering surfaces shall be kept free of storage and shall be cleaned with a mild solution of water and detergent and sanitized after each changing. A solution of 100 ppm chlorine or equivalent methods approved by the Department shall be used for sanitizing. A disinfecting solution of one-quarter cup (two fluid ounces) liquid chlorine bleach in one gallon of water containing 500 to 800 parts per million (ppm) of available chlorine shall be mixed daily and used for disinfecting the diapering surface as described in Paragraph (d) of this Rule. To achieve the maximum germ reduction with bleach, the cleaned surfaces should be left moderately or glistening wet with the bleach solution and allowed to air dry or be dried only after a minimum contact time of at least two minutes has been achieved. A slight chlorine odor should emanate from this solution. If there is no chlorine odor, a new solution needs to be made even if the solution was prepared fresh that day. Other disinfecting solutions that have been determined to be at least as effective as the chlorine bleach solution are acceptable as long as these products are nontoxic to children, used according to the manufacturer's instructions and are approved by the Department for use as a disinfectant in place of the bleach solution. A suitable testing method or kit shall be available and used daily to insure to ensure compliance with the minimum-prescribed

~~strength concentration.~~ These ~~Cleaning and disinfecting~~ solutions shall be used from separate and properly labeled, hand pump spray ~~bottles available at each diaper changing station.~~ ~~bottles.~~ No cloths or sponges shall be used on ~~diapering surfaces.~~

~~(d) Each diaper changing area in a child care center shall include a handwash lavatory for caregivers, except for centers licensed for fewer than 13 children and located in a residence. For centers licensed for fewer than 13 children and located in a residence a handwash lavatory shall be in or near diaper changing areas. Proper diaper changing procedures shall include:~~

- ~~(1) gathering supplies before placing child on diapering surface;~~
- ~~(2) donning disposable gloves (if needed);~~
- ~~(3) using disposable towelette or moistened paper towel to clean child, wiping front to back;~~
- ~~(4) disposing of soiled towelettes and diaper in a plastic-lined, covered receptacle;~~
- ~~(5) applying diapering products (if needed);~~
- ~~(6) removing gloves (if used), discarding in a plastic-lined, covered receptacle, or, if gloves are not used, wiping hands with disposable towelette or moistened paper towel;~~
- ~~(7) placing clean diaper and clothing on child;~~
- ~~(8) washing child's hands in accordance with Rule .2803 of this Section, or, if child is unable to support their head, cleaning the child's hands with a disposable towelette or moistened paper towel, then drying the child's hands and returning the child to a supervised area;~~
- ~~(9) spraying entire diapering surface with detergent solution and wipe clean, using disposable paper towels;~~
- ~~(10) spraying entire diapering surface with approved disinfecting solution and allowing to remain on the surface for two minutes or as specified by the manufacturer, or air dry; and~~
- ~~(11) caregiver washing hands in accordance with Rule .2803 of this Section even if disposable gloves are used.~~

~~(e) The use of vinyl or latex disposable gloves by caregivers during the diaper changing process is required if the worker has cuts or sores on hands or chapped hands. Gloves shall be discarded after use with each child.~~

~~(f) Caregivers may dispose of feces in diapers in the toilet, but shall not rinse soiled cloth diapers, or training pants or clothes. Soiled cloth diapers, training pants or clothes shall be sent to a diaper service or placed in a tightly closed plastic bag or other equivalent container approved by the Department. Department, stored out of reach of children, and sent daily to the child's home to be laundered.~~

~~(g) Pre-moistened towelettes or damp paper towels shall be used for cleaning children during the changing process. Soiled paper or towelettes shall be discarded after use with each child and shall be disposed of in a covered plastic lined receptacle.~~

~~(h)(g) Receptacles containing soiled - Soiled disposable diapers shall be placed in a cleanable, plastic lined, covered container~~

~~and removed to - emptied in an exterior garbage area at least daily.~~

~~(i) Whether or not disposable gloves are used, caregivers shall wash their hands after each individual diaper change in accordance with Rule .2828 of this Section.~~

~~(j) Children's hands shall be washed in the lavatory after each individual diaper change in accordance with Rule .2828 of this Section, or, in the case of infants, with single use, pre moistened towelettes.~~

~~(k)(h) Instructions providing information to care givers in on proper methods of ~~diaper changing~~ - diaper changing and handwashing shall be posted in each diaper changing area.~~

Authority G.S. 110-91.

15A NCAC 18A .2820 STORAGE

~~(a) Rooms or spaces Adequate space shall be provided for the storage of equipment, furniture, toys, clothes, linens, backpacks, book bags, diaper bags, beds, cots, mats, and supplies and shall be kept clean. Shelving or other ~~storage,~~ storage areas shall be provided and be constructed in a manner to facilitate cleaning, ~~cleaning.~~ ~~-shall be provided for orderly storage of supplies, including mats and toys.~~ Soiled laundry shall be handled and stored separately from clean laundry using separate cleanable containers.~~

~~(b) All corrosive agents, insecticides, rodenticides, herbicides, pesticides, bleaches, detergents, cleansers, polishes, items containing petroleum products, any product which is under pressure in an aerosol dispenser, ~~-dispensing can,~~ and any substance which may be hazardous to a child if ingested, inhaled, or handled shall only be kept in its original container or in another clearly labeled container, used according to the manufacturer's instructions and stored in a locked storage room or cabinet when not in use. ~~eabinet, locked~~ Locked storage rooms and cabinets shall include those which are unlocked with a combination, electronic or magnetic device, key, or equivalent locking device. ~~with a combination lock or key. Keys~~ These unlocking devices shall be kept out of the reach of a child and shall not be stored in the lock. Toxic substances shall be stored below or separate from medications and food. Any product not listed above, which is labeled "keep out of reach of children" without any other warnings, shall be kept inaccessible to children when not in use, but is not required to be kept in locked storage. The product shall be considered inaccessible to children when stored on a shelf or in an unlocked cabinet that is mounted a minimum vertical distance of five feet above the finish floor.~~

~~(c) A properly Properly mixed sanitizing, disinfecting, and detergent solutions, hand sanitizers, and hand lotions shall be kept out of reach of children when not in use, but are sanitizing solution and a mild detergent solution approved by the Department shall not be required to be stored in a locked storage. ~~storage room or locked cabinet.~~ These solutions shall be clearly labeled as sanitizing, disinfecting, or detergent (soapy water) solutions, and shall not be accessible to children. Hand soap is not required to be kept out of reach of children or in locked storage.~~

~~(d) Medications including prescription and non-prescription items shall be stored in a separate locked cabinet or other locked~~

~~container.— container and shall not be stored above food. Designated emergency medications shall be stored out of reach of children, but are not required to be in locked storage. Non-prescription diaper creams and sunscreen shall be kept out of reach of children when not in use, but are not required to be in locked storage. Medications which require refrigeration shall be stored in a locked box or locked container in a designated area for such storage in a refrigerator which is not accessible to children.~~

(e) Individual cubicles, lockers, or coat hooks shall be provided for storage of coats, hats, or similar items. Coat hooks not in individual cubicles or lockers, shall be spaced at least 12 horizontal inches apart. ~~Individual toothbrushes or combs used by children.~~ Combs shall be labeled and stored individually. Toothbrushes shall be individually identified, allowed to air dry and protected from contamination. When a container of toothpaste is used for multiple children, the toothpaste shall be dispensed onto an intermediate surface such as waxed paper, in individual toothbrush or comb cases or other approved methods.

(f) Employee purses and other personal effects shall be kept out of reach of children.

Authority G.S. 110-91.

15A NCAC 18A .2821 BEDS, COTS, MATS, AND LINENS

(a) All beds, cribs, cots, and mats shall be in good ~~repair~~ repair, stored to ~~prevent protect them from splash, drip and other~~ contamination, cleaned regularly and sanitized between users.

(b) ~~Individual cribs, portable cribs, or~~ Cribs and play pens used for sleeping shall be easily cleanable, and equipped with a firm, tight-fitting mattress made of waterproof, washable material at least two inches thick. ~~The mattress shall fit snugly so that an adult can fit no more than two fingers between the mattress and the crib, portable crib or play pen.~~

(c) All beds, cots or mats shall be assigned and labeled for each individual child, and equipped with individual linens. ~~All linen shall be kept clean and in good repair.~~

(d) Mats shall be of a waterproof, washable material at least two inches thick and shall be stored so that the floor side does not touch the sleeping side or by an equivalent method approved by the Department, Environmental Health Specialist.

(e) When in use, cribs, cots, mats and playpens shall be placed at least 18 inches apart or separated by partitions which ~~prevent children from~~ minimize physical contact.

(f) Linen shall be kept clean, in good repair, and stored with the individual mat or cot until laundered or stored individually for each child in a designated area. ~~area if taken off the mats or cots.—Linen shall be laundered between users, when soiled, and at least once a minimum of one time per week. week, or more often if soiled. Linen used for more than one child shall be laundered between users. Linen~~ Linen used in infant rooms where children in care are less than 12 months old shall be changed and laundered when soiled and at least daily. on a daily basis.—Linens shall be large enough to cover the sleeping surface.

(g) Wash cloths, bibs, and burping cloths shall not be used for more than one child and shall be laundered when soiled and at least daily.

Authority G.S. 110-91.

15A NCAC 18A .2822 TOYS, EQUIPMENT AND FURNITURE

(a) ~~Furniture shall be of easily cleanable construction, and shall be kept clean and in good repair.~~

~~(b)(a) Equipment and toys.—~~ Toys, equipment and furniture provided by the child care center ~~shall be of easily cleanable construction, and shall be kept clean and in good repair. In infant and toddler rooms, rooms designated for children who are not toilet trained, toys and other mouth-contact surfaces shall be cleaned and then sanitized in accordance with 15A NCAC 18A .2812 at least daily when used and more frequently if necessary, by the following methods: necessary.~~

- (1) scrubbed in warm, soapy water using a brush to reach into crevices;
- (2) rinsed in clean water;
- (3) submerged in a sanitizing solution prepared by combining one tablespoon of chlorine bleach with one gallon of water for at least two minutes or sanitized by an equivalent method approved by the Department;
- (4) air dried; and
- (5) toys, items and surfaces not designed to be submerged shall be washed and rinsed in place, sprayed with a sanitizing solution and allowed to air dry.

A sanitizing solution of one tablespoon liquid bleach in one gallon of water containing 50 to 200 parts per million (ppm) of available chlorine mixed daily shall be used for this purpose. A suitable testing method or kit shall be available to ensure compliance with the prescribed concentration. To achieve the maximum germ reduction with bleach, the cleaned surfaces should be left moderately or glistening wet with the bleach solution and allowed to air dry or be dried only after a minimum contact time of at least two minutes has been achieved. A slight chlorine odor should emanate from this solution. If there is no chlorine odor, a new solution needs to be made even if the solution was prepared fresh that day. Other sanitizing solutions that have been determined to be at least as effective as the chlorine bleach solution are acceptable as long as these products are nontoxic to children, used according to the manufacturer's instructions and approved by the Department for use as a sanitizer in place of the bleach solution. Alternatively, hard plastic toys may be washed and rinsed in a dishwasher and cloth toys may be laundered and mechanically dried without requiring additional sanitizing.

~~(e)(b)~~ Toys, furniture, cribs, or other items accessible to children, shall be free of peeling, flaking, or chalking paint.

~~(d)(c)~~ Water play ~~activity~~ centers shall be filled just prior to each water play session. ~~use of the center.~~ Water must be emptied after each session ~~dumped at least daily~~ or more often if visibly soiled. The water play centers ~~activity unit,~~ including toys, shall be cleaned and sanitized at least daily or more often if

soiled. Water play may be prohibited during the outbreak and investigation of communicable diseases. Wading pools are not considered water play activity centers and are regulated under 15A NCAC 18A .2500.

Authority G.S. 110-91.

15A NCAC 18A .2823 PERSONNEL

(a) Employees ~~and their clothing shall be clean. wear clean outer clothing and shall be clean as to their person and methods of foodhandling and child care.~~ Employees shall keep their fingernails clean and smooth, trimmed.

~~(b) Hair nets, caps, or similar hair restraints shall be worn by employees engaged in the preparation of food. Hair spray, barrettes, or visors are not considered an effective hair restraint.~~

~~(c)(b) Tobacco use in any form is prohibited in the food preparation area, in any part of the child care center except in a designated area either outdoors, separate from the outdoor learning environment, or indoors in a room with a separate ventilation system approved by the building inspector, accessible to the children, and in the playground area.~~

~~(d) Persons with a communicable disease or a communicable condition shall be excluded from situations in which transmission can be reasonably expected to occur, in accordance with Communicable Disease Control Measures under 15A NCAC 19A .0200. Any person with boils, sores, burns, infected wounds or other potentially draining lesions on the face, neck, hands, lower arms or other exposed skin shall properly bandage affected area to eliminate exposure to drainage. If exposure to drainage cannot be eliminated or proper handwashing cannot be maintained, then the employee shall be excluded from the child care center while the condition exists.~~

~~(e)(c) Volunteer personnel shall adhere to the same requirements as employees, as specified in these the rules of this Section, as employees.~~

Authority G.S. 110-91.

15A NCAC 18A .2824 FLOORS

(a) Floors and floor coverings of all food preparation, food storage, utensil-washing areas, toilet rooms, and laundry areas shall be constructed of nonabsorbent, easily cleanable material. ~~cleanable, durable material such as sealed concrete, terrazzo, ceramic tile, durable grades of linoleum or plastic, or tight wood impregnated with plastic.~~

(b) Floors and floor coverings of all sleeping and play areas shall be constructed of easily cleanable materials. ~~cleanable, durable materials.~~

(c) Carpeting used as a floor covering shall be of closely woven construction, properly installed, and easily cleanable. Carpeted floors shall be vacuumed daily when children are not present in the room, except to clean up spills. Vacuum bags shall be changed and vacuums shall be emptied when children are not present in the room. The vacuum cleaner shall be in good repair. Carpets shall be cleaned using extraction methods at least once each six months. Cleaning materials including surfactants, solvents and water shall be removed from the carpet before the space is reoccupied. When hot water extraction is used, carpet

shall be completely dry within 12 hours of cleaning. Carpeting is prohibited in food preparation areas, equipment and utensil washing areas, food storage areas, laundry areas, and toilet rooms.

(d) Floors in areas accessible to children, shall be free of peeling, flaking or ~~chalking~~ otherwise deteriorating paint.

(e) All floors and floor coverings shall be kept clean and maintained in good repair.

~~(f) Floors in all rooms and areas shall be free of identified lead poisoning hazards as defined under 15A NCAC 18A .3101.~~

Authority G.S. 110-91.

15A NCAC 18A .2825 WALLS AND CEILINGS

(a) The walls and ceilings, including doors and windows, of all rooms and areas shall be kept ~~clean~~ clean, free of visible fungal growth, and in good repair. All walls and ceilings shall be nonabsorbent and easily cleanable, cleanable and free of peeling, flaking, chalking, or otherwise deteriorating paint.

~~(b) Ceilings~~ Walls and ceilings in rooms in which food is stored, handled or prepared, utensil-washing rooms, and toilet rooms shall be ~~nonabsorbent, non absorbent and easily cleanable.~~ Acoustic and other ceiling material may be used where ventilation precludes the possibility of grease and moisture absorption. For child care centers licensed for fewer than 13 children and located in a residence, ceilings of residential construction are acceptable if kept clean and in good repair.

~~(c) Walls and ceilings, including doors and windows in areas accessible to children, shall be free of peeling, flaking, or chalking paint.~~

~~(d) Walls and ceilings, including doors and windows, of all rooms and areas shall be free of identified lead poisoning hazards as defined under 15A NCAC 18A .3101.~~

Authority G.S. 110-91.

15A NCAC 18A .2826 LIGHTING AND THERMAL ENVIRONMENT

(a) All rooms and enclosed areas shall be ~~well~~ lighted by natural or artificial means. Lighting shall be capable of illumination to at least 50 foot-candles at work surfaces in kitchens and diaper changing areas and at children's work tables, desks and easels. Lighting shall be capable of illumination to at surfaces. At least 10 foot-candles of light, at 30 inches above the floor, shall be provided in all other areas, including storage rooms. Light fixtures in all areas shall be kept clean and in good repair. Completely shielded bulbs. Shielded or shatterproof bulbs shall be used in food preparation, storage, and serving areas and in all rooms used by children.

(b) All rooms used by children shall be heated, cooled, and ventilated to maintain a temperature between 65°F (19°C) and 85°F (30°C). Ventilation may be in the form of operable windows which are screened or by means of mechanical ventilation to the outside. Windows and window treatments shall be kept clean and in good repair. All ventilation equipment, including ~~heating and cooling vents, air supply diffusers (heating and cooling vents) and return grilles, fans, and~~

all other special ventilation equipment ~~which is required for kitchens and toilet rooms,~~ shall be kept clean and in good repair.
(c) ~~Nothing in the rules of this Section requires that outdoor storage buildings be wired with electricity or provided with heating and air conditioning.~~

Authority G.S. 110-91.

15A NCAC 18A .2827 COMMUNICABLE DISEASES AND CONDITIONS

(a) ~~Any child-Children who becomes-become ill to the extent that they can no longer participate in routine group activities at the child care center and is suspected of having a communicable disease or communicable condition~~ shall be separated from the other children until the child leaves the center.

(b) Each child care center shall include a designated area for a child who becomes ill-~~ill to the extent that they can no longer participate in the routine group activities.~~ When in use, such area shall be equipped with a bed, cot or mat and a vomitus receptacle. ~~All Thermometers and all materials used in the designated area including mouthable toys shall be cleaned and sanitized after each use.~~ Linens and disposables shall be changed after each use.

(c) If the area is not a separate room, it shall be separated from space used by other children by a partition, screen or other means approved by the Department. ~~Environmental Health Specialist. This-~~ The designated area shall be proximate to near a toilet and lavatory, and where health and sanitation measures can be carried out without interrupting activities of other children and staff.

(d) ~~Employees with a communicable disease or a communicable condition shall be excluded from situations in which transmission can be expected to occur, in accordance with Communicable Disease Control Measures under 10A NCAC 41A .0200. Any employee with boils, sores, burns, infected wounds or other potentially draining lesions on exposed skin shall properly bandage the affected area to eliminate exposure to drainage. If such bandaging obstructs proper handwashing or if the exposure to drainage cannot be eliminated, then the employee shall be excluded from food preparation and caregiving while the condition exists.~~

Authority G.S. 110-91.

15A NCAC 18A .2828 HANDWASHING

(a) ~~Employees shall be instructed that handwashing is the single most important line of defense in preventing the transmission of disease-causing organisms. Employees shall wash hands upon reporting for work; before and after handling food; before feeding infants or children; before handling clean utensils or equipment; after toileting or handling of body fluids (e.g., saliva, nasal secretions, vomitus, feces, urine, blood, secretions from sores, pustulant discharge); after diaper changing; after handling soiled items such as garbage, mops, cloths, and clothing; and after removing disposable gloves.~~

(b) ~~Children shall wash hands upon arrival at the child care center; after each diaper change or visit to the toilet; before~~

~~eating meals or snacks; before and after water activity play; and after handling animals or animal cages.~~

(e) ~~Proper handwashing procedures shall include:~~

- (1) ~~Using soap and tempered running water;~~
- (2) ~~Rubbing hands vigorously with soap and tempered water for 15 seconds;~~
- (3) ~~Washing all surfaces of the hands, to include the backs of hands, palms, wrists, under fingernails, and between fingers;~~
- (4) ~~Rinsing well for 10 seconds;~~
- (5) ~~Drying hands with a paper towel or mechanical dryer;~~
- (6) ~~Turning off faucet with paper towel.~~

Authority G.S. 110-91.

15A NCAC 18A .2829 WASTEWATER

All wastewater shall be disposed of in a publically-owned wastewater treatment system or by an approved properly operating on-site wastewater system-~~system under 15A NCAC 18A .1900.~~ Septic systems shall be sized to accommodate anticipated children and staff for all shifts.

Authority G.S. 110-91.

15A NCAC 18A .2830 SOLID WASTES

(a) ~~Solid wastes containing food- Food scraps or-and other putrescible materials shall-~~ shall be placed in a plastic-lined, cleanable, covered container and removed to an exterior garbage area at least daily. ~~prior to disposal, be kept in durable, rust resistant, nonabsorbent, water tight, rodent proof, and easily cleanable containers such as standard garbage cans which shall be covered with tight lids when filled or stored or not in continuous use. Refuse including scrap-Scrap paper, cardboard boxes and similar items shall be stored in containers, rooms or designated areas approved by the Department.~~

(b) Garbage containers, mops and other cleaning equipment shall be kept clean. Facilities shall be provided for the washing and storage of ~~all-garbage containers cans-~~ and mops for child care centers, except for centers licensed for fewer than 13 children and located in a residence. Cleaning facilities shall include ~~combination faucet, a faucet with a threaded nozzle and hot and cold running water, threaded nozzle, and water of at least 80°F (27°C) in either a designated utility sink or above a curbed impervious pad sloped to drain into an approved sanitary sewage system.~~ ~~Other can-~~ Can cleaning facilities approved prior to July 1, 1991 shall be ~~deemed-~~ approved if in good repair, repair and functioning properly. ~~Can cleaning facilities replaced after July 1, 1991 shall meet the requirements of this Section.~~

(c) ~~Where-~~ Dumpsters and other containerized systems shall be kept clean and covered. ~~are used for garbage storage, facilities~~ Facilities shall be provided for the cleaning either on-site, or off-site through a contractual agreement. ~~of such systems. A contract for off-site cleaning shall constitute compliance with this Section.~~

(d) Solid wastes shall be disposed of so as to prevent insect breeding and public health nuisances.

Authority G.S. 110-91.

15A NCAC 18A .2831 ANIMAL AND VERMIN CONTROL

(a) Unrestrained animals, except those used in supervised activities or approved pet therapy programs, shall not be allowed in the ~~day child care facility, center, including the outdoor learning environment, play area.~~ When pets are kept on the premises, copies of vaccination records required by North Carolina law and local ordinances shall be available for review. Turtles, iguanas, and other reptiles are not allowed to be kept as pets. Animals shall not be allowed in the food preparation areas. Animal cages shall be kept clean.

(b) Effective measures shall be taken to keep uncontained insects, rodents, and other vermin out of the child care centers and to prevent their breeding or presence on the premises. Traps shall only be used when children are not present in the area.

(c) All openings to the outer air shall be protected against the entrance of flying insects. In food preparation areas, ~~For extermination of flying insects, only approved fly traps, pyrethrin-based insecticides or a fly swatter shall be used for extermination of flying insects. in the food preparation areas.~~ Products shall be used only in accordance with directions and cautions appearing on their labels. Insecticides shall not come in contact with raw or cooked food, utensils, or equipment used in food preparation and serving, or with any other food-contact surface.

(d) Only those pesticides which have been properly registered with the appropriate federal regulatory agency and the North Carolina Department of Agriculture shall be used. Pesticides shall be used in accordance with the directions on the label and shall be stored in a locked storage room or cabinet separate from foods and medications. Pesticides shall only be applied and used when children are not present in the area. Decks, fences, playground equipment, and other products constructed or installed after the effective date of the rules of this Section shall not be made from chromated copper arsenate pressure-treated wood. In areas accessible to children, existing decks, fences, playground equipment, and other products made from chromated copper arsenate pressure-treated wood shall be sealed using an oil-based, semi-transparent stain sealant. Sealants shall be re-applied as needed and at least once every two years and soil under such structures shall be covered or made inaccessible.

(e) Any composting areas shall be covered and maintained to prevent attracting rodents or vermin. Worm bins shall be kept covered.

(f) Grass, fruit and vegetable gardens, vines on fences, and other vegetation shall be maintained in a manner which does not encourage the harborage of vermin.

(g) Animals kept outdoors for educational purposes shall have a separate designated area that is maintained.

Authority G.S. 110-91.

15A NCAC 18A .2832 OUTDOOR LEARNING ENVIRONMENT AND PREMISES

(a) The premises, including the outdoor ~~play area,~~ learning environment, shall be kept clean, drained to minimize standing

~~water, and free of litter and hazardous materials. materials.~~ Grass and other vegetation shall be ~~and~~ maintained in a manner which does not encourage the harborage of vermin. All debris, glass, dilapidated structures and broken play equipment shall be removed. Wells, grease traps, cisterns and utility equipment shall be made inaccessible to children.

(b) ~~All outdoor activity areas shall be kept clean. All debris, glass, dilapidated structures, and broken play equipment shall be removed. The play areas shall be free from unprotected wells, grease traps, cisterns, and utility equipment.~~

(b) Sand toys, water tables and other items that can collect standing water in the outdoor learning environment shall be emptied and properly stored to prevent standing water.

(c) For outdoor play equipment, the following shall apply:

(1) Equipment shall be kept in good repair, free of peeling, flaking, or chalking paint and free of rust and ~~corrosion;~~ corrosion.

(2) The sandbox used in outdoor play shall be constructed to allow for proper drainage and shall be covered when not in use and kept clean.

(d) Premises, including the outdoor play area, shall be free of identified lead poisoning hazards as defined ~~under~~ in 15A NCAC 18A .3101.

(e) When food service is provided in the outdoor learning environment, food shall be protected, stored, prepared and served in accordance with 15A NCAC 18A .2805, .2806, .2807 and .2808. Employees and children shall wash hands in accordance with 15A NCAC 18A .2803 and food service tables shall be cleaned or covered prior to use.

(f) When diapering and toileting facilities are provided in the outdoor learning environment, they shall be maintained in accordance with 15A NCAC 18A .2817 and .2819 and employees and children shall wash hands in accordance with 15A NCAC 18A .2803.

(g) Storage provided outdoors for children's toys shall be kept clean. Storage areas that are accessible to children shall be kept free of hazardous equipment and substances in accordance with 15A NCAC 18A .2820. Storage areas shall meet requirements for lighting in accordance with 15A NCAC 18A .2826 by means of opening doors, windows, sky lights, battery operated light, flashlight or electric lighting. Spare batteries shall be available for battery operated light fixtures and flashlights.

(h) Outdoor water activity centers shall be maintained in accordance with 15A NCAC 18A .2822. Flow through water play systems shall be designed to minimize standing water. Employees and children shall wash hands in accordance with 15A NCAC 18A .2803 before and after water play.

Authority G.S. 110-91.

15A NCAC 18A .2833 SWIMMING AND WADING POOLS

(a) Swimming and wading pools shall be designed, constructed, operated and maintained in accordance with the Rules Governing Public Swimming Pools, 15A NCAC 18A .2500. Copies of these Rules may be obtained from DENR, Division of

Environmental Health, Environmental Health Services Section, P.O. Box 29534, Raleigh, North Carolina 27626-0534.

(b) Portable wading pools, natural bodies of water, and other unfiltered, unfiltered and nondisinfected containments of water shall not be utilized for water recreation activities.

Authority G.S. 110-91.

15A NCAC 18A .2834 COMPLIANCE, INSPECTIONS AND REPORTS

(a) When requested by a child care operator or the Division of Child Development, a sanitation inspection shall be conducted by the local health department within 30 days.

(b) Unannounced inspections of child care centers shall be made by the Department at least once each six-month period. An original and two copies of the Child Care Sanitation Inspection Form shall be completed by the Department. The original shall be submitted to the Division of Child Development. The child care center operator and the Department shall each retain a copy.

(c) The Department shall inspect each child care program that has been designated as a child care center by the Division of Child Development. Demerits shall be assigned for each occurrence of violations within these requirements:

- (1) handwashing (4-6 points);
- (2) food (2-6 points);
- (3) food service equipment and utensils (2-6 points);
- (4) water supply and drinking water facilities (2-6 points);
- (5) lead poisoning hazards (6 points);
- (6) toilet and lavatory facilities (2-4 points);
- (7) diaper changing facilities (2-6 points);
- (8) storage (2-6 points);
- (9) beds, cots, mats and linens (3 points);
- (10) toys, equipment and furniture (4 points);
- (11) personnel (2-6 points);
- (12) floors, walls and ceilings (4 points);
- (13) lighting and thermal environment (2-3 points);
- (14) communicable disease control (2 points);
- (15) wastewater (6 points);
- (16) solid waste (2 points);
- (17) animal and vermin control, premises, outdoor learning environment (2-6 points); and
- (18) swimming and wading pools (6 points), if applicable.

~~(a)(d)~~ The Environmental Health Specialist Department shall indicate on the Child Care Inspection Sanitation Standards Evaluation Form for Child Care Centers whether the child care center is superior, approved, provisional, or disapproved. The classification. A Sanitation Classification placard shall be posted in the center in a conspicuous place designated by the Department. Environmental Health Specialist. The superior, approved, provisional, or disapproved classification of a child care center is based on the center's compliance with the standards for construction and operation found in this the rules of this Section. However, a summary classification of disapproved shall be issued when the right-of-entry to inspect is denied or when an inspection is discontinued at the request of

the operator or administrator unless the decision to discontinue the inspection is mutual.

~~(b)(e)~~ The degree of the child care center's compliance is indicated by the total demerit point score which is shown number of demerits on the Child Care Sanitation Standards Evaluation Inspection Form. Form that the Environmental Health Specialist completes.

- (1) For the purpose of issuing a license to a new operator, a Child Care Sanitation Standards Evaluation Inspection Form for Child Care Centers, shall be forwarded to the Division of Child Development only when the child care center can be granted a superior classification; classification. If the center is not yet open and children are not in attendance when the initial inspection is conducted, a Child Care Sanitation Inspection Form shall be completed and forwarded to the Division of Child Development, but the Sanitation Classification placard shall not be posted. Another sanitation inspection shall be conducted within 30 days of opening and the Sanitation Classification placard shall then be posted.
- (2) A child care center shall be classified as superior if the total demerit score is does not exceed more than 15 and no 6 demerit point 6-point demerit item is violated; violated.
- (3) A child care center shall be classified as approved if the total demerit score is more than 15 and does not exceed more than 30, and no 6 demerit point 6-point demerit item is violated; violated.
- (4) A child care center shall be classified as provisional if any 6 demerit point 6-point demerit item is violated; violated or if the total demerit point demerit score is more than 30 but does not exceed more than 45. This The provisional classification period shall not exceed seven days unless construction or renovation is necessary to correct any violation, in which case the Environmental Health Specialist Department may allow specify a longer provisional classification period. period;
- (5) A child care center shall be classified as disapproved if the demerit score is more than 45, 46 or more, or if conditions which resulted in a provisional classification have not been corrected in the time period specified by the Department. Environmental Health Specialist;
- (6) If the provisional status period exceeds seven days, or the child care center is disapproved, receives a disapproved classification, the Division of Child Development shall be notified immediately by faxing forwarding a copy of the inspection form report to the Division of Child Development. The Environmental Health Specialist shall notify

- ~~the Division of Child Development in accordance with Rule .2803 of this Section;~~
- (7) ~~The classification card — Sanitation Classification placard shall not be removed except by or upon the instruction of the Department Environmental Health Specialist.~~
- (f) If the Department determines that conditions found at the child care center at the time of any inspection or visit are dangerous to the health of the children, the Division of Child Development shall be immediately notified by verbal contact. The original inspection report or other documentation of the dangerous conditions shall be sent to the Division of Child Development within two working days following the inspection.
- (g) The Department may conduct an inspection of any child care center as frequently as necessary in order to ensure compliance with applicable sanitation standards.
- (h) The Child Care Sanitation Inspection Form shall be used to document demerits for violations of the rules. A written explanation and corrective action for each violation shall be documented on a comment addendum form.
- (i) In filling out the inspection form, demerits may be assessed only once for a single occurrence or condition existing within or outside the child care center. Demerits shall be assessed based on actual violations of the rules of this Section observed during the inspection.

Authority G.S. 110-88; 110-91.

15A NCAC 18A .2835 APPEALS PROCEDURE

~~Appeals concerning the interpretation and enforcement of the rules in this Section as adopted by the Commission for Health Services shall be governed by G.S. 110-94 and G.S. 150B. No appeal lies against the North Carolina Department of Environment and Natural Resources or its designee. Appeals regarding the sanitation ratings shall be directed to the Division of Child Development. shall be made in accordance with G.S. 110 and G.S. 150B.~~

Authority G.S. 110-91.

15A NCAC 18A .2836 MILDLY ILL CHILDREN

Child care centers may offer care to children who are mildly ill if licensed to do so by the Division of Child Development. Care may be provided as a component of a child care center that provides child care to well children or may be provided as a separate stand-alone program. All other rules of this Section shall apply to these facilities except as provided in this Subsection:

- (1) Prior to starting a program for mildly ill children, the child care operator shall request an inspection from the local health department.
- (2) Drinking fountains shall not be used.
- (3) Toilet fixtures, potty chairs, utility sinks, tubs and showers shall be cleaned and disinfected after each use.
- (4) Lavatories shall be of a hands-free design, equipped with single-lever faucets, or the equivalent.

- (5) Cloth diapers shall not be used.
- (6) Individually labeled moist towelette containers shall be provided for each child in diapers.
- (7) Caregivers shall wear clean disposable gloves when changing each diaper.
- (8) Moist towelettes shall not be used in lieu of handwashing for children who cannot support their heads.
- (9) A 36-inch separation shall be maintained or partitions shall be placed between beds, cots and mats to minimize contact among children.
- (10) Furniture shall be nonabsorbent.
- (11) Thermometers and mouthable toys shall be cleaned and sanitized between uses by different children. Soft, cloth material toys may be brought from home if labeled for use by an individual child. If soft toys are provided by the center, they shall be sanitized between uses by different children.
- (12) Caregivers for mildly ill children shall not prepare food in the kitchen or serve food to well children.
- (13) Family style food service is prohibited.
- (14) Carpeted floors are prohibited. Throw rugs may be used if laundered when contaminated and at least weekly. Floors contaminated by body fluids shall be cleaned and disinfected immediately.
- (15) Caregivers shall wash hands in accordance with the procedures in Rule .2803(c) before leaving the area designated for mildly ill children.
- (16) All waste shall be disposed of in a plastic-lined, covered receptacle.

Authority G.S. 110-91.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 - COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the State Board of Cosmetic Art Examiner intends to amend the rules cited as 21 NCAC 14F .0108; 14G .0107; 14H .0112, .0120; 14J .0207, .0502; 14N .0102-.0103, .0111, .0113; 14P .0108, .0112; 14R .0101, .0103 and repeal the rules cited as 21 NCAC 14F .0112; 14M .0101-.0134; 14N .0101, .0104-.0105, .0108-.0109, .0112, .0114, .0201-.0202, .0301-.0302, .0401-.0402, .0501-.0502, .0601-.0602, .0701-.0702.

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: March 16, 2005

Time: 10:00 a.m.

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

Reason for Proposed Action: *Change in rules and regulations governing the licensing of beauty shops, sanitation, forms, examinations, and civil penalties.*

Procedure by which a person can object to the agency on a proposed rule: *If you have any objection(s) to the proposed rule(s), please forward a typed or handwritten letter indicating your specific reason(s) for your objection(s) to: Souk Rios, NC Board of Cosmetic Art Examiners, 1201 Front Street, Suite 110, Raleigh, NC 27609.*

Written comments may be submitted to: *Souk Rios, NC Board of Cosmetic Art Examiners, 1201-110 Front St., Raleigh, NC 27609, phone 919-733-4117, ext. 222, fax 919-733-4127, or email srios@intrex.net.*

Comment period ends: *May 2, 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 14F – RULES AND REGULATIONS GOVERNING THE LICENSING OF BEAUTY SHOPS

SECTION .0100 – RULES AND REGULATIONS GOVERNING THE LICENSING OF BEAUTY SHOPS

21 NCAC 14F .0108 INSPECTION OF COSMETIC ART SHOPS

(a) A newly established cosmetic art shop, a shop which has been closed for more than 90 days, a shop which has changed ownership, or a shop which has been operating without a permit license shall be inspected before a permit license will be issued. The Board shall be given 30 days notice to schedule an inspection.

(b) Each cosmetic art shop must pass inspection by the Board pursuant to 21 NCAC Subchapter 14H of these Rules.

Inspections shall be conducted at least annually and may be conducted without notice.

Authority G.S. 88B-1; 88B-21; 88B-23.

21 NCAC 14F .0112 POSTPONEMENT OF RE-INSPECTION

~~(a) A beauty salon must notify the Board at least ten days prior to a scheduled re-inspection if the beauty salon will not be prepared for the inspection.~~

~~(b) Notification must be sent to the chairman of the Board at the Board's address.~~

Authority G.S. 88B-23.

SUBCHAPTER 14G - REQUIREMENTS FOR THE ESTABLISHMENT OF COSMETIC ART SCHOOLS

SECTION .0100 - PERMANENT FILES

21 NCAC 14G .0107 EQUIPMENT AND TEACHERS

(a) A cosmetic art school shall have the necessary classrooms and equipment for teaching as required by Subchapters 14I and 14J, and shall provide a staff of cosmetic art teachers licensed by the Board.

(b) The Board shall not accept an application for a letter of approval until all furniture, supplies and equipment as prescribed by the Rules in this Chapter has been installed and the entire school is complete.

(c) All courses in a cosmetic art school must be taught by a licensed cosmetology teacher, except that manicuring courses may be taught by either a licensed cosmetology teacher or a licensed manicurist ~~teacher~~. teacher and esthetics courses may be taught by either a licensed cosmetology teacher or a licensed esthetician teacher.

(d) Notwithstanding Paragraph (c) of this Rule, a registered cosmetologist not licensed to teach cosmetic art may substitute for a cosmetology, esthetician, or manicurist teacher and a registered manicurist not licensed by this Board as a manicurist teacher may substitute for a manicurist ~~teacher~~. teacher, and an esthetic teacher and a registered esthetician not licensed by this Board as an esthetic teacher may substitute for an esthetician teacher. In no event may such a substitution last for more than 15 working days per year per teacher.

Authority G.S. 88B-23; 88B-30.

SUBCHAPTER 14H – SANITATION

SECTION .0100 - SANITATION

21 NCAC 14H .0112 CLEANLINESS OF CLINIC AREA: SUPPLIES: COMBS AND BRUSHES

(a) The clinic area shall be kept clean.

(b) Waste material shall be kept in covered receptacles. The area surrounding the waste receptacles shall be maintained in a neat and sanitary manner.

(c) Sanitation rules which apply to towels and cloths are as follows:

- (1) Separate and clean towels shall be used for each patron.
- (2) After a towel has been used once, it shall be discarded and placed in a clean, closed container until laundered.
- (3) There shall be a supply of clean towels at all times.
- (4) All capes used on patrons shall be kept clean and shall not be allowed to come in direct contact with the patron's neck.

(d) At least six combs and brushes shall be provided for each cosmetology operator and cosmetology student.

(e) All combs, brushes, esthetics and manicurist instruments shall be cleaned and disinfected after each use in the following manner:

- (1) They shall be soaked in a cleaning solution that shall not leave a residue and, if necessary, scrubbed.
- (2) They shall be disinfected in accordance with the following: ~~manufacturer's instructions that state the solution will destroy HIV virus, TB or HBV and is approved by the Federal Environmental Protection Agency.~~

(A) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and or tuberculocidal, that is mixed and used according to the manufacturer's directions;

(B) household bleach in a 10 percent solution for 10 minutes;

(C) 70% or higher isopropyl alcohol for 15 minutes; or

(D) 90% ethyl alcohol for 15 minutes.

When selecting a disinfectant, care shall be taken to choose one that will not shorten the service life of the comb, brush, esthetics or manicuring instrument. In using a disinfectant, care shall be taken to wear any personal protective equipment, such as gloves, recommended in the Material Safety Data Sheet prepared on the disinfectant by the manufacturer.

- (3) They shall be rinsed with hot tap water and dried thoroughly with a clean towel before their next use. If they are not used immediately, they shall be stored in a clean, closed cabinet until they are needed.

Authority G.S. 88B-4.

21 NCAC 14H .0120 FOOTSPA SANITATION

Manicurists/Cosmetologists ~~Cosmetologists~~ shall use the following disinfection procedures to ensure proper cleaning and maintenance of the footspa equipment and to prevent bacterial infection:

(1) Between each customer a manicurist/cosmetologist ~~cosmetologist~~ shall:

- (a) drain all water and remove all debris from the footspa;
- (b) clean the surfaces and walls of the footspas with soap or detergent and rinse with clean, clear water; and
- (c) disinfect with an EPA registered disinfectant with bactericidal, fungicidal, and virucidal activity used according to the manufacturer's instructions.

(2) At the end of the day a manicurist/cosmetologist ~~cosmetologist~~ shall:

- (a) remove the screen. All debris trapped behind the screen of each footspa shall be removed, and the screen and the inlet shall be washed with soap or detergent and water;
- (b) before replacing the screen:
 - (i) wash the screen with a chlorine bleach solution of one teaspoon of five per cent chlorine bleach to one gallon of water, or totally immerse the screen in an EPA registered disinfectant;
 - (ii) flush the system with low sudsing soap and warm water for 10 minutes; and
 - (iii) finally, rinse and drain; and
- (c) make a record of the date/time of this cleaning and disinfecting.

(3) Every other week a manicurist/cosmetologist ~~cosmetologist~~ shall:

- (a) after following the outlined procedures for the end of each day, fill the footspa tub with five gallons of water and four teaspoons of five per cent bleach solution;
- (b) circulate the solution through the footspa system for five to ten minutes;
- (c) let the solution sit overnight (at least six - ten hours);
- (d) drain and flush the system the following morning; and
- (e) make a record of the date/time of this cleaning and disinfecting.

Authority G.S. 88B-4.

SUBCHAPTER 14J - COSMETOLOGY CURRICULUM

SECTION .0200 - ADVANCED DEPARTMENT

**21 NCAC 14J .0207 LIVE MODEL/MANNEQUIN
PERFORMANCE REQUIREMENTS**

(a) The following minimum live model/mannequin performance completions shall be done by each student in the advanced department before the student is eligible to take the cosmetologist's examination. Sharing of performance completions shall not be allowed. Credit for a performance shall only be given to one student.

		1200		1500	
		Live Model		Maniq.	
(1)	scalp/hair treatments w/massage	15		15	
(2)	roller sets/styles	50		25	25
(3)	fullhead fingerwave/style	5	OR 5	5	OR 5
(4)	fullhead pincurl/style	5	OR 5	5	OR 5
(5)	blowdry/marcel style	50		25	25
(6)	blowdry/style with brush	5	OR 5	10	OR 10
(7)	thermal press & curl	3	OR 3	5	OR 5
(8)	artificial hair	2	OR 2	2	OR 2
(9)	haircuts	25	25	50	25
(10)	chemical reformation/permanent waving & relaxers	20	5	30	5
(11)	temporary color	5		5	
(12)	semi perm color	5	5	15	5
(13)	permanent color	10	5	15	5
(14)	lash & brow tinting	2		4	
(15)	manicure with arm & hand massage	15		15	
(16)	pedicure with leg & foot massage	2		2	
(17)	artificial nails (sets)	2	OR 2	2	2
(18)	facials with massage/makeup	5		10	
(19)	hair removal	5		5	

(b) Certification of these live model/mannequin performance completions shall be required along with the application for the examination.

(c) A live model ~~may be substituted with a mannequin~~ may be used for any mannequin service.

Authority G.S. 88B-23.

**SECTION .0500 – CREDIT FOR COSMETOLOGY
STUDY OUTSIDE OF NORTH CAROLINA**

**21 NCAC 14J .0502 APPROVAL OF CREDIT FOR
COSMETOLOGY INSTRUCTION/ANOTHER
COUNTRY**

Any person who has been trained in the field of cosmetology in a foreign country and desires to be licensed must first demonstrate satisfactory proof of proficiency in the cosmetology skills meeting all the North Carolina requirements. Each applicant must take the State Board examination. ~~examination in the English language.~~

Authority G.S. 88B-10; 88B-12; 88B-13; 145-12.

SUBCHAPTER 14M - FORMS

SECTION .0100 - FORMS

21 NCAC 14M .0101 DESIGNATIONS

~~The Board uses the following forms:~~

- ~~(1) Application for Approval of Cosmetology School Form COS 1;~~
- ~~(2) Cover Letter Sent with Application To Take the Cosmetology Teacher Examination Form COS 2;~~
- ~~(3) Certification of Enrollment of Students Entering Cosmetology School Form COS 3;~~
- ~~(4) Application for Out of State Applicants Form COS 4;~~
- ~~(5) Application for Apprentice Certificate of Registration Form COS 5;~~
- ~~(6) Affidavit of Apprenticeship Form COS 6;~~
- ~~(7) Examination Notice Form COS 7;~~
- ~~(8) Enrollment for Manicurist Student Form COS 8;~~
- ~~(9) Application for Manicurist Certificate of Registration Form COS 9;~~
- ~~(10) Application for Cosmetology Teacher Examination Form COS 10;~~

- ~~(11) Application To Retake the Cosmetology Teacher Examination Form COS 11;~~
- ~~(12) Inspector's Report Form COS 12;~~
- ~~(13) Beauty Salon License Application Form COS 13;~~
- ~~(14) Monthly report of students' credited hours Form COS 14;~~
- ~~(15) Substitute Teachers Form COS 15;~~
- ~~(16) Student Records Form COS 16;~~
- ~~(17) Rules and Regulations for Opening a New Beauty Salon Forms COS 17 01, 02, 03, 04, 05, 06, 07, 08, 09, 10;~~
- ~~(18) School Fee Renewal Notice Form COS 18;~~
- ~~(19) Student Record Certification Form COS 19;~~
- ~~(20) Student Enrollment/Daily Time Record Form COS 20;~~
- ~~(21) Duplicate License Letter Form COS 21;~~
- ~~(22) Letter of Approval Form COS 22;~~
- ~~(23) Return Application Letter Form COS 23;~~
- ~~(24) Additional Information from Salon Owners Form COS 24;~~
- ~~(25) Renewal Application Form COS 25;~~
- ~~(26) Cosmetologist Renewal Information Request Form COS 26;~~
- ~~(27) Affidavit Sheet Returned for Various Corrections Form COS 27;~~
- ~~(28) Guidelines for Student Applying for State Board Examinations Form COS 28;~~
- ~~(29) Certificate of North Carolina Licensed Operator Going to Another State Form COS 29;~~
- ~~(30) Overpayment Refund Form Form COS 30;~~
- ~~(31) Name Change Legal Papers Request Form COS 31.~~

Authority G.S. 88B-23.

21 NCAC 14M .0102 FORM COS-1

~~Form COS 1 is the form one must file for a letter of approval for the operation of a cosmetology school. It requires information such as the following:~~

- ~~(1) name and location of school;~~
- ~~(2) ownership of the school, and~~
- ~~(3) answers as to compliance with board rules.~~

Authority G.S. 88B-23.

21 NCAC 14M .0103 FORM COS-2

~~Form COS 2 is a cover letter that is sent to an applicant for the cosmetology teacher examination when the application for the examination is sent. The letter gives the applicant information about the format of the cosmetology teacher examination.~~

Authority G.S. 88B-23.

21 NCAC 14M .0104 FORM COS-3

~~Form COS 3 reports enrollment of students in a cosmetology school. It is filed by a cosmetology school and requires information such as the following:~~

- ~~(1) name, address, birth date and social security number of each student enrolled;~~
- ~~(2) date the student entered school; and~~
- ~~(3) name of any previous school attended and dates.~~

Authority G.S. 88B-23.

21 NCAC 14M .0105 FORM COS-4

~~Form COS 4 is an application form for out of state practitioners who wish to become licensed in North Carolina. It requires information such as the following:~~

- ~~(1) name, address, state of residency and social security number;~~
- ~~(2) length of time in practice;~~
- ~~(3) license numbers for other state or states, and~~
- ~~(4) experience.~~

Authority G.S. 88B-23.

21 NCAC 14M .0106 FORM COS-5

~~(a) Form COS 5 is an application for an apprentice certificate of registration. It requires information such as the following:~~

- ~~(1) name and address of applicant and social security number;~~
- ~~(2) name and address of cosmetology school attended, and~~
- ~~(3) educational experience.~~

~~(b) The form must be notarized before submitting it to the board.~~

~~(c) Two checks must accompany this form; a check in the amount of five dollars (\$5.00) to cover the registration fee; and a check in the amount of five dollars (\$5.00) to cover the apprentice license.~~

Authority G.S. 88B-21; 88B-23.

21 NCAC 14M .0107 FORM COS-6

~~Form COS 6 is an affidavit to be filled out by a managing cosmetologist who has supervised a registered apprentice during his or her apprenticeship. This form must be notarized.~~

Authority G.S. 88B-23.

21 NCAC 14M .0108 FORM COS-7

~~Form COS 7 is notification of the time and place of an examination in cosmetology.~~

Authority G.S. 88B-23.

21 NCAC 14M .0109 FORM COS-8

~~Form COS 8 is a form reporting the enrollment of one as a manicurist student. Information such as the following is requested:~~

- ~~(1) name and address of student;~~

- ~~(2) — date and place of birth of student, and~~
- ~~(3) — date enrolled in cosmetology school.~~

Authority G.S. 88B-23.

21 NCAC 14M .0110 FORM COS-9

~~Form COS 9 must be completed in order to receive a manicurist's certificate of registration. The form must be notarized. Information such as the following is requested:~~

- ~~(1) — name and address of applicant,~~
- ~~(2) — name and address of cosmetology school attended,~~
- ~~(3) — date course work was completed, and~~
- ~~(4) — birth date.~~

Authority G.S. 88B-21; 88B-23.

21 NCAC 14M .0111 FORM COS-10

~~Form COS 10 must be filed in order to take the cosmetology teacher examination. It must be notarized. It requests information such as:~~

- ~~(1) — name, birth date, and address of applicant;~~
- ~~(2) — name of cosmetology school at which applicant took a cosmetology teacher trainee course; and~~
- ~~(3) — dates applicant enrolled in and was graduated from the teacher trainee course.~~

Authority G.S. 88B-23.

21 NCAC 14M .0112 FORM COS-11

~~Form COS 11 is an application to retake the cosmetology teacher examination.~~

Authority G.S. 88B-23.

21 NCAC 14M .0113 FORM COS-12

~~Form COS 12 is an inspector's report of facility conditions in beauty establishments. The information requested on the form is the same as that outlined in 21 NCAC 14H .0018.~~

Authority G.S. 88B-23.

21 NCAC 14M .0114 COPIES

~~Copies of all forms may be obtained by writing the Chairman of the North Carolina State Board of Cosmetic Art Examiners, Grove Towers, Fifth Floor, 1110 Navaho Dr., Raleigh, North Carolina 27609.~~

Authority G.S. 88B-23.

21 NCAC 14M .0115 ACCESS TO FORMS

~~The forms described in 21 NCAC 14M are on file at the office of the North Carolina State Board of Cosmetic Art Examiners and can be inspected during regular office hours.~~

Authority G.S. 88B-23.

21 NCAC 14M .0116 FORM COS-13

~~Form COS 13 is used to obtain or renew a beauty salon license.~~

Authority G.S. 88B-23.

21 NCAC 14M .0117 FORM COS-14

~~Form COS 14 is used to report students' credited hours during each month. It must be mailed to the state board office by the 15th of each month.~~

Authority G.S. 88B-23.

21 NCAC 14M .0118 FORM COS-15

~~Form COS 15 must be filed in order for a cosmetology school to obtain a substitute for a licensed cosmetology instructor in an approved beauty school. It requires information such as the following:~~

- ~~(1) — cosmetology teacher and substitute name;~~
- ~~(2) — social security number;~~
- ~~(3) — record ID number;~~
- ~~(4) — current license number;~~
- ~~(5) — dates and hours for substitute;~~
- ~~(6) — school signature and approval.~~

Authority G.S. 88B-23.

21 NCAC 14M .0119 FORM COS-16

~~Form COS 16 is returned with the enrollment sheet or drop out sheet when there are various errors on either, showing where correction should be made, such as:~~

- ~~(1) — name of school attended with dates and applicant's name at the time;~~
- ~~(2) — social security number;~~
- ~~(3) — correct date of birth;~~
- ~~(4) — school seal;~~
- ~~(5) — date entered school;~~
- ~~(6) — earned hours not listed;~~
- ~~(7) — enrollment date not agree with drop out and enrollment form;~~
- ~~(8) — two enrollment forms submitted with two different enrollment dates;~~
- ~~(9) — drop out notices sent with different hours earned;~~
- ~~(10) — full name of student needed;~~
- ~~(11) — no record of cosmetology student listed on drop out notice;~~
- ~~(12) — no re enrollment form submitted;~~
- ~~(13) — enrollment not submitted within 30 days after enrollment — send photostated copy of actual daily time records.~~

Authority G.S. 88B-23.

21 NCAC 14M .0120 FORM COS-17

~~Form COS 17 states rules for opening a new beauty salon and is given to the new shop owner with the name, address, telephone number, and office hours of the inspector for the area.~~

Authority G.S. 88B-23.

21 NCAC 14M .0121 FORM COS-18

~~Form COS 18 is sent requesting fee for renewal of cosmetology school license.~~

Authority G.S. 88B-23.

21 NCAC 14M .0122 FORM COS-19

~~Form COS 19 is a request for certified records of a cosmetology student who has not applied for examination.~~

Authority G.S. 88B-23.

21 NCAC 14M .0123 FORM COS-20

~~Form COS 20 is sent to cosmetology schools to resolve discrepancies between records of the school and the State Board Office. It requires information such as the following:~~

- ~~(1) drop out notice, hours earned by cosmetology student;~~
- ~~(2) enrollment for cosmetology student.~~

Authority G.S. 88B-23.

21 NCAC 14M .0124 FORM COS-21

~~Form COS 21 is sent when information is needed for obtaining a duplicate license. It requires information such as the following:~~

- ~~(1) letter to the effect license has been lost or was never received;~~
- ~~(2) social security number, and one dollar (\$1.00) for postage and handling.~~

Authority G.S. 88B-23.

21 NCAC 14M .0125 FORM COS-22

~~Form COS 22 is a form letter sent to inform individual asking for reciprocity that request has been approved.~~

Authority G.S. 88B-23.

21 NCAC 14M .0126 FORM COS-23

~~Form COS 23 is sent to an individual, who requests reciprocity, to request corrections or additional information. It indicates errors such as the following:~~

- ~~(1) other state does not grant reciprocity to North Carolina;~~
- ~~(2) no executive secretary or director signature;~~
- ~~(3) applicant has no license in other state;~~
- ~~(4) applicant has not practiced cosmetology at least one year, within past three years;~~
- ~~(5) affidavit not signed by managing cosmetologist;~~
- ~~(6) affidavit not notarized;~~
- ~~(7) no state seal affixed;~~
- ~~(8) page one not completed;~~
- ~~(9) page three not completed;~~
- ~~(10) more information for question five other names, years licensed;~~

- ~~(11) copy of current license expiration date.~~

Authority G.S. 88B-23.

21 NCAC 14M .0127 FORM COS-24

~~Form COS 24 is sent requesting additional information or actions from beauty salon owners. It requires information such as the following:~~

- ~~(1) notice of past due renewal;~~
- ~~(2) fee remittal;~~
- ~~(3) return license with correct renewal date;~~
- ~~(4) name of beauty salon, address, file number, number of chairs;~~
- ~~(5) explanation for address change;~~
- ~~(6) add a chair application.~~

Authority G.S. 88B-23.

21 NCAC 14M .0128 FORM COS-25

~~Form COS 25 is an application sent to cosmetologists for renewal of license. It requires information such as the following:~~

- ~~(1) license number;~~
- ~~(2) record ID number;~~
- ~~(3) social security number;~~
- ~~(4) date of birth;~~
- ~~(5) beauty school attended;~~
- ~~(6) name and address.~~

Authority G.S. 88B-23.

21 NCAC 14M .0129 FORM COS-26

~~Form COS 26 is a notice sent to cosmetologists requesting additional information.~~

Authority G.S. 88B-23.

21 NCAC 14M .0130 FORM COS-27

~~Form COS 27 is returned with the affidavit to request accurate information such as the following:~~

- ~~(1) correct time for apprenticeship;~~
- ~~(2) return both parts of license;~~
- ~~(3) copy of valid license for supervising cosmetologist.~~

Authority G.S. 88B-23.

21 NCAC 14M .0131 FORM COS-28

~~Form COS 28 explains guidelines for cosmetology students applying to take State Board Examinations.~~

Authority G.S. 88B-23.

21 NCAC 14M .0132 FORM COS-29

~~Form COS 29 confirms certification of licensed operators in North Carolina going to another state.~~

Authority G.S. 88B-23.

21 NCAC 14M .0133 FORM COS-30

~~Form COS-30 indicates overpayment of fees.~~

Authority G.S. 88B-23.

21 NCAC 14M .0134 FORM COS-31

~~Form COS-31 requests a copy of the court order changing a name.~~

Authority G.S. 88B-23.

SUBCHAPTER 14N - EXAMINATIONS

SECTION .0100 – GENERAL PROVISIONS

21 NCAC 14N .0101 TIME AND PLACE OF EXAMINATIONS

~~The Board shall announce the time and place for holding each examination at least ten work days prior to the date thereof.~~

Authority G.S. 88B-7(1); 88B-8(1); 88B-18; 88B-20(a); 88-4.

21 NCAC 14N .0102 INITIAL APPLICATIONS AND FEES

(a) All applications for examination must be on a form provided by the Board.

(b) If special arrangements are required, the initial application or request for re-examination must include, an application for special arrangements pursuant to 21 NCAC 14N .0107.

~~(c) The application must be filed with the Board and accompanied by the applicable examination fee. If the application is not signed or is inadequately completed, or the proper supporting documentation is not enclosed, or the applicable fee is not paid, the application shall be deemed incomplete and returned.~~

~~(d) If the examination fee is paid by check or money order, the check or money order shall be made payable to the "Board of Cosmetic Art Examiners".~~

~~(e) If possible, the Board shall schedule candidates whose properly completed applications are received by the 10th of one month to take the examination during the following month. The Board shall assign the candidate to the location nearest to the candidate that is available for that month.~~

Authority G.S. 88B-4; 88B-7(1); 88B-8(1); 88B-18; 88B-20(a).

21 NCAC 14N .0103 GENERAL EXAMINATION INSTRUCTIONS

(a) All candidates scheduled for an examination ~~examination~~, conducted by Promissor, Inc., shall bring:

- (1) their social security card, two forms of signature identification, one of which should be photo bearing;
- (2) a form of identification with a current picture, your Promissor confirmation number; and
- (3) practical exam only: tools and supplies (as required by Promissor), and a mannequin

and/or live model (esthetics exam only). a kit containing all supplies necessary to perform all services required by the examination;

(4) a No. 2 pencil; and

(5) admission letter.

(b) Candidates for the cosmetologist examination shall bring a mannequin that conforms with applicable requirements set forth in 21 NCAC 14N .0105. No briefcases, large bags, books, papers, or study materials are allowed in the examination room. The assessment center manager will collect any such materials and return them to you after you finish your examination. Promissor is not responsible for lost or misplaced items.

~~(c) Candidates for the cosmetologist's teacher examinations shall bring whatever supplies are suitable for presenting the theory lecture of their pre assigned lecture topic and demonstrating the pre assigned practical demonstration topic. No cell phones, calculators or other electronic devices are permitted during the examination.~~

(d) Candidates for the esthetician and esthetician teachers examination shall bring a live model. No eating, drinking, smoking or gum-chewing is permitted during the examination.

(e) Candidates shall not be accepted after roll call. No visitors (with the exception of models), children, pets or guests are allowed at the test center.

(f) No candidate shall bring books, electronic devices, calculators, papers, or reference materials of any kind into the testing room, except as provided in Paragraph (c) and (g) of this Rule. No extra time for the examination will be permitted.

(g) Cosmetology teacher, manicurist teacher and esthetician teacher candidates may use visual aids, prepared in advance, during the practical examination. During the lesson planning part of the examination, only a text book brought by that candidate may be used. No leaving the test center is permitted during the examination. You may visit the restroom without the proctor's permission, but you will not receive any additional time for the examination.

(h) No giving or receiving assistance during the examination. If you do, the test center manager will stop your examination and dismiss you from the test center. Promissor will not score the examination and will report you to the Board, which will make any decision regarding discipline.

(i) You must maintain silence during the examination, and should not mention the name of the school you attended or the name of your instructor. Do not wear or carry any school identification on your uniform or equipment.

Authority G.S. 88B-4; 88B-7; 88B-9; 88B-10; 88B-11; 88B-18.

21 NCAC 14N .0104 LIVE MODEL REQUIREMENTS

~~(a) If a cosmetology teacher candidate has chosen to bring a live model for the examination, the model must:~~

- ~~(1) be at least 18 years old;~~
- ~~(2) submit to all cosmetic art services required by the examination; and~~
- ~~(3) agree to a haircut of at least one to one and one half inches during the examination. Hair must be of sufficient length to perform requirements after cutting. Prior to the~~

~~examination, the model's hair must have already been shampooed, set and dried.~~

~~(b) A model brought by a candidate for the manicurist or manicurist teacher examination, pursuant to 21 NCAC 14N .0103(d) shall:~~

- ~~(1) be 18 years old;~~
- ~~(2) submit to all cosmetic art services required by examination.~~

~~(c) A model brought by a candidate for the esthetician or esthetician teachers examination pursuant to 21 NCAC 14N .0103(e) shall:~~

- ~~(1) be 18 years old;~~
- ~~(2) submit to all operations of esthetics.~~

~~(d) Cosmetic art school or shop owners, cosmetologists or apprentice cosmetologists, manicurists, estheticians, cosmetology, manicurist, or esthetician teachers, cosmetic art shop operators, and present or former cosmetology or manicurist students may not sit as models.~~

~~(e) No model may sit for more than one candidate at one exam.~~

Authority G.S. 88B-4; 88B-11; 88B-18.

21 NCAC 14N .0105 MANNEQUIN REQUIREMENTS

~~If, pursuant to 21 NCAC 14N .0103(b) and (c), a candidate has chosen to bring a mannequin for the examination, the mannequin's hair shall be of sufficient length for the candidate to perform at least a one to one and one half inch haircut. Hair shall be of sufficient length to perform requirements after cutting. The candidate shall bring a holder for the mannequin.~~

Authority G.S. 88B-4; 88B-11.

21 NCAC 14N .0108 FAILURE TO APPEAR FOR EXAMINATION

~~If a candidate fails to appear for the scheduled examination, the examination fee shall not be refunded.~~

Authority G.S. 88B-4; 88B-18; 88B-20(a).

21 NCAC 14N .0109 OBSERVATION OF EXAMINATION BY THIRD PARTIES

~~No visitors shall be allowed in the examination room during the examinations.~~

Authority G.S. 88B-10(2); 88B-12(2); 88B-16; 88B-17; 88B-21(a)(16); 88B-23; 88B-30(4).

21 NCAC 14N .0111 NOTIFICATION OF EXAMINATION RESULTS

~~(a) The examination results shall be mailed to the candidate at the address on the application form within 30 days of the examination.~~

~~(b) If the candidate wishes to have the examination results mailed to an address different from the one on the application form, the new address shall be received by the Board within five days after the examination.~~

~~(c) Any cosmetology student who completed a 1500-hour course and failed to make the required 75 percent on both parts~~

~~of the cosmetology examination, but scored at least 70 percent on both parts, may send a written request for an apprentice cosmetologist license, along with the required fee, instead of taking the exam again. In this case, the candidate shall not be given credit toward apprentice time until the date the written request and appropriate fee are received in the office. Notice shall be sent, with the license, advising the applicant of the starting date of the apprenticeship.~~

Authority G.S. 88B-10(2); 88B-12(2); 88B-16; 88B-17; 88B-21(a)(16); 88B-23; 88B-30(4).

21 NCAC 14N .0112 REVIEW OF EXAMINATION

~~(a) A candidate who has failed the practical section of an examination may upon written request receive a breakdown of the practical examination grades. A candidate may not receive a breakdown of the theory section of an examination.~~

~~(b) A candidate who has passed both sections of an examination at any level may not receive a breakdown of his examination grades.~~

Authority G.S. 88B-4; 88B-8(2); 88B-10(2); 88B-18; 93B-8.

21 NCAC 14N .0113 RE-EXAMINATION

~~(a) If, upon application for re-examination, the applicant has taken and passed one section of an examination, he or she shall apply for re-examination only on the section of the examination that he or she did not pass.~~

~~(b) Applicants for re-examination must apply for re-examination in writing and pay the appropriate examination fee.~~

~~(c) Notwithstanding any other provision of the rules in this Subchapter, pursuant to G.S. 88B-18(d) a cosmetology candidate who has failed either section of the examination three times, shall complete an additional 200 hours of study at an approved cosmetic art school before another application for re-examination shall be accepted by the Board.~~

~~(d) Upon written request by any candidate, the Board shall release a summary of the results of each category of the practical section of the most recent examination to the school in which the candidate is enrolled for the additional study, pursuant to G.S. 88B-18(d).~~

~~(e) The school in which the student has enrolled pursuant to G.S. 88B-18(d) shall design a course of study for that student in order to correct the student's deficiencies.~~

~~(f) A candidate for licensure as an apprentice cosmetologist who~~

- ~~(1) passes the examination with a score of 75 percent or more on both sections; and~~
- ~~(2) subsequently completes an additional 300 hours within one year of the examination date may be licensed as a cosmetologist under G.S. 88B-7 without retaking the examination.~~

Authority G.S. 88B-4; 88B-18.

21 NCAC 14N .0114 FAILURE TO COMPLY WITH CHAPTER

~~(a) The examiner may dismiss from the examination any candidate who fails to comply with this Chapter or who disrupts~~

~~the examination, and the candidate shall be treated as having failed the examination.~~

~~(b) With respect to fees only, a candidate who has been dismissed pursuant to Paragraph (a) of this Rule, will be treated as though the candidate has failed to appear.~~

Authority G.S. 88B-10(2); 88B-12(a)(2); 88B-16; 88-17; 88B-21(a)(16); 88B-23; 88B-30(4).

SECTION .0200 - COSMETOLOGIST EXAM

21 NCAC 14N .0201 EXAMINATION - THEORY SECTION

~~(a) The theory section of the cosmetologist examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology which covers all phases of cosmetic art, including hairdressing, manicuring and pedicuring, facial massage, and sanitation.~~

~~(b) The candidate shall have two hours to complete the theory section of the cosmetologist examination.~~

Authority G.S. 88B-12.

21 NCAC 14N .0202 EXAMINATION - PRACTICAL SECTION

~~The practical section of the cosmetologist examination shall require the candidate to perform procedures which will test the basic knowledge and skills necessary to practice as a cosmetologist and shall be related to the curriculum required by the Board to be taught in approved cosmetic art schools to cosmetology students.~~

Authority G.S. 88B-10(2); 88B-12(2); 88B-17.

SECTION .0300 - MANICURIST EXAMINATION

21 NCAC 14N .0301 EXAMINATION - THEORY SECTION

~~(a) The theory section of the manicurist examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology which covers all phases of the art of manicuring, pedicuring and sanitation.~~

~~(b) The candidate shall have two hours to complete the theory section of the manicurist examination.~~

Authority G.S. 88B-12.

21 NCAC 14N .0302 EXAMINATION - PRACTICAL SECTION

~~The practical section of the manicurist examination shall require the candidate to perform procedures which will test the basic knowledge and skills necessary to practice as a manicurist and shall be related to the curriculum required by the Board to be taught in approved cosmetic art schools to manicurist students.~~

Authority G.S. 88B-17; 88B-30(4).

SECTION .0400 - COSMETOLOGIST TEACHER EXAMINATION

21 NCAC 14N .0401 EXAMINATION - THEORY SECTION

~~(a) The theory section of the cosmetology teacher examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology which includes lesson plans, teaching techniques, teaching aids, testing, classroom management, and student motivation.~~

~~(b) The candidate shall have two hours to complete the theory section of the examination.~~

Authority G.S. 88B-12.

21 NCAC 14N .0402 EXAMINATION - PRACTICAL SECTION

~~The practical section of the cosmetology teacher's examination shall require the candidate to perform procedures which will test the basic knowledge and skills of teaching techniques.~~

Authority G.S. 88B-17; 88B-21(a)(16); 88B-23.

SECTION .0500 - MANICURIST TEACHER EXAMINATION

21 NCAC 14N .0501 EXAMINATION - THEORY SECTION

~~(a) The theory section of the manicurist teacher examination shall include the national theory examination of the National Interstate Council of State Boards of Cosmetology, which includes lesson plans, teaching techniques, teaching aids, testing, classroom management, and student motivation.~~

~~(b) The candidate shall have two hours to complete the theory section of the examination.~~

Authority G.S. 88B-12.

21 NCAC 14N .0502 EXAMINATION - PRACTICAL SECTION

~~The practical section of the manicurist teacher's examination shall require the candidate to perform procedures which will test the basic knowledge and skills of teaching techniques.~~

Authority G.S. 88B-17; 88B-21(a)(16); 88B-23.

SECTION .0600 - ESTHETICIAN EXAMINATION

21 NCAC 14N .0601 EXAMINATION - THEORY SECTION

~~(a) The written section of the esthetician examination shall include the national written examination for estheticians of the National Interstate Council of State Board of Cosmetology which covers all phases of esthetics.~~

~~(b) The candidate shall have two hours to complete the written section of the esthetician examination.~~

Authority G.S. 88B-4; 88B-18.

21 NCAC 14N .0602 EXAMINATION - PRACTICAL SECTION

~~The practical section of the esthetics examination shall require the candidate to perform procedures which will test the basic knowledge and skills necessary to practice as an esthetician and shall be related to the curriculum required by the Board to be taught in an approved cosmetic art school to esthetician students.~~

Authority G.S. 88B-4; 88B-18.

SECTION .0700 – ESTHETICIAN TEACHER EXAMINATION

21 NCAC 14N .0701 EXAMINATION - THEORY SECTION

~~(a) The written section of the esthetician teacher examination shall include the national written examination for teachers of the National Interstate Council of State Boards of Cosmetology which shall include lesson plans, teaching techniques, teaching aids, testing, classroom management, and student motivation.~~
~~(b) The candidate shall have two hours to complete the written section of the examination.~~

Authority G.S. 88B-4; 88B-11.

21 NCAC 14N .0702 EXAMINATION - PRACTICAL SECTION

~~The practical section of the esthetician teacher's examination shall require the candidate to perform procedures which will test the basic knowledge and skills of teaching techniques.~~

Authority G.S. 88B-4; 88B-11.

SUBCHAPTER 14P – CIVIL PENALTY

SECTION .0100 – CIVIL PENALTY

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 NCAC 14P .0112 SANITARY RATINGS AND POSTING OF RATINGS - APPLICABLE TO ESTABLISHMENTS WITH A SANITATION GRADE OF LESS THAN 80%

(a) The presumptive civil penalty for failure to display an inspection grade card is:

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

(b) The presumptive civil penalty for non-working toilet facilities is:

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

(c) The presumptive civil penalty for failure to maintain equipment, furnishings and floor coverings is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$25.00) |
| (2) | 2nd offense | \$50.00 |
| (3) | 3rd offense | \$100.00 |

(d) The presumptive civil penalty for failure to provide hot and cold running water is:

- | | | |
|-----|-------------|-------------------|
| (1) | 1st offense | warning (\$50.00) |
|-----|-------------|-------------------|

- (2) 2nd offense \$100.00
 (3) 3rd offense \$200.00
- (e) The presumptive civil penalty for keeping any animal or bird in a cosmetic art shop or school is: (Trained animals accompanying sightless or hearing impaired persons are exempt)
- (1) 1st offense warning (\$25.00)
 (2) 2nd offense \$50.00
 (3) 3rd offense \$100.00
- (f) The presumptive civil penalty for failure to have students wear clean washable uniform or professional attire ~~clean, white clothing~~ is:
- (1) 1st offense warning (\$50.00)
 (2) 2nd offense \$100.00
 (3) 3rd offense \$200.00
- (g) The presumptive civil penalty for failure of operators in cosmetic art shops to wear clean outer garments with sleeves is:
- (1) 1st offense warning (\$50.00)
 (2) 2nd offense \$100.00
 (3) 3rd offense \$200.00
- (h) The presumptive civil penalty for failure to store used or clean towels, or failure to launder used towels is:
- (1) 1st offense warning (\$50.00)
 (2) 2nd offense \$100.00
 (3) 3rd offense \$200.00
- (i) The presumptive civil penalty for failure to dispose of supplies or instruments which come in direct contact with a patron and which cannot be disinfected is:
- (1) 1st offense warning (\$50.00)
 (2) 2nd offense \$100.00
 (3) 3rd offense \$200.00
- (j) The presumptive civil penalty for failure to disinfect non-electrical instruments and equipment is:
- (1) 1st offense warning (\$50.00)
 (2) 2nd offense \$100.00
 (3) 3rd offense \$200.00
- (k) The presumptive civil penalty for failure to store and label creams, powders, and other cosmetic preparations is:
- (1) 1st offense warning (\$25.00)
 (2) 2nd offense \$50.00
 (3) 3rd offense \$100.00
- (l) The presumptive civil penalty for failure to have necessary first aid equipment on hand is:
- (1) 1st offense warning (\$25.00)
 (2) 2nd offense \$50.00
 (3) 3rd offense \$100.00
- (m) The presumptive civil penalty for failure to provide necessary lighting or ventilation, unsanitary conditions is:
- (1) 1st offense warning (\$50.00)
 (2) 2nd offense \$100.00

- (3) 3rd offense \$200.00
- (n) The presumptive civil penalty for windows and doors not effectively screened is:
- (1) 1st offense warning (\$50.00)
 (2) 2nd offense \$100.00
 (3) 3rd offense \$200.00
- (o) The presumptive civil penalty for trash containers not covered is:
- (1) 1st offense warning (\$25.00)
 (2) 2nd offense \$50.00
 (3) 3rd offense \$100.00
- (p) The presumptive civil penalty for failure to use EPA approved disinfectant is:
- (1) 1st offense \$50.00
 (2) 2nd offense \$100.00
 (3) 3rd offense \$200.00
- (q) The presumptive civil penalty for failure to maintain a sanitary establishment (80% rating or better) is:
- (1) 1st offense warning (\$25.00)
 (2) 2nd offense \$50.00
 (3) 3rd offense \$100.00

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

SUBCHAPTER 14R – CONTINUING EDUCATION

21 NCAC 14R .0101 CONTINUING EDUCATION REQUIREMENTS

- (a) The continuing education requirement for all licensees is eight hours per year. Cosmetologists may complete the 24 hours of continuing education any time within the cosmetologist's three-year licensing cycle. No licensee shall receive credit for course duplication completed during the licensing cycle. ~~Course instructors shall not receive credit for any course taught by them.~~
- (b) Courses completed prior to an individual being licensed by the Board shall not qualify for continuing education credit. A licensee shall not receive continuing education credit for any course given in North Carolina that does not have the prior approval of the Board.
- (c) Estheticians and manicurists must complete courses in their subject area. Only licensed teachers may complete courses in teacher training techniques.
- (d) All providers shall allow any representative or employee of the Board entrance into any Board approved continuing education requirement course at no cost to the Board.
- (e) The Board shall keep a current roster of approved continuing education courses. Copies of the roster shall be posted to the Board's website and updated monthly. Additional copies of the roster shall be available to licensees and the public upon request to the Board. Requesting individuals shall provide stamped, self-addressed envelopes.
- (f) Out-of-state continuing education hours shall be submitted for approval to the Board within 30 days of completing the course in order to be acceptable in meeting the annual requirements.

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

21 NCAC 14R .0103 CRITERIA FOR CONTINUING EDUCATION COURSES

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

(b) Providers must use an attendance sign-in sheet provided by the Board, listing the licensee's name and teacher's license number, to verify attendance. Forms may be copied. Course monitors will be required at the rate of one monitor per 20 students with a maximum of 10 monitors at any course. Instructors may serve as the course monitor for courses with fewer than 20 students.

(c) No provider shall certify the attendance of a person who was not physically present during at least ninety per cent of the course time.

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

- (1) Board approved continuing education number;
- (2) Name and license number of attendee;
- (3) Course title and description
- (4) Hours of attendance;
- (5) Date of course;
- (6) Name and signature of instructor/monitor in employ of provider;

The provider shall certify the items above and furnish a copy to the attendee within 30 days after completion of the course.

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

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

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

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

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

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

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

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

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

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Nursing intends to amend the rule cited as 21 NCAC 36 .0120, .0228 and .0404.

Proposed Effective Date: July 1, 2005

Public Hearing:

Date: May 17, 2005

Time: 1:00 p.m.

Location: NC Board of Nursing, 3724 National Drive, Ste 201, Raleigh, NC

Reason for Proposed Action:

21 NCAC 36 .0120 - To define "specialty" as used in Chapter 36.

21 NCAC 36 .0228 – To clarify the qualifications required for Board of Nursing recognition as a clinical nurse specialists.

21 NCAC 36 .0404 – To clarify the limitation on time between NA II Program completion and listing on the NA II Registry; to use birth month as the expiration/renewal date for NA II listing.

Procedure by which a person can object to the agency on a proposed rule: Persons may submit objections to these Rules by contacting Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC, fax (919) 781-9461 and email jeans@ncbon.com or polly@ncbon.com.

Written comments may be submitted to: Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602, phone (919) 782-3211, ext 252, fax (919) 781-9461 and email jeans@ncbon.com or polly@ncbon.com.

Comment period ends: May 17, 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.

Authority G.S. 90-171.23.

SECTION .0200 - LICENSURE

Fiscal Impact

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

SECTION .0100 - GENERAL PROVISIONS

21 NCAC 36 .0120 DEFINITIONS.

The following definitions shall apply throughout this chapter unless the context indicates otherwise:

- (1) "Accountability/Responsibility" means being answerable for action or inaction of self, and of others in the context of delegation or assignment.
- (2) "Assigning" means designating responsibility for implementation of a specific activity or set of activities to a person licensed and competent to perform such activities.
- (3) "Delegation" means transferring to a competent individual the authority to perform a selected nursing activity in a selected situation. The nurse retains accountability for the delegation.
- (4) "Supervision" means the provision of guidance or direction, evaluation and follow-up by the licensed nurse for accomplishment of an assigned or delegated nursing activity or set of activities.
- (5) "Participating in" means to have a part in or contribute to the elements of the nursing process.
- (6) "Advanced Practice Registered Nurse (APRN)" means for the purposes of Board qualification a nurse who meets the criteria specified in G.S. 90-171.21(d)(4).
- (7) "National Credentialing Body" means a credentialing body that offers certification or re-certification in the licensed nurse's or Advanced Practice Registered Nurse's specialty area of practice.
- (8) "Prescribing Authority" means the legal permission granted by the Board of Nursing and Medical Board for the nurse practitioner and nurse midwife to procure and prescribe legend and controlled pharmacological agents and devices to a client in compliance with Board of Nursing rules and other applicable federal and state law and regulations.
- (9) "Specialty" means a broad, population-based focus of study encompassing the common health-related problems of that group of patients and the likely co-morbidities, interventions and responses to those problems.

21 NCAC 36 .0228 CLINICAL NURSE SPECIALIST PRACTICE

(a) The registered nurse who meets the qualifications as outlined in Paragraph (b) of this Rule may be recognized by the Board as a clinical nurse ~~specialist or a clinical nurse specialist applicant~~ specialist, and perform nursing activities at an advanced skill level as outlined in Paragraph (c) of this Rule.

(b) In order ~~for the individual~~ to be recognized, recognized as a Clinical Nurse Specialist, the individual shall have an ~~unrestricted~~ unencumbered license to practice as a registered nurse in North Carolina and meet ~~one of~~ the following qualifications:

- (1) As of January 1, 2006 has completed a master's level or higher educational program have completed a graduate degree in a clinical nursing specialty as defined in 21 NCAC 36 .0120(9) and consistent with G.S. 90-171.21(d)(4); and be currently certified in a clinical specialty by a national credentialing body approved by the Board as defined in Paragraph (e) of this Rule; or
 - (2) Maintain current certification from a national credentialing body in the clinical nursing specialty approved by the Board of Nursing, as defined in Paragraph (e) of this Rule and 21 NCAC 36 .0120(9); or.
 - ~~(3)(2)~~ have Has a graduate degree in a related field and was have been initially certified by the American Nurses Credentialing Center as a Clinical Specialist prior to June 1992 and has have maintained such certification continuously to date, date; or
 - ~~(3)~~ have completed a graduate degree in a clinical nursing specialty and is awaiting initial certification by a national credentialing body approved by the Board, as defined in Paragraph (e) of this Rule, for a period not to exceed 24 months after completion of the graduate program.
- (c) Clinical nurse specialist scope of practice incorporates the basic components of nursing practice as defined in Rule .0224 of this Section as well as the understanding and application of nursing principles at an advanced level in his/her area of clinical nursing specialization which includes but is not limited to:
- (1) assessing ~~clients'~~ patients' health status, synthesizing and analyzing multiple sources of data, and identifying alternative possibilities as to the nature of a healthcare problem;
 - (2) diagnosing and managing ~~clients'~~ patients' acute and chronic health problems within a nursing framework;
 - (3) formulating strategies to promote wellness and prevent illness;

- (4) prescribing and implementing therapeutic and corrective nursing measures;
- (5) planning for situations beyond the registered nurse's expertise, and consulting with or referring ~~clients~~ patients to other health care providers as appropriate;
- (6) promoting and practicing in collegial and collaborative relationships with ~~clients~~, patients, families, other health care professionals and individuals whose decisions influence the health of individual ~~clients~~, patients, families and communities;
- (7) initiating, establishing and utilizing measures to evaluate health care outcomes and modify nursing practice decisions;
- (8) assuming leadership for the application of research findings for the improvement of health care outcomes; and
- (9) integrating education, consultation, management, leadership and research into the advanced clinical nursing specialist role.

(d) The registered nurse who seeks recognition by the Board as a clinical nurse specialist ~~or clinical nurse specialist applicant~~ shall:

- (1) complete the appropriate application, which shall include:
 - (A) evidence of the appropriate graduate masters, post-master's certificate or doctoral degree as set out in ~~Subparagraph (b)(1)(2) or (3)~~ Subparagraphs (b)(1), and (3) of this Rule; and
 - (B) evidence of current certification in a clinical nursing specialty from a national credentialing body as set out in ~~Subparagraphs (b)(1) and (2)~~ Subparagraphs (b)(2) and (3) of this Rule;
- (2) submit an administrative fee of twenty-five dollars (\$25.00) for processing the application; and
- (3) submit evidence of ~~renewal or~~ initial certification and re-certification at the time such occurs in order to maintain Board of Nursing recognition consistent with ~~Paragraph (b)~~ Paragraphs (b) and (c) of this Rule.

(e) The Board of Nursing may approve those national credentialing bodies offering certification and recertification in a clinical nursing specialty which have established the following minimum requirements:

- (1) ~~current licensure as a an unencumbered registered nurse license; nurse;~~
- (2) ~~certification as a clinical nurse specialist is limited to masters, post-master's certificate or doctoral prepared applicant;~~
- (3)(2) ~~a minimum of 500 hours of clinical experience as a registered nurse in a graduate program in the clinical nursing specialty. For a dual tract~~

graduate program, if less than 500 hours per tract, a requirement that there must be documentation of any crossover which would justify less than an additional 500 hours for the second track, the nursing specialty;

- (3) ~~recertification criteria include evidence of:~~
 - (A) ~~a combination of two or more of the following:~~
 - (i) ~~clinical practice; or~~
 - (ii) ~~continuing education units;~~
 - ~~or~~
 - (iii) ~~re examination; and~~
 - (B) ~~recertification a minimum of every five years after initial certification; and~~
- (4) ~~certification limited to registered nurses except when offered to other licensed health professionals who have a baccalaureate or higher degree in their discipline.~~

Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21(d)(4); 90-171.23(b); 90-171.42(b).

SECTION .0400 - UNLICENSED PERSONNEL: NURSE AIDES

21 NCAC 36 .0404 LISTING AND RENEWAL

(a) All nurse aide II's, as defined in Rule .0403(b) of this Section, regardless of working title, employed or assigned in a service agency or facility for the purpose of providing nursing care activities shall be listed on the Board of Nursing Nurse Aide II Registry and shall meet the following requirements:

- (1) successful completion of a nurse aide II program or its Board approved equivalent;
- (2) GED or high school diploma;
- (3) listed as a Level I nurse aide on the DFS Nurse Aide Registry with no substantiated findings of abuse, neglect, or misappropriation of property; and
- (4) submission of an application to the Board of Nursing for placement on the Board of Nursing Nurse Aide II Registry prior to working as a nurse aide II.

The application shall be submitted with the required fee within 30 business days of completion of the nurse aide II program. Application for initial listing received in the Board office ~~between April and June~~ shall show an expiration day of ~~June 30~~ the last day of the birth month of the following year.

(b) Nursing students currently enrolled in Board of Nursing approved nursing programs desiring listing as a nurse aide II shall submit:

- (1) An application fee; and
- (2) A listing form completed by the nursing program director indicating successful completion of course work equivalent in content and clinical hours to that required for a nurse aide II.

(c) Registered nurses and licensed practical nurses who hold current, unrestricted licenses to practice in North Carolina, and registered nurses and licensed practical nurses in the discipline process by the Board of Nursing who do not have any findings as cited in G.S. 131E-256(a)(1)(a) – (e) may make application as a nurse aide II.

(d) An individual previously enrolled in a Board approved nursing program leading to licensure as RN or LPN may list with no additional testing provided the student withdrew from school in good standing within the last 24 months and completed the equivalent content and clinical hours. Such individual shall submit listing form as described in Paragraph (b)(2) of this Rule. If the student was in good standing upon withdrawal from the school and withdrew from the school in excess of 24 months, the student must complete an entire nurse aide II program.

(e) Individuals who have completed a training course equivalent in content and clinical hours to the nurse aide II program, may submit documentation of same to the Board of Nursing for review. If training is equivalent, the individual may submit the application with required fee and be listed on the Board of Nursing Nurse Aide Registry as a nurse aide II.

(f) An employing agency or facility may choose up to four nurse aide II tasks to be performed by nurse aide I personnel without the nurse aide I completing the entire nurse aide II program. These tasks are individual activities which may be performed after the nurse aide has received the approved training and competency evaluation as defined in Rule .0403(b) of this Section.

- (1) The agency may obtain the selected tasks curriculum model from the nearest Community College or the Board of Nursing or may submit a self generated curriculum to the Board for approval. Board approval must be obtained prior to teaching the nurse aide II tasks.
- (2) Once approval has been obtained, the Board of Nursing must be notified of the nurse aide II task(s) that will be performed by nurse aide I personnel in the agency and for which all Board stipulations have been met. The

notification of nurse aide II task(s) form which may be requested from the Board office shall be used. Each agency shall receive a verification letter once the Board has been appropriately notified.

- (3) Documentation of the training and competency evaluation must be maintained for each nurse aide I who is approved to perform nurse aide II task(s) within the agency.

(g) Each nurse aide II shall renew listing with the Board of Nursing biennially on forms provided by the Board. The renewal application shall be accompanied by the required fee.

- (1) To be eligible for renewal, the nurse aide II must have worked at least eight hours for compensation during the past 24 months performing nursing care activities under the supervision of a Registered Nurse.
- (2) Any nurse aide II who has had a continuous period of 24 months during which no nursing care activities were performed for monetary compensation but who has performed patient care activities for monetary compensation shall successfully complete the competency evaluation portion of the nurse aide II program and submit application in order to be placed on the Board of Nursing Nurse Aide II Registry.
- (3) A nurse aide II who has performed no nursing care or patient care activities for monetary compensation within the past 24 months must successfully complete a nurse aide II program prior to submitting the application for renewal.
- (4) A nurse aide II who has substantiated findings of abuse, neglect, or misappropriation of funds on the DFS Nurse Aide Registry shall not be eligible for renewal as a nurse aide II.

Authority G.S. 90-171.19; 90-171.20(2)(4)(7)d.,e.,g.; 90-171.37; 90-171.43(4); 90-171.55; 90-171.83; 42 U.S.C.S. 1395i-3 (1987).

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting January 19, 2005, and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules have been entered into the North Carolina Administrative Code.

APPROVED RULE CITATION	REGISTER CITATION TO THE NOTICE OF TEXT
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10A	NCAC	22G	.0106*	19:05 NCR
10A	NCAC	26E	.0102*	18:24 NCR
10A	NCAC	26E	.0104*	18:24 NCR
10A	NCAC	26E	.0105	18:24 NCR
10A	NCAC	26E	.0106-.0107*	18:24 NCR
10A	NCAC	26E	.0111*	18:24 NCR
10A	NCAC	26E	.0113*	18:24 NCR
13	NCAC	15	.0429*	19:03 NCR
15A	NCAC	02D	.0801	19:02 NCR
15A	NCAC	02D	.0803	19:02 NCR
15A	NCAC	02Q	.0603*	19:02 NCR
15A	NCAC	02Q	.0605*	19:02 NCR
15A	NCAC	02Q	.0701	19:02 NCR
15A	NCAC	02Q	.0709*	19:02 NCR
15A	NCAC	02Q	.0711*	19:02 NCR
15A	NCAC	18A	.1969*	19:06 NCR
21	NCAC	46	.1414*	19:04 NCR
21	NCAC	46	.1602*	19:04 NCR
21	NCAC	46	.1612*	19:04 NCR
21	NCAC	46	.2502*	19:04 NCR
21	NCAC	46	.2702-.2704*	19:04 NCR
21	NCAC	46	.3301*	19:04 NCR
21	NCAC	46	.3401-.3408*	19:04 NCR

These rules were previously approved by RRC but were pending review by the Tax Review Board prior to entry into the Code. These rules have been reviewed. The Department of Revenue is exempt from publishing notice in the Register pursuant to G.S. 150B-1(d)(4).

17	NCAC	03C	.0104	Eff. February 1, 2005
17	NCAC	04C	.0802	Eff. January 1, 2005
17	NCAC	05C	.0304	Eff. January 1, 2005
17	NCAC	05C	.0601	Eff. January 1, 2005
17	NCAC	05C	.0701	Eff. January 1, 2005
17	NCAC	05C	.0704	Eff. February 1, 2005
17	NCAC	05C	.0801-.0802	Eff. January 1, 2005
17	NCAC	05C	.0906	Eff. January 1, 2005
17	NCAC	05C	.0907	Eff. January 1, 2005
17	NCAC	05C	.1002	Eff. January 1, 2005
17	NCAC	05C	.1506	Eff. January 1, 2005
17	NCAC	05C	.1702	Eff. January 1, 2005
17	NCAC	05C	.2404	Eff. January 1, 2005
17	NCAC	06B	.0104	Eff. February 1, 2005
17	NCAC	06B	.0605	Eff. February 1, 2005
17	NCAC	06B	.3407	Eff. February 1, 2005

17	NCAC	06B	.3503	Eff. February 1, 2005
17	NCAC	06B	.3724	Eff. February 1, 2005
17	NCAC	06C	.0112	Eff. February 1, 2005
17	NCAC	06C	.0119	Eff. February 1, 2005
17	NCAC	06C	.0203	Eff. February 1, 2005

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 22G .0106 RECONSIDERATION REVIEWS

(a) As required by 42 CFR 447, Subpart C, providers may submit additional evidence for determination of reimbursement amounts pursuant to the Medicaid State Plan. Providers may either accept agency reimbursement determinations or request a consideration review in accordance with the procedures set forth in 10A NCAC 22I and 22J.

(b) Indirect rates shall not be adjusted on reconsideration review.

(c) Direct rates may be adjusted for the following reasons:

- (1) to accommodate any changes in the minimum standards or minimum levels of resources required in the provision of patient care that are mandated by state or federal laws or regulation;
- (2) to correct any adjustments or revisions to ensure that the payment rate is calculated in accordance with Rule .0102 of this Section.

History Note: Authority G.S. 108A-25(b); 108A-54; 108A-55; S.L. 1985, c. 479, s. 86; 42 C.F.R. 447, Subpart C; Eff. January 1, 1978; Temporary Amendment Eff. October 1, 1984 for a Period of 120 Days to Expire on January 28, 1985; Amended Eff. January 4, 1993; November 1, 1991; May 1, 1990; June 1, 1989; Temporary Amendment Eff. August 3, 2004; Amended Eff. February 1, 2005.

10A NCAC 26E .0102 DEFINITIONS

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

- (1) The term "act" means the North Carolina Controlled Substances Act (G.S. Chapter 90, Article 5).
- (2) The term "Commission" means the same as defined in G.S. 90-87
- (3) The term "basic class" means as to controlled substances listed in Schedules I, II and VI:
 - (a) each of the opiates including its isomers; esters; ethers; salts; and salts of isomers, esters and ethers whenever the existence of such isomers, esters, ethers and salts is possible within the specific chemical designation listed in Schedule I of the

North Carolina Controlled Substances Act;

- (b) each of the opium derivatives including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation listed in Schedule I of the North Carolina Controlled Substances Act;
- (c) each of the hallucinogenic substances including its salts, isomers and salts of isomers whenever the existence of such salts, isomers and salts of isomers is possible within the specific chemical designation listed in Schedule I of the North Carolina Controlled Substances Act;
- (d) each of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:
 - (i) opium including raw opium, opium extracts, opium fluid extracts, powdered opium, granulated opium, deodorized opium and tincture of opium;
 - (ii) apomorphine;
 - (iii) ethylmorphine;
 - (iv) hydrocodone;
 - (v) hydromorphone;
 - (vi) metopon;
 - (vii) morphine;
 - (viii) oxycodone;
 - (ix) oxymorphone;
 - (x) thebaine;
 - (xi) mixed alkaloids of opium listed in Schedule I of the North Carolina Controlled Substances Act;
 - (xii) cocaine; and
 - (xiii) ecgonine;
- (e) each of the opiates including its isomers; esters; ethers; salts; and salts of isomers, esters and ethers whenever the existence of such

- isomers, esters, ethers and salts is possible within the specific chemical designation listed in Schedule II of the North Carolina Controlled Substances Act; and
- (f) methamphetamine including its salts, isomers and salts of isomers when contained in any injectable liquid.
- (4) The term "commercial detection service" means the same as defined in G.S. 90-102.1.
- (5) The term "DEA" means the Federal Drug Enforcement Administration.
- (6) The term "Director" means the Director of the Division of Mental Health, Developmental Disabilities and Substance Abuse Services, Department of Health and Human Services.
- (7) The term "dog handler" means the same as defined in G.S. 90-102.1. For purposes of this definition person means an individual.
- (8) The term "drug detection dog" means the same as defined in G.S. 90-102.1.
- (9) The term "hearing" means any hearing held pursuant to this part of the granting, denial, revocation or suspension of a registration pursuant to G.S. 90-102 and 90-103.
- (10) The term "individual practitioner" means same as defined in G.S. 90-87
- (11) The term "person" means the same as defined in G.S. 90-87.
- (12) The terms "register" and "registration" refer only to registration required and permitted by G.S. 90-102.
- (13) The term "registrant" means any person who is registered pursuant to G.S. 90-102.
- (14) The term "office-based opioid treatment" means any controlled substance listed in

Schedules III-V dispensed for the maintenance or detoxification treatment of opioid addiction or for the detoxification treatment of opioid dependence.

- (15) Any term not defined in this Section shall have the definition set forth in G.S. 90-87.

History Note: Authority G.S. 90-100; 90-102.1;

143B-147(a)(5);

Eff. June 30, 1978;

Amended Eff. February 1, 2005; July 1, 2004; May 1, 1990;

May 15, 1979; September 30, 1978.

10A NCAC 26E .0104 PERSONS REQUIRED TO REGISTER

(a) Every person who manufactures, distributes or dispenses any controlled substance or uses any controlled substance for the purpose of the initial and maintenance training of drug detection dogs or who proposes to engage in the manufacture, distribution or dispensing of any controlled substance or use of any controlled substance for the purpose of the initial and maintenance training of drug detection dogs in this state shall obtain annually a registration unless exempted by law or pursuant to Rules .0109-.0111 of this Section.

(b) Only persons actually engaged in such activities are required to obtain a registration; related or affiliated persons who are not engaged in such activities are not required to be registered. (For example, a stockholder or parent corporation of a corporation manufacturing controlled substances is not required to obtain a registration.)

(c) Any person applying for registration or re-registration shall file, annually, an application for registration with the Department of Health and Human Services and submit the required nonrefundable fee with the application. Categories of applicants and the annual fee for each category are as follows:

CATEGORY	FEE
(1) Clinic	125.00
(2) Hospital	300.00
(3) Nursing Home	100.00
(4) Teaching Institution	100.00
(5) Researcher	125.00
(6) Analytical Laboratory	100.00
(7) Distributor	500.00
(8) Manufacturer	600.00
(9) Office-Based Opioid Treatment	0.00
(10) Dog Handler	125.00

(d) For any person applying for registration six months or less prior to the end of the fiscal year, the required annual fee submitted with the application shall be reduced by one-half of the above listed fee for each category.

History Note: Authority G.S. 90-100; 90-101; 143B-210(9);

Eff. June 30, 1978;

Amended Eff. February 23, 2005;

July 1, 2004; January 1, 1994.

10A NCAC 26E .0106 TRAINING AND QUALIFICATION REQUIREMENTS FOR DOG HANDLERS

(a) An individual applying for registration as a dog handler shall demonstrate competence in the field of drug detection dog training and handling. The applicant shall demonstrate competence by achieving certification as a drug detection dog handler from an approved canine certification association

pursuant to G.S. 90-102.1 and as set forth in Rule .0107 of this Section.

(b) The applicant shall submit proof to the Department of Health and Human Services (DHHS) of a Drug Enforcement Administration registration or pending application.

(c) The applicant shall submit documentation to DHHS verifying current certification as a drug detection dog handler from an approved canine certification association as set forth in Rule .0107 of this Section

(d) The applicant shall submit to DHHS five letters of reference showing the applicant is of good moral character and temperate habits in accordance with G.S. 90-102.1.

(e) Pursuant to G.S. 90-102.1, the Department of Justice may provide a criminal record check to the DHHS for an individual who applies for a new or renewal registration. The applicant shall comply with the criminal record check including the use of his or her fingerprints and shall incur any costs associated with the criminal record check.

History Note: Authority G.S. 90-102.1; S.L. 2003-398; Eff. February 1, 2005.

10A NCAC 26E .0107 APPROVAL OF CANINE CERTIFICATION ASSOCIATIONS BY THE DEPARTMENT OF HEALTH AND HUMAN SERVICES

(a) The Department of Health and Human Services shall approve a canine certification association that requests approval and meets the requirements as set forth in this Rule.

(b) Each canine certification association shall utilize certification standards that require the dog handler to demonstrate competence in the following areas:

- (1) basic canine obedience;
- (2) canine safety;
- (3) drug detection; and
- (4) legal aspects of searches and controlled substances identification.

(c) The canine certification association shall make available to DHHS the certification procedures and standards it plans to employ.

(d) The certification procedures and standards shall certify the dog handler and drug detection dog as a team.

(e) The canine certification association shall submit documentation to DHHS showing the following:

- (1) the certification procedures and standards it utilizes are accepted as valid by a court of law; and
- (2) the dog handler/drug detection dog teams that have obtained certifications from that association are accepted as valid by a court of law.

(f) The DHHS shall review the certification procedures and standards to verify the association's compliance with the requirements as set forth in this Rule.

(g) The approval of a canine certification association by the DHHS shall be valid for three years. Canine certification associations that want to maintain approval shall request renewal from DHHS prior to the end of the three year period.

(h) The DHHS shall maintain a list of approved canine certification associations.

History Note: Authority G.S. 90-102.1; S.L. 2003-398; Eff. February 1, 2005.

10A NCAC 26E .0111 EXEMPTION OF LAW ENFORCEMENT OFFICIALS

(a) The requirement of registration is waived for the following persons in the circumstances described in this Rule:

- (1) any person employed by the following agencies who is lawfully engaged in the enforcement of any North Carolina or federal law relating to controlled substances, drugs or customs and is duly authorized to possess controlled substances in the course of his official duties: the Department of Health and Human Services, the North Carolina Department of Justice, the North Carolina Board of Pharmacy, the Drug Enforcement Administration, the United States Bureau of Customs and the United States Food and Administration;
- (2) any dog handler who is employed or under contract to a North Carolina law enforcement agency and any other person specified in G.S. 90-101(c)(5);
- (3) any person employed by any political subdivision of the State who is engaged in the enforcement of any state or local law relating to controlled substances and who is duly authorized to possess controlled substances in the course of his official duties; or
- (4) any official of the United States Army, Navy, Marine Corps, Air Force, Coast Guard or Public Health Service who is authorized to prescribe, dispense or administer but not to procure or purchase controlled substances in the course of his official duties. Such officials shall follow procedures set forth in Section .0400 of this Subchapter regarding prescriptions but shall state the branch of service or agency (e.g., United States Army or Public Health Service) and the service identification number of the issuing official in lieu of the registration number required on prescription forms. The service identification number of a Public Health Service officer is his social security number.

(b) Any official exempted by this Rule may, when acting in the course of his official duties, possess any controlled substance and distribute any such substance to any other official who is also exempted by this Section and acting in the course of his official duties.

(c) Any official exempted by this Rule may procure any controlled substance in the course of an inspection in accordance with .0503(a)(4) of this Subchapter or in the course of any

criminal investigation involving the person from whom the substance was procured.

History Note: Authority G.S. 90-100; 90-101; 90-102.1;

143B-147(a)(5);

Eff. June 30, 1978;

Amended Eff. February 1, 2005; May 1, 1990;

Recodified from 10A NCAC 26E .0109 Eff. February 1, 2005.

**10A NCAC 26E .0113 APPLICATION FORMS:
CONTENTS: SIGNATURE**

(a) Any person required to be registered and not who is not registered and applying for registration:

- (1) to manufacture or distribute controlled substances, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225;
- (2) to dispense controlled substances listed in Schedules II through V, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 224;
- (3) to conduct instructional activities with controlled substances listed in Schedules II through V, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 224;
- (4) to conduct research with controlled substances listed in Schedules II through V other than research described in .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with evidence of federal registration to conduct research with such controlled substances;
- (5) to conduct research with narcotic drugs listed in Schedules II through V, as described in .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with evidence of federal registration to conduct research with narcotic drugs;
- (6) to conduct research with controlled substances listed in Schedules I and VI, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with evidence of federal registration to conduct research with such controlled substances;
- (7) to conduct instructional activities with controlled substances listed in Schedules I and VI, shall apply as a researcher on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225 with evidence of federal registration to conduct instructional activities with controlled substances; to conduct chemical analysis with

controlled substances listed in any schedule, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225;

- (8) to conduct chemical analysis with controlled substances listed in any schedule, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225;
- (9) to dispense controlled substances in Schedule III-V for opioid treatment, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 224; and
- (10) to provide a commercial detection service, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 225.

(b) Any person registered and who is applying for re-registration:

- (1) to manufacture or distribute controlled substances, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (2) to dispense controlled substances in Schedules II through V, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 226;
- (3) to conduct instructional activities with controlled substances listed in Schedules II through VI, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 226;
- (4) to conduct research with controlled substances listed in Schedules II through V other than research described in Rule .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (5) to conduct research with narcotic drugs listed in Schedules II through V, as described in Rule .0105(a)(6) of this Subchapter, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (6) to continue to conduct research with controlled substances listed in Schedules I and VI under one or more approved research protocols, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (7) to continue to conduct instructional activities with controlled substances listed in Schedules I and VI under one or more approved federal instructional statements, shall apply as a researcher on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;

- (8) to conduct chemical analysis with controlled substances listed in any schedule, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227;
- (9) to dispense controlled substances in Schedule III-V in opioid treatment, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 226; and
- (10) to provide a commercial detection service, shall apply on Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Form 227.

(c) Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Forms 224 and 225 may be obtained by writing to the Director. Commission for Mental Health, Developmental Disabilities and Substance Abuse Services Forms 226 and 227 will be mailed as applicable to each registered person approximately 60 days before the expiration date of registration; if any registered person does not receive such forms within 45 days before the expiration date of registration, the registered person must give notice of such fact and request such forms by writing to the Director.

(d) Each application for registration to handle any basic class of controlled substance listed in Schedules I (except to conduct chemical analysis with such classes) and VI and each application for registration to manufacture a basic class of controlled substances listed in Schedule II or to conduct research with any narcotic controlled substance listed in Schedule II shall include the Federal Drug Enforcement Administration code number for each class or substance to be covered by such registration.

(e) Each application shall include all information called for by these Rules unless the item is not applicable, in which case this fact shall be indicated.

(f) An applicant may authorize one or more individuals who would not otherwise be authorized to do so to sign applications for the applicant by filing with the director a power of attorney for each such individual. The power of attorney shall be signed by a person who is authorized to sign applications under this Paragraph and shall contain the signature of the individual being authorized to sign applications. The power of attorney shall be valid until revoked by the applicant.

History Note: Authority G.S. 90-100; 90-102;

143B-147(a)(5);

Eff. June 30, 1978;

Amended Eff. February 1, 2005; May 1, 1990; May 15, 1979;

September 30, 1978;

Recodified from 10A NCAC 26E .0111 Eff. February 1, 2005.

TITLE 13 – DEPARTMENT OF LABOR

13 NCAC 15 .0429 GO KARTS

(a) Go Kart Design. All go karts shall comply with the following standards.

- (1) Numbering of Go Karts. Each shall be provided an identifying number that can be easily seen by the operator. A corresponding number shall be stamped or attached to the frame of the go kart.
- (2) Speed. Go kart speed shall not exceed the maximum speed for which the track is designed. The speed of adult go karts shall be set not to exceed 28 miles per hour unless approved by the Department. Kiddie go karts shall not exceed 10 miles per hour. When a go kart is designed to permit the readjustment of its maximum speed, the means of adjustment shall not be accessible to the driver of the go kart.
- (3) Seats, Seat Belts and Shoulder Straps. All go karts shall meet one of the following requirements:
 - (A) The seat, back rest, and leg area shall be designed to retain the driver/occupants inside the go kart in the event of a rollover or a collision at the front, rear, or side of the go kart; or
 - (B) The go kart shall be equipped with seat belts and shoulder straps mounted in a manner that will restrain the occupant(s) in the vehicle in case of a collision or rollover. Properly mounted safety harnesses as effective as seat belts and shoulder straps may be substituted for seat belts and shoulder straps.
- (4) Occupancy. Go karts shall be occupied by only one person at a time unless the go kart is designed and equipped with a seat and safety belt system that is intended for and is suitable for two persons.
- (5) Guarding of Parts. Rotating, moving, hot engine or muffler parts shall be guarded to prevent contact or entanglement of the occupant's hair, clothing, or other body parts.
- (6) Brakes. Go karts shall have a braking system designed and adjusted to permit them to be brought to a complete stop within 40 feet from maximum speed with their maximum weight on board.
- (7) Brake and Throttle Controls. Go karts shall have brake and throttle controls that are readily recognizable as to their function. The operator shall also instruct each driver on the operation of the brake and throttle controls before each operation. The controls shall return automatically to their non-operational position when released.
- (8) Padding of Exposed Protruding Components. Go karts shall have their steering wheel hub and all other protruding exposed parts within

the driving compartment padded to minimize the risk of injury to an occupant in the event of a collision or overturn.

- (9) Roll Bars and Head Rests. All adult go karts must be provided with a roll bar of sufficient height and strength to provide the occupant with protection in the event of a roll over. Seats of all go karts must be provided with a padded head rest. The head rest may substitute as a roll bar if it is of sufficient height and strength.
- (10) Bumpers. Go karts shall be provided with bumpers or energy absorption body parts.
- (11) Wheel Guards. The wheels of every go kart shall be enclosed or guarded in such a manner that the wheels of another go kart cannot interlock with or ride over them.
- (12) Fuel Tanks. Go kart fuel tanks shall be designed and mounted so that the tank cannot be ruptured in the event of a collision or a roll over.
- (13) Noise Level. Go karts shall be provided with muffler systems capable of limiting sound from the engine to 75 dBA when measured at a distance of 50 feet from the outer edge of the go kart track.

(b) Track Design. Plans for proposed construction of go kart tracks in the State of North Carolina shall be submitted to the North Carolina Department of Labor, Elevator and Amusement Device Division, 1101 Mail Service Center, Raleigh, North Carolina 27699, before construction begins. Buildings on the track site must be submitted to the local building inspection agency for approval. The design of the track shall be consistent with go kart manufacturer's recommendations for the speed of the go kart and be approved by the department. The following requirements for track layout, track surface and track materials contained in Paragraphs (c), (d) and (e), of this Rule, shall be complied with before certificates of operation will be issued.

(c) Track Layout. Go kart tracks may be oval shaped or of road course configurations. They may not be constructed in the shape of a figure eight or have any cross connected points. Straight portions of the track shall be flat except that 2 degrees of banking may be provided for drainage. The width of all tracks shall be a minimum of 16 feet wide. Road courses may continue the same width for their entire length. Oval tracks shall have turns at least five feet wider than the straight portions and the minimum radius of the turns shall be 15 feet. Turns of oval tracks may be banked to a maximum of one inch for each one foot of track width. Any variation from the minimum track width shall be approved in advance, in accordance with 13 NCAC 15 .0107.

(d) Track Surface. A go kart track shall have a hard smooth surface. It shall provide sufficient road grip to be driven throughout the course at maximum speed. It shall be free of obstacles such as holes or bumps, or water or oil.

(e) Track Materials. Materials used in the surfacing of go kart tracks shall be asphalt, concrete, or other solid and binding materials. Proposals to use dirt track surfaces shall be submitted

for special consideration and evaluation, in accordance with 13 NCAC 15 .0107.

(f) Track Safety and Guarding.

- (1) Barriers. Every go kart track shall provide properly constructed barriers along the entire course on both inside and outside of the track. Barriers shall be so constructed that a go kart colliding with a barrier at maximum speed will come to a safe stop or be guided back to the track. Earthen berms may be used as a barrier provided they will stop a go kart safely. Bales of hay, straw, or other materials capable of being ignited may not be used as a barrier.
- (2) Track Lanes. White or yellow lines, at least four inches wide, shall mark all inside and outside edges of the track.
- (3) Fencing. The outside perimeter of a go kart track shall be protected by a fence at least 48 inches in height. The fence shall be set back at least 36 inches from the inside face of the track barrier. Gates shall be located for easy supervision by track attendants when the facility is open and they shall be kept locked when it is closed. The fence may be omitted where natural barriers provide the same degree of protection as the fence. Where two separate tracks are operated inside a single perimeter fence all go karts on both tracks shall start and stop at the same time.
- (4) Fire Extinguishers. Every go kart track shall be equipped with ABC Dry Chemical Fire Extinguishers. The extinguishers shall have a minimum capacity of five pounds, in accordance with NFPA 10 – Standard for Portable Fire Extinguishers. At least one extinguisher shall be located in the following locations:
 - (A) Within seventy feet of every track section;
 - (B) In each pit area;
 - (C) In each refueling stop;
 - (D) In each go kart storage area; and
 - (E) In the maintenance shop.
 Each fire extinguisher location shall be prominently marked and the extinguisher shall be easily accessible.
- (5) Refueling Area. Refueling of go karts shall be carried out at a designated area remote from any area accessible to the public. Refueling areas shall comply with the requirements of the NFPA 70 - National Electrical Code, Sections 510, 511, and 514.
- (6) Track Lighting. Go kart tracks equipped for night operation shall have sufficient illumination at all sections of the track for drivers to be able to negotiate the entire course safely. It shall also be sufficient for operators to monitor the go karts on each section of the

course. Lighting shall comply with the NFPA 70 - National Electrical Code and all other state and local requirements.

- (7) Pits or Pit Areas. Where provided, pits must be fenced or provided with a sufficient barrier to prohibit the entry of spectators. Pits shall have separate entrance and exit lanes.
- (8) Spectator Areas. Spectator areas shall be separated from the track and pit areas by a fence or barrier sufficient to withstand the impact of a go kart traveling at full speed. It shall be approximately level and free of holes or debris.

(f) Track Operation. The following standards of operation shall apply to electric or fuel powered go karts, dune buggies, auto racers, and all terrain vehicles.

- (1) All go karts must start and stop operation at the same time or a separate pit area shall be provided for loading and unloading purposes.
- (2) Drivers of adult go karts must be at least 48 inches (4 feet) tall and have a leg length sufficient to reach the brake and throttle controls when seated.
- (3) Drivers of kiddie go karts shall not exceed 54 inches (4 feet 6 inches) tall and must have a leg length sufficient to reach the brake and throttle controls when seated.
- (4) Adult go karts and kiddie go karts shall not be operated simultaneously on the same track.
- (5) No go kart may be operated when weather conditions are such that it may affect the safe operation of the go kart or when visibility on the track is less than 150 feet.
- (6) Each section of a go kart track shall be monitored during the time that any go kart is in operation. Monitoring shall be by direct visual contact by the operator or track attendants or by electronic visual surveillance.
- (7) A go kart that is losing oil or fuel shall be immediately removed from the track.
- (8) When the noise level of any go kart exceeds the requirements of Subparagraph (a)(13) of this Rule, it shall be immediately removed from the track until it has been repaired.
- (9) Safety equipment such as helmets (when used) and seat restraints shall be utilized in accordance with the manufacturer's recommendations for the type of use or operation and be of correct size for the person using it.
- (10) Persons with hair longer than shoulder length or wearing loose clothing that could obstruct the vision of the driver or become entangled in any moving part shall not be permitted to drive or ride a go kart. Hair that is longer than shoulder length may be tied up to reduce its length.

- (11) Persons whose behavior appears to be impaired by such as the use of drugs or alcohol shall not be permitted to drive a go kart.
- (12) Smoking shall not be permitted within 30 feet of a go kart.
- (13) Track regulations shall not permit persons to leave their go karts while any go kart is in operation on the track.
- (14) Signs containing the following information and other track regulations shall be posted at the track entrance or ticket window and conspicuously in the pit area.
 - (A) To drive or ride an adult go kart you must be at least 48 inches tall.
 - (B) To drive a kiddie go kart you may not be taller than 54 inches.
 - (C) Keep both hands on the wheel at all times.
 - (D) Keep both feet inside the go kart.
 - (E) Hair longer than shoulder length must be tied up.
 - (F) All loose clothing must be tucked in.
 - (G) No smoking within 30 feet of a go kart.
 - (H) Do not leave the go kart while on the track.
- (15) Signs that indicate the direction of travel for go karts shall be posted intermittently around the track perimeter.

(g) Inspections and Maintenance. Tracks and go karts shall be inspected and maintained for a safe operation at all times. The following inspections shall be made:

- (1) The track shall be inspected daily for potholes, bumps or loose material. Necessary repairs shall be made before opening the track.
- (2) Daily inspections shall be made on each go kart prior to operation. The inspection shall include:
 - (A) Wheel and tires;
 - (B) Steering mechanism;
 - (C) Frame welds;
 - (D) Axles and spindles;
 - (E) Safety belts, roll bars, and seat padding;
 - (F) Gasoline tank, lines and valves;
 - (G) Brake and throttle operation; and
 - (H) Exhaust systems.
- (3) Go kart maintenance shall be performed as recommended by the go kart manufacturer.

*History Note: Authority G.S. 95-111.4;
Eff. May 1, 1992;
Amended Eff. February 1, 2005.*

**TITLE 15A - DEPARTMENT OF ENVIRONMENT
& NATURAL RESOURCES**

15A NCAC 02Q .0603 APPLICATIONS

(a) A transportation facility permit application may be obtained from and shall be filed in writing in accordance with Rule .0104 of this Subchapter.

(b) Applicants shall file transportation facility permit applications at least 90 days before projected date of construction of a new transportation facility or modification of an existing transportation facility.

(c) The permittee shall file requests for permit name or ownership changes as soon as the permittee is aware of the imminent name or ownership change.

(d) A transportation facility permit application shall be made in triplicate on forms from the Division and shall include plans and specifications giving all data and information as required by this Section and 15A NCAC 02D, .0800, Transportation Facilities.

(e) A transportation facility permit application containing dispersion modeling analyses that demonstrate compliance with ambient air quality standards for carbon monoxide or traffic analyses showing a level of service of A, B, C, or D as defined in the Highway Capacity Manual, using planned roadway and intersection improvements shall include approval for the improvements from the appropriate state or city department of transportation. The Highway Capacity Manual is hereby incorporated by reference and shall include any later amendments and editions. This manual may be obtained from the Institute of Transportation Engineers, 1099 14th Street, NW, Suite 300 West, Washington, D.C. 20005-3438 at a cost of one hundred twenty dollars (\$120.00).

(f) Whenever the information provided on the permit application forms does not describe the transportation facility to the extent necessary to evaluate the application, the Director may request that the applicant provide any other information as allowed or required by this Section and 15A NCAC 02D, .0800 and necessary to evaluate the transportation facility. Before acting on any permit application, the Director may request any information from an applicant and conduct any inquiry or investigation that he considers necessary to determine compliance with applicable standards including traffic level of service.

(g) A non-refundable permit application fee shall accompany each transportation facility permit application. The permit application fee is described in Section .0200 of this Subchapter.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109;

Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. July 1, 1994;

Amended Eff. February 1, 2005.

15A NCAC 02Q .0605 FINAL ACTION ON PERMIT APPLICATIONS

(a) The Director may:

- (1) issue a permit containing the conditions necessary to carry out the purposes of G.S. 143, Article 21B;

- (2) rescind a permit upon request by the permittee; or
- (3) deny a permit application when necessary to carry out the purposes of G.S. 143, Article 21B.

(b) The Director shall issue a permit for the construction or modification of a transportation facility subject to the rules in 15A NCAC 02D .0800 if the permit applicant submits a complete application and demonstrates to the satisfaction of the Director that the ambient air quality standard for carbon monoxide shall not be exceeded.

(c) The Director shall issue a permit for a period of time necessary to complete construction, but such period shall not exceed five years.

(d) The Director shall not approve a permit for a transportation facility that:

- (1) interferes with the attainment or maintenance of the ambient air quality standard for carbon monoxide
- (2) results in a contravention of applicable portions of the implementation plan control strategy, or
- (3) is demonstrated with dispersion modeling to exceed the ambient air quality standard for carbon monoxide

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143-215.109;

Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Eff. July 1, 1994;

Amended Eff. February 1, 2005.

15A NCAC 02Q .0709 DEMONSTRATIONS

(a) Demonstrations. The owner or operator of a source who is applying for a permit or permit modification to emit toxic air pollutants shall:

- (1) demonstrate to the satisfaction of the Director through dispersion modeling that the emissions of toxic air pollutants from the facility will not cause any acceptable ambient level listed in 15A NCAC 02D .1104 to be exceeded beyond the premises (adjacent property boundary); or
- (2) demonstrate to the satisfaction of the Commission or its delegate that the ambient concentration beyond the premises (adjacent property boundary) for the subject toxic air pollutant shall not adversely affect human health (e.g., a risk assessment specific to the facility) though the concentration is higher than the acceptable ambient level in 15A NCAC 02D .1104 by providing one of the following demonstrations:
 - (A) the area where the ambient concentrations are expected to exceed the acceptable ambient levels in 15A

NCAC 02D .1104 is not inhabitable or occupied for the duration of the averaging time of the pollutant of concern, or

- (B) new toxicological data that show that the acceptable ambient level in 15A NCAC 02D .1104 for the pollutant of concern is too low and the facility's ambient impact is below the level indicated by the new toxicological data.

(b) Technical Infeasibility and Economic Hardship. This Paragraph shall not apply to any incinerator covered under 15A NCAC 02D .1200. The owner or operator of any source constructed before May 1, 1990, or a perchloroethylene dry cleaning facility subject to a GACT standard under 40 CFR 63.320 through 63.325 who cannot supply a demonstration described in Paragraph (a) of this Rule shall:

- (1) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104 is technically infeasible (the technology necessary to reduce emissions to a level to prevent the acceptable ambient levels in 15A NCAC 02D .1104 from being exceeded does not exist); or
- (2) demonstrate to the satisfaction of the Commission or its delegate that complying with the guidelines in 15A NCAC 02D .1104 would result in serious economic hardship. (In deciding if a serious economic hardship exists, the Commission or its delegate shall consider market impact; impacts on local, regional and state economy; risk of closure; capital cost of compliance; annual incremental compliance cost; and environmental and health impacts.)

If the owner or operator makes a demonstration to the satisfaction of the Commission or its delegate pursuant to Subparagraphs (1) or (2) of this Paragraph, the Director shall require the owner or operator of the source to apply maximum feasible control. Maximum feasible control shall be in place and operating within three years from the date that the permit is issued for the maximum feasible control.

(c) Pollution Prevention Plan. The owner or operator of any facility using the provisions of Part (a)(2)(A) or Paragraph (b) of this Rule shall develop and implement a pollution prevention plan consisting of the following minimum elements:

- (1) statement of corporate and facility commitment to pollution prevention;
- (2) identification of current and past pollution prevention activities;
- (3) timeline and strategy for implementation;
- (4) description of ongoing and planned employee education efforts;

- (5) identification of internal pollution prevention goal selected by the facility and expressed in either qualitative or quantitative terms.

The facility shall submit along with the permit application the pollution prevention plan. The pollution prevention plan shall be maintained on site. A progress report on implementation of the plan shall be prepared by the facility annually and be made available to Division personnel for review upon request.

(d) Modeling Demonstration. If the owner or operator of a facility demonstrates by modeling that no toxic air pollutant emitted from the facility exceeds the acceptable ambient level values given in 15A NCAC 02D .1104 beyond the facility's premises, further modeling demonstration is not required with the permit application. However, the Commission may still require more stringent emission levels according to its analysis under 15A NCAC 02D .1107.

(e) Change in Acceptable Ambient Level. When an acceptable ambient level for a toxic air pollutant in 15A NCAC 02D .1104 is changed, any condition that has previously been put in a permit to protect the previous acceptable ambient level for that toxic air pollutant shall not be changed until:

- (1) The permit is renewed, at which time the owner or operator of the facility shall submit an air toxic evaluation showing that the new acceptable ambient level will not be exceeded (If additional time is needed to bring the facility into compliance with the new acceptable ambient level, the owner or operator shall negotiate a compliance schedule with the Director. The compliance schedule shall be written into the facility's permit and final compliance shall not exceed two years from the effective date of the change in the acceptable ambient level.); or
- (2) The owner or operator of the facility requests that the condition be changed and submits along with that request an air toxic evaluation showing that the new acceptable ambient level shall not be exceeded.

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;

Rule originally codified as part of 15A NCAC 2H .0610;

Eff. July 1, 1998;

Amended Eff. February 1, 2005.

15A NCAC 02Q .0711 EMISSION RATES REQUIRING A PERMIT

(a) A permit to emit toxic air pollutants shall be required for any facility whose actual (or permitted if higher) rate of emissions from all sources are greater than any one of the following toxic air pollutant permitting emissions rates:

Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
acetaldehyde (75-07-0)				6.8
acetic acid (64-19-7)				0.96
acrolein (107-02-8)				0.02
acrylonitrile (107-13-1)	10			
ammonia (7664-41-7)				0.68
aniline (62-53-3)			0.25	
arsenic and inorganic arsenic compounds	0.016			
asbestos (1332-21-4)	1.9×10^{-6}			
aziridine (151-56-4)		0.13		
benzene (71-43-2)	8.1			
benzidine and salts (92-87-5)	0.0010			
benzo(a)pyrene (50-32-8)	2.2			
benzyl chloride (100-44-7)			0.13	
beryllium (7440-41-7)	0.28			
beryllium chloride (7787-47-5)	0.28			
beryllium fluoride (7787-49-7)	0.28			
beryllium nitrate (13597-99-4)	0.28			
bioavailable chromate pigments, as chromium (VI) equivalent	0.0056			
bis-chloromethyl ether (542-88-1)	0.025			
bromine (7726-95-6)				0.052
1,3-butadiene (106-99-0)	12			
cadmium (7440-43-9)	0.37			
cadmium acetate (543-90-8)	0.37			
cadmium bromide (7789-42-6)	0.37			
carbon disulfide (75-15-0)		3.9		
carbon tetrachloride (56-23-5)	460			
chlorine (7782-50-5)		0.79		0.23
chlorobenzene (108-90-7)		46		
chloroform (67-66-3)	290			
chloroprene (126-99-8)		9.2	0.89	
cresol (1319-77-3)			0.56	
p-dichlorobenzene (106-46-7)				16.8
Dichlorodifluoromethane (75-71-8)		5200		
dichlorofluoromethane (75-43-4)		10		
di(2-ethylhexyl)phthalate (117-81-7)		0.63		
dimethyl sulfate (77-78-1)		0.063		
1,4-dioxane (123-91-1)		12		
epichlorohydrin (106-89-8)	5600			
ethyl acetate (141-78-6)			36	
ethylenediamine (107-15-3)		6.3	0.64	
ethylene dibromide (106-93-4)	27			
ethylene dichloride (107-06-2)	260			
ethylene glycol monoethyl ether (110- 80-5)		2.5	0.48	
ethylene oxide (75-21-8)	1.8			
ethyl mercaptan (75-08-1)			0.025	

Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
fluorides		0.34	0.064	
formaldehyde (50-00-0)				0.04
Hexachlorocyclopentadiene (77-47-4)		0.013	0.0025	
hexachlorodibenzo-p-dioxin (57653-85-7)	0.0051			
n-hexane (110-54-3)		23		
hexane isomers except n- hexane				92
hydrazine (302-01-2)		0.013		
hydrogen chloride (7647-01-0)				0.18
hydrogen cyanide (74-90-8)		2.9	0.28	
hydrogen fluoride (7664-39-3)		0.63		0.064
hydrogen sulfide (7783-06-4)				0.52
maleic anhydride (108-31-6)		0.25	0.025	
manganese and compounds		0.63		
manganese cyclopentadienyl tricarbonyl (12079-65-1)		0.013		
manganese tetroxide (1317-35-7)		0.13		
mercury, alkyl		0.0013		
mercury, aryl and inorganic compounds		0.013		
mercury, vapor (7439-97-6)		0.013		
methyl chloroform (71-55-6)		250		64
methylene chloride (75-09-2)	1600		0.39	
methyl ethyl ketone (78-93-3)		78		22.4
methyl isobutyl ketone (108-10-1)		52		7.6
methyl mercaptan (74-93-1)			0.013	
nickel carbonyl (13463-39-3)		0.013		
nickel metal (7440-02-0)		0.13		
nickel, soluble compounds, as nickel		0.013		
nickel subsulfide (12035-72-2)	0.14			
nitric acid (7697-37-2)				0.256
nitrobenzene (98-95-3)		1.3	0.13	
n-nitrosodimethylamine (62-75-9)	3.4			
non-specific chromium (VI) compounds, as chromium (VI) equivalent	0.0056			
pentachlorophenol (87-86-5)		0.063	0.0064	
perchloroethylene (127-18-4)	13000			
phenol (108-95-2)			0.24	
phosgene (75-44-5)		0.052		
phosphine (7803-51-2)				0.032
polychlorinated biphenyls (1336-36-3)	5.6			
soluble chromate compounds, as chromium (VI) equivalent		0.013		
styrene (100-42-5)			2.7	
sulfuric acid (7664-93-9)		0.25	0.025	
tetrachlorodibenzo-p-dioxin (1746-01-6)	0.00020			
1,1,1,2-tetrachloro-2,2,-difluoroethane		1100		

Pollutant (CAS Number)	Carcinogens lb/yr	Chronic Toxicants lb/day	Acute Systemic Toxicants lb/hr	Acute Irritants lb/hr
(76-11-9)				
1,1,2,2-tetrachloro-1,2-difluoroethane (76-12-0)		1100		
1,1,2,2-tetrachloroethane (79-34-5)	430			
toluene (108-88-3)		98		14.4
toluene diisocyanate, 2,4- (584-84-9) and 2,6- (91-08-7) isomers		0.003		
trichloroethylene (79-01-6)	4000			
trichlorofluoromethane (75-69-4)			140	
1,1,2-trichloro-1,2,2-trifluoroethane (76-13-1)				240
vinyl chloride (75-01-4)	26			
vinylidene chloride (75-35-4)		2.5		
xylene (1330-20-7)		57		16.4

(b) For the following pollutants, the highest emissions occurring for any 15-minute period shall be multiplied by four and the product shall be compared to the value in Paragraph (a). These pollutants are:

- (1) acetaldehyde (75-07-0);
- (2) acetic acid (64-19-7);
- (3) acrolein (107-02-8);
- (4) ammonia (7664-41-7);
- (5) bromine (7726-95-6);
- (6) chlorine (7782-50-5);
- (7) formaldehyde (50-00-0);
- (8) hydrogen chloride (7647-01-0);
- (9) hydrogen fluoride (7664-39-3); and
- (10) nitric acid (7697-37-2)

History Note: Authority G.S. 143-215.3(a)(1); 143-215.108; 143B-282; S.L. 1989, c. 168, s. 45;
Rule originally codified as part of 15A NCAC 02H .0610;
Eff. July 1, 1998;
Amended Eff. February 1, 2005; April 1, 2001.

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

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

- (1) **APPLICATION:** An application shall be submitted in writing to the State for an E & I system. The application shall include the information required by G.S. 130A-343(d),(e),(f), and (g), and the following, as applicable:
 - (a) specification of the type of approval requested as either innovative, controlled demonstration, experimental, or a combination;
 - (b) description of the system, including materials used in construction, and its proposed use;
 - (c) summary of pertinent literature, published research, and previous experience and performance with the system;
 - (d) results of any available testing, research or monitoring of pilot systems or full-scale operational systems conducted by a third party research or testing organization;
 - (e) evaluation protocols shall be specified as either an approved and listed protocol by the State or submit an alternative protocol for the evaluation of the performance of the manufacturer's system;
 - (f) identity and qualifications of any proposed research or testing organization and the principal investigators, and an affidavit certifying that the organization and principal investigators have no conflict of interest and do not stand to gain financially from the sale of the E & I system;

- (g) objectives, methodology, and duration of any proposed research or testing;
 - (h) specification of the number of systems proposed to be installed, the criteria for site selection, and system monitoring and reporting procedures;
 - (i) operation and maintenance procedures, system classification, proposed management entity and system operator;
 - (j) procedure to address system malfunction and replacement or premature termination of any proposed research or testing;
 - (k) notification of any proprietary or trade secret information, system, component, or device;
 - (l) a request for innovative system approval intended by the applicant to be reclassified from an innovative to an accepted system shall include monitoring, reporting and evaluation protocols to be followed by the manufacturer, the results of which shall be submitted in its future petition for accepted status; and
 - (m) fee payment as required by G.S. 130A-343(k), by corporate check, money order or cashier's check made payable to: North Carolina On-Site Wastewater System Account or NC OSWW System Account, and mailed to the On-Site Wastewater Section, 1642 Mail Service Center, Raleigh, NC 27699-1642 or hand delivered to Rm. 1A-245, Parker Lincoln Building, 2728 Capital Blvd., Raleigh, NC.
- (2) REVIEW: The State shall review all applications submitted and evaluate at least the following:
- (a) the completeness of the application, and whether additional information is needed to continue the review;
 - (b) whether the system meets the standards of an innovative system under G.S. 130A-343(a)(5), G.S. 130A-343(g), and Item (3) of this Rule, or whether the system meets the standards of an experimental or controlled demonstration system under G.S. 130A-343(e) or (f) and Item (4) of this Rule, as applicable.
- (3) INNOVATIVE SYSTEMS: Innovative systems, technologies, components, or devices shall be reviewed and approved by the State, and the local health department shall permit innovative systems in accordance with the following:
- (a) The State shall approve the system as an innovative system if the following standards have been met;
 - (i) The system, shall have been demonstrated to perform equal or superior to a system, which is described in Rules .1955, .1956, .1957, or .1958, of this Section, based upon controlled pilot-scale research studies or statistically-valid monitoring of full-scale operational systems.
 - (ii) Materials used in construction shall be equal or superior in physical properties and chemical durability, compared to materials used for similar proposed systems, specifically described in Rules .1955, .1956, .1957, or .1958 of this Section.
 - (b) When a system is approved as innovative by the State, the applicant shall be notified in writing. Such notice shall include any conditions for permitting, siting, installation, use, monitoring, and operation. Approved innovative systems shall be assigned a unique code for tracking purposes. Prior to making a request for reclassification of a system from innovative to accepted, the manufacturer shall have a system in place to keep track of the number and location of new system installations, and of any system installations it becomes aware of which were required to be repaired, and to provide this information to the State upon request and in any subsequent petition for accepted status.
 - (c) A local health department shall issue an Improvement Permit and a Construction Authorization for any innovative system approved by the State upon a finding that the provisions of this Section including any conditions of the approval are met. Use of an innovative system and any conditions shall be described on the Improvement Permit, Construction Authorization, or Operation Permit.

- (4) **EXPERIMENTAL AND CONTROLLED DEMONSTRATION SYSTEMS:** A system may be approved for use as an experimental or controlled demonstration system as part of a research or testing program which has been approved by the State. The research or testing program shall be conducted by a third party research or testing organization which has knowledge and experience relevant to the proposed research or testing and has no conflict of interest and does not stand to gain financially from the sale of the proposed system.
- (a) To be approved by the State, the proposed research or testing program shall include the following:
- (i) The research program shall be designed such that, if the objectives were met, the system would satisfy the standards for approval as an innovative system under Item (3) of this Rule.
- (ii) Research design and testing methodology shall have a reasonable likelihood of meeting the objectives.
- (b) The State shall notify the applicant and the applicable local health departments when the proposed research or testing program has been approved for an experimental or controlled demonstration system. Such notice shall include, but not be limited to, conditions for permitting, siting, operation, monitoring and maintenance, and number of systems which can be installed.
- (c) A local health department shall issue an Improvement Permit and Construction Authorization for an experimental or controlled demonstration system when the following conditions are met:
- (i) There is an application for an Improvement Permit in accordance with Rule .1937(c) of this Section, with the proposed use of an experimental system specified.
- (ii) The proposed site is included as part of an approved research or testing program and any conditions specified for use of the system have been met.
- (iii) When an experimental or controlled demonstration system is proposed to serve a residence, place of business or place of public assembly, there shall be a repair system in accordance with the provisions of Rule .1945(b) or an innovative or accepted system of this Rule, except:
- (A) When an existing and properly functioning wastewater system is available for immediate use, including connection to a public or community wastewater system; or
- (B) When the experimental or controlled demonstration system is used as a repair to an existing malfunctioning system when there are no other approved or accepted repair options; or
- (C) As provided in G.S. 130A-343(f) for Controlled Demonstration Systems.
- (iv) When an experimental or controlled demonstration system is proposed which shall not serve a residence, place of business, or place of public assembly, a repair area or backup system shall not be required.
- (v) The application for an experimental system shall include statements that the property owner is aware of its experimental nature, that the local health department and State do not guarantee or warrant that these systems will function in a satisfactory manner for any period of time, and that use

- of the system may need to be discontinued if the system research or testing program is prematurely terminated. Such statements shall be signed by the owner.
- (vi) The owner of the site on which an experimental system is proposed shall execute an easement granting rights of access to the system at reasonable hours for monitoring and evaluation to the research or testing organization. This easement shall specify that it is granted for the purposes of researching and testing an experimental wastewater system and shall remain valid as long as the system is to be part of the proposed research or testing program. The easement shall be recorded with the county register of deeds.
 - (vii) Provisions shall be made for operation and maintenance of the system.
 - (viii) Any special conditions required for the installation of the experimental or controlled demonstration system shall be specified in the Improvement Permit and the Construction Authorization. Use of an experimental or controlled demonstration system and any conditions shall be described on the Improvement Permit, Construction Authorization and any subsequent operation permits, with provisions for a repair area and backup system specified. A condition of the Improvement Permit and Construction Authorization shall be that the installation be under the direct field supervision of the research or testing organization.
 - (ix) The proposed Improvement Permit, Construction Authorization and any subsequent operation permits for experimental or controlled demonstration systems shall be reviewed by the State and found to be consistent with the approved research or testing program prior to issuance by the local health department.
 - (d) Upon completion of the installation and prior to use, an Experimental or Controlled Demonstration System Operation Permit (ESOP or CDSOP) shall be issued by the local health department. The ESOP (CDSOP) shall be valid for a specified period of time not to exceed five years. Special maintenance, monitoring and testing requirements shall be specified as permit conditions, in accordance with the approved research or testing program. Failure to carry out these conditions shall be grounds for permit suspension or revocation.
 - (e) Prior to expiration of the ESOP (CDSOP) and based upon satisfactory system performance as determined during the research or testing program, the local health department shall issue an Operation Permit. Premature termination of the research or testing program shall be grounds for ESOP (CDSOP) suspension or revocation.
 - (f) Upon completion of monitoring, research and testing, the research or testing organization shall prepare a final report including recommendations on future use of the system. If the State determines that the results indicate that the standards of Item (3) of this Rule are met, the State shall approve the use as an innovative system.
- (5) **ACCEPTED SYSTEMS:** A petition to the Commission (CHS) for reclassification of a proprietary innovative system to an accepted system shall be submitted by the manufacturer for review to the State, accompanied by the fee payment as required by G.S. 130A-343(k) and as stipulated in Item (l) of this Rule. The State shall review all petitions submitted and evaluate the following: the completeness of the petition, and whether additional information is needed to continue the review; and whether the system meets the standards of an accepted system under G.S. 130A-343(a)(l), G.S. 130A-343(h), and this Section. The State may also initiate a review of a nonproprietary innovative

system pursuant to G. S. 130A-343(i)(2). The State shall submit to the CHS findings and recommendations based upon its review for final Commission action on system designation. The Commission shall designate a wastewater system technology, component or device as an accepted system when it finds that the standards set forth by G. S. 130A-343(a)(1) and G.S. 130A-343(h) have been met. The following factors shall be considered prior to granting accepted system status:

- (a) documentation provided that there are at least 300 systems installed statewide and the system has been in use as an approved innovative system for more than five years;
- (b) data and findings of all prior evaluations of the system performance shall be provided by the manufacturer;
- (c) results of prior performance surveys of innovative systems in use in North Carolina for at least the five year period immediately preceding the petition;
- (d) review(s) of records on system use and performance reported by local health departments and other information documenting the experiences with performance of the system in North Carolina, including information collected and reported pursuant to Subitem (3)(b) and Item (12) of this Rule;
- (e) for proprietary nitrification trench systems, a statistically valid survey of system performance shall be performed. The manufacturer shall provide a proposed survey plan pursuant to Subitems (5)(e)(i) or (5)(e)(ii) of this Rule for State concurrence prior to carrying out the survey. This plan shall specify the number of systems to be evaluated, period of evaluation, method to randomly select systems to be evaluated, methods of field and data evaluation, and proposed survey team members, including proposed cooperative arrangements to be made with State and local health department on-site wastewater program staff. The State shall facilitate local health department participation with any performance review or survey. The State shall utilize the Division of Public Health's State Center for Health Statistics for

assistance in evaluating the statistical validity of proposed evaluation protocols.

- (i) The survey shall include the field evaluation of at least 250 randomly selected innovative systems compared with 250 comparably-aged randomly selected conventional systems, with at least 100 of each type of surveyed system currently in use and in operation for at least five years. Systems surveyed shall be distributed throughout the three physiographic regions of the state in approximate proportion to the relative usage in the three regions. The survey shall determine comparative system failure rates, with field evaluations completed during a typical wet-weather season (February through early April), with matched innovative and conventional systems sampled during similar time periods in each region. The petitioner shall provide a statistical analysis of the survey results showing a "one-sided" test where, if the failure rate in the sample of 250 innovative systems is at least five percentage points higher than the failure rate in the sample of 250 conventional systems, there is only a five percent chance that a difference this large would occur by chance (95% confidence level). If a statistically significant higher failure rate in the innovative system is not detected, the Commission shall find that the innovative system performs the same as or better than the conventional system.
- (ii) Other surveys, including evaluations of different numbers of innovative and conventional systems,

- designed to verify equal or superior performance of the innovative system compared to a conventional system under actual field conditions in North Carolina may be proposed by the manufacturer for approval by the state when they are demonstrated to have comparable statistical validity as described in Subitem (5)(e)(i).
- (f) The Commission may grant accepted status to an innovative system based upon a showing by the manufacturer that there have been at least 10,000 operational systems installed in the state, in more than one county of the state, over at least an eight year period with a total reported failure rate statewide based on records provided by the manufacturer and local health departments of less than one percent. However, the granting of accepted status based upon this criteria shall be conditioned on the manufacturer successfully completing an approved field survey pursuant to Subitems (5)(e)(i) or (5)(e)(ii) of this Rule within no more than 24 months of being granted accepted status;
- (g) For proprietary innovative systems which include an advanced pretreatment component designed to achieve specific effluent quality standards, the field survey shall be designed to verify effluent is in compliance with these established performance standards. Data evaluated shall be from sites where influent wastewater characteristics and flow meet design parameters. Compliance shall be achieved for all parameters by the arithmetic mean of all samples (geometric mean for fecal coliforms, where applicable). The percent of all samples failing to meet performance standards shall not exceed 20% for any parameter. The percent of sites in violation of performance standards for one or more parameters shall not exceed 10%.
- (h) When a petition or recommendation for an accepted wastewater system designation is approved by the CHS, the State shall notify local health departments and publish a listing of accepted systems. The CHS shall impose any use, design, installation, operation, maintenance, monitoring, and management conditions pursuant to G.S. 130A-343.
- (i) The local health department shall permit systems designated as accepted nitrification trench systems that meet the requirements of this Section, laws, and conditions of its accepted system approval in an equivalent manner as a conventional system. The Owner may choose to substitute an accepted system for a conventional system or another accepted system without prior approval of the health department as long as no changes are necessary in the location of each nitrification line, trench depth, or effluent distribution method. The type of system installed shall be indicated on the Operation Permit, including designation of the manufacturer and model or unique code.
- (6) **MODIFICATION OF APPROVED SYSTEMS:** Where a manufacturer of an approved E & I or accepted system seeks to modify such system or its conditions of approval (including siting or sizing criteria) and retain its approved status, the manufacturer shall submit to the State a request for approval of the proposed modification. If the manufacturer demonstrates that the modified system will perform in a manner equal or superior to the approved system in terms of structural integrity, chemical durability, hydraulic performance and wastewater treatment, the state shall approve the modified system with the same status as the previously approved system. In the case of modifications to accepted systems, the demonstration required by this Item shall be made by clear, convincing, and cogent evidence. Approvals of proposed modifications to E & I systems pursuant to this subsection shall be made by the State. Approvals of proposed modifications to accepted systems pursuant to this Item shall be made by the Commission. In order to confirm the satisfactory performance of an approved modified accepted system, the manufacturer shall conduct a survey of installed modified systems in accordance with Subitem (5)(e) of this Rule within one year of the fifth anniversary of the State's approval of the modified system and shall submit the

- results of the survey to the State. The State may modify, suspend, or revoke its approval of the modified system based on the survey results or any other information that supports a finding that the modified system does not perform in a manner equal or superior to the previously approved system.
- (7) The State may modify, suspend or revoke the approval of a system as provided for in G.S. 130A-343(c).
- (a) The system approval shall be modified as necessary to comply with subsequent changes in laws or rules which affect their approval.
- (b) The approval of a system may be modified, suspended or revoked upon a finding as follows:
- (i) subsequent experience with the system results in altered conclusions about system performance, reliability, or design;
- (ii) the system or component fails to perform in compliance with performance standards established for the system; or
- (iii) the system or component or the system applicant fails to comply with wastewater system laws, rules or conditions of the approval.
- (c) The State shall notify the CHS of any action required for CHS approval of any modifications to the status of an accepted system.
- (8) Modification, suspension or revocation of a system approval shall not affect systems previously installed pursuant to the approval.
- (9) Reductions in total nitrification trench length allowed for systems, as compared to the system sizing requirements delineated in Rule .1955 of this Section for conventional systems based upon excavated trench width, apply only to drainfields receiving septic tank effluent of domestic strength or better quality. The system may be used for facilities producing non-domestic strength wastewater with nitrification trench length and trench bottom area determined based upon excavated trench width equal to what is required by Rule .1955 of this Section for a conventional gravel trench system, with no reduction or application of an equivalency factor. However, reductions up to 25 percent when allowed for approved innovative or accepted system models may be applied for facilities producing higher strength wastewater following a specifically approved pretreatment system designed to assure effluent strength equal to or better than domestic septic tank effluent, with a BOD less than 150 mg/l, TSS less than 100 mg/l and FOG less than 30 mg/l.
- (10) A Performance Warranty shall be provided by the manufacturer of any approved innovative or accepted wastewater system handling untreated septic tank effluent which allows for a reduction in the total nitrification trench length of more than 25% as compared to the total nitrification trench length required for a 36-inch wide conventional wastewater system, pursuant to G.S. 130A-343(j). The Department shall approve the warranty when found in compliance with the applicable laws and these Rules. When a wastewater system warranted according to G.S. 130A-343(j) (warranty system) is proposed to serve a residence, place of business, or place of public assembly, the site shall include a repair or replacement area in accordance with Rule .1945(b) of this Section or an innovative or accepted system approved under this Rule with no more than a 25 percent reduction in excavated trench bottom area.
- (a) The Manufacturer shall provide the approved Performance Warranty in effect on the date of the Operation Permit issuance to the owner or purchaser of the system. The warranty shall be valid for a minimum of five-years from the date the warranty system is placed into operation.
- (b) The Manufacturer shall issue the Performance Warranty to the property owner through its authorized installer who shall sign the Performance Warranty indicating the system has been installed in accordance with the manufacturer's specifications, any conditions of the system approval granted by the Department, and all conditions of the Authorization to Construct a Wastewater System by the local health department. The installer or contractor shall return a copy of the signed Performance Warranty to the Manufacturer within 10 days indicating the physical address or location of the facility served by the warranty system, date the system was installed or placed into use, and type and model of system installed.

- (c) The Performance Warranty shall provide that the manufacturer shall furnish all materials and labor necessary to repair or replace a malfunctioning warranty system as defined in Rule .1961(a) of this Section or a warranty system that failed to meet any performance conditions of the approval. The system shall be repaired or replaced with a fully functional wastewater system at no cost to the Owner, in accordance with this Section and applicable laws.
- (d) Performance Warranty repairs such as full replacement of the nitrification system, extension of the nitrification system or other repairs shall be completed pursuant to a repair Authorization to Construct that is issued by the local health department in accordance with this Section.
- (e) The Performance Warranty shall be attached to the Operation Permit issued by the Health Department for the wastewater system. The Performance Warranty shall remain in effect, notwithstanding change in ownership, to the end of the five-year warranty period.
- (11) Manufacturers of proprietary systems approved under this Rule shall provide a list of manufacturer's authorized installers to the Department and applicable local health departments, and update this list whenever there are additions or deletions. No Operation Permit shall be issued for a proprietary system installed by a person not authorized by the Manufacturer, unless the Manufacturer of the proprietary system specifically approves the installation in writing.
- (12) The local health department shall include in its monthly activity report submitted to the State the number of new system Operation Permits issued for E & I and accepted systems. Additionally, the number of Operation Permits issued for repairs of E & I and accepted systems, and repair system type shall be reported to the State as part of the monthly activity report. The State shall accumulate and store this installation data for future reference and surveys, including site locations.

History Note: Authority G. S. 130A-335(e),(f); 130A-343;
 Eff. April 1, 1993;
 Temporary Amendment Eff. June 24, 2003; February 1, 2003;
 Amended Eff. February 1, 2005; May 1, 2004.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 03C .0104 REMAINDER INTEREST

A gift of a remainder interest is a gift of a future interest, and the annual exclusion provided in Section 2503(b) of the Internal Revenue Code would not apply.

History Note: Authority G.S. 105-188; 105-262;
 Eff. February 1, 1976;
 Amended Eff. February 1, 2005; October 1, 1991.

17 NCAC 04C .0802 FREE DISTRIBUTION BY MANUFACTURER

History Note: Authority G.S. 105-113.5; 105-262;
 Eff. February 1, 1976;
 Amended Eff. January 1, 1994; October 30, 1981;
 Repealed Eff. January 1, 2005.

17 NCAC 05C .0304 ATTRIBUTION OF EXPENSES TO NONTAXABLE INCOME

(a) Direct Expenses - All expenses directly connected with the production of income which is not subject to tax in this State shall be used to compute the net amount of such untaxed income.

(b) Interest Expenses - When a corporation earns income which is not taxed by this State (see examples), or holds property that does or will produce untaxed income, and incurs interest expense which is not specifically related to any particular income or property, it shall attribute a portion of the interest expense to such untaxed income and property in determining taxable income reported to this State. The formula used for computing the amount of interest expense to be attributed to untaxed income and property is as follows:

- (1) Value of assets:
 - (A) Value of the tax return balance sheet of assets which produce or which would produce untaxed income; *
 - (B) Value of all assets on the tax return balance sheet; **
 - (C) Determine the ratio or percentage of Subparagraphs (b)(1)(A) to (B) of this Rule.
- (2) Income/Profits:
 - (A) Gross untaxed income;
 - (B) Total gross profits;
 - (C) Determine the ratio or percentage of Subparagraphs (b)(2)(A) to (B) of this Rule.
- (3) Total of the ratios or percentages determined in Subparagraphs (b)(1) and (2) of this Rule;
- (4) Divide the total of Subparagraph (b)(3) of this Rule by two;
- (5) Apply average percentage determined in Subparagraph (b)(4) of this Rule to the total interest expense on the return filed in this state.

(c) Examples of Untaxed Income are:

- (1) Dividend income classified as apportionable (G.S. 105-130.4);
- (2) Dividend income excludable by statute (G.S. 105-130.5);
- (3) Interest income classified as nonapportionable (G.S. 105-130.4);
- (4) Interest income earned on United States obligations and state of North Carolina obligations;
- (5) Other nonapportionable income or exempt income.

(d) Expenses Connected with Interest Income from United States Obligations - Under G.S. 105-130.5(b)(1), interest income from obligations of the United States or its possessions is excludable from North Carolina taxable income to the extent such income is included in federal taxable income. Expenses incurred in producing the exempt income must be determined and subtracted from the gross amount earned during a taxable period before the deduction is made in computing the state taxable income. In the computation of expenses related to income from United States obligations, the formula described in Paragraph (b) of this Rule may be used with respect to interest expense.

(e) Other Expenses Attributed to Nontaxable Income and to Nonapportionable Income and Property - In the determination of expenses other than interest expense attributed to untaxed income, the procedure set forth in the Federal Code for determining expenses related to foreign source income generally referred to as stewardship and supportive expenses may be used to determine the expenses allocated to untaxed income and property producing or which would produce untaxed income. Alternatively, an income formula as outlined in Paragraph (b)(2) of this Rule relating to interest expenses may be used to determine the amount of supportive function expenses attributable to untaxed income. In the determination of "supportive function expenses", direct expenses incurred exclusively in a specific identifiable taxable or nontaxable activity shall be determined and excluded before application of the attribution percentage to expenses. If direct expenses are determinable for a particular activity resulting in an accurate computation of the net income or loss from such activity, the values of this activity are to be removed as elements of the ratio when computing the attribution percentage.

Note: * When the equity method of accounting is used, the increase or decrease in value as a result of such accounting method may be excluded from this value.

Note: ** Equity included in this value may be excluded and the reserve for depreciation reflected on the balance sheet may be restored to the asset value.

History Note: Authority G.S. 105-130.4; 105-130.5; 105-262;
Eff. April 1, 1991;
Amended Eff. January 1, 2005; January 1, 1994.

17 NCAC 05C .0601 PRELIMINARY STATEMENT

A taxpayer must have income from business activity taxable by this state and at least one other state, to allocate and apportion income. Income from business activity includes apportionable or nonapportionable income. Thus, if a taxpayer has nonapportionable income taxable by one state and apportionable income taxable by another state, the taxpayer's income shall be allocated and apportioned in accordance with G.S. 105-130.4. Where a corporation is not taxable in another state on its apportionable income but is taxable in another state only because of nonapportionable income, all apportionable income shall be attributed to this state.

History Note: Authority G.S. 105-130.4; 105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 2005.

17 NCAC 05C .0701 DIVISION OF INCOME: IN GENERAL

(a) When a taxpayer has income from sources within this state as well as income from sources outside this state, the division of income and the resulting determination of the portion of the taxpayer's entire net income which has its source in this state shall be determined pursuant to the allocation and apportionment provisions set forth in G.S. 105-130.4 and these Rules. The taxpayer shall determine which portion of its entire net income constitutes "apportionable income" and which portion constitutes "nonapportionable income". The various items of nonapportionable income shall be directly allocated to specific jurisdictions pursuant to the provisions of Subsections (d) to (h) of G.S. 105-130.4. The apportionable income of the taxpayer other than public utilities and excluded corporations shall be divided between the jurisdictions in which the business is conducted pursuant to the property, payroll and sales apportionment factors set forth in Subsections (i) to (l) of G.S. 105-130.4. The sum of the items of nonapportionable income directly allocated to this state, plus the amount of apportionable income attributable to this state by the apportionment formula shall constitute the amount of the taxpayer's entire net income which is subject to tax under the income tax laws of this state.

(b) The taxpayer shall classify income as apportionable or nonapportionable income on a consistent basis. In the event the taxpayer is not consistent in reporting, it shall disclose in its return to this state the nature and extent of the inconsistency.

(c) The word "apportionment" refers to the division of net income between jurisdictions by the use of a formula containing apportionment factors, and the word "allocation" refers to the assignment of net income to a particular jurisdiction.

History Note: Authority G.S. 105-130.4; 105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 2005; January 1, 1994.

17 NCAC 05C .0704 PRORATION OF DEDUCTIONS

Any allowable deduction that is applicable both to apportionable and nonapportionable income or to more than one "trade or business" of the taxpayer shall be prorated to those classes of income or trades or businesses in determining income subject to

tax. The taxpayer shall be consistent in the proration of such deduction or deductions in filing returns under these Rules.

History Note: Authority G.S. 105-130.4; 105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 2005; January 1, 1994.

17 NCAC 05C .0801 IN GENERAL

(a) The property factor as provided in G.S. 105-130.4 shall include all real and tangible personal property owned or rented and used during the income year to produce apportionable income. The term "real and tangible personal property" includes land, buildings, machinery, stocks of goods, equipment and other real and tangible personal property used in connection with the production of apportionable income but does not include coin or currency. (see definition of "business income")

(b) Property used in connection with the production of nonapportionable income which is allocated in accordance with Subsection (c) to (h) of G.S. 105-130.4 shall be excluded from the factor.

(c) Property used in connection with the production of both apportionable and nonapportionable income shall be included in the factor only to the extent the property was used in connection with the production of apportionable income.

History Note: Authority G.S. 105-130.4; 105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 2005; January 1, 1994.

17 NCAC 05C .0802 PROPERTY USED FOR THE PRODUCTION OF APPORTIONABLE INCOME

Property shall be included in the property factor if it is actually used during the income year for the production of apportionable income. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includible in the factor. Property or equipment under construction during the income year (except inventorable goods in process) shall be excluded from the factor until such property is actually used for the production of apportionable income. If the property is partially used for the production of apportionable income while under construction, the value of the property to the extent used shall be included in the property factor.

History Note: Authority G.S. 105-130.4; 105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 2005.

17 NCAC 05C .0906 DENOMINATOR OF PAYROLL FACTOR

Except for compensation paid to general executive officers and compensation paid in connection with nonapportionable income the denominator of the payroll factor is the total compensation paid everywhere during the income year. Accordingly, compensation paid to employees whose services are performed entirely in a state where the taxpayer is exempt from taxation,

for example, by Public Law 86-272, is included in the denominator of the payroll factor.

Note: A taxpayer has employees in its state of legal domicile (State A) and is taxable in State B. In addition the taxpayer has other employees whose services are performed entirely in State C where the taxpayer is exempt from taxation by Public Law 86-272. As to these latter employees, the compensation will be assigned to State C where their services are performed (i.e. included in the denominator only of the payroll factor) even though the taxpayer is not taxable in State C.

History Note: Authority G.S. 105-130.4; 105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 2005; October 31, 1981.

17 NCAC 05C .0907 NUMERATOR OF PAYROLL FACTOR

Except for compensation paid to general executive officers and compensation paid in connection with nonapportionable income, for purposes of G.S. 105-130.4, the numerator of the payroll factor is the total amount paid in this state during the tax period by the taxpayer for compensation. The tests to be applied in determining whether compensation is paid in this state are stated in the Model Unemployment Compensation Act which is hereby incorporated by reference. This does not include any subsequent amendments or editions. A copy of this act can be obtained at no charge by contacting the Department of Revenue. Accordingly, if compensation paid to employees is included in the payroll factor by use of the cash method of accounting or if the taxpayer is required to report such compensation under such method for unemployment compensation purposes, it shall be presumed that the total wages reported by the taxpayer to this state for unemployment compensation purposes constitutes compensation paid in this state except for compensation excluded under G.S. 105-130.4(k). The presumption may be overcome by satisfactory evidence that an employee's compensation is not properly reportable to this state for unemployment compensation purposes.

History Note: Authority G.S. 105-130.4; 105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 2005; January 1, 1994;
October 31, 1981.

17 NCAC 05C .1002 SALES INCIDENTAL TO GENERAL BUSINESS OPERATIONS

(a) The term "sales" also includes gross receipts derived by a taxpayer from business transactions or activities which are incidental to its principal business activity and which are includible in apportionable income. However, substantial amounts of gross receipts arising from an incidental or occasional sale of a fixed asset used in connection with the taxpayer's regular trade or business will be excluded from the sales factor since such sales constitute a "casual sale" of property and the inclusion of such gross receipts will not fairly apportion to this state the income derived by the taxpayer from its business activity in this state. Gross receipts from casual sales are considered substantial if they cause the sales factor to be

distorted. For example, gross receipts from the sale of a factory or plant will be excluded from the sales factor.

(b) In including or excluding gross receipts, the taxpayer shall be consistent in the treatment of such gross receipts in filing returns with this state. In the event the taxpayer is not consistent in its reporting, it shall disclose in its return to this state the nature and extent of the inconsistency.

History Note: Authority G.S. 105-130.4; 105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 2005.

17 NCAC 05C .1506 CORPORATIONS ALLOCATING THEIR NET INCOME

(a) A corporation required to allocate and apportion its net income or net loss under G.S. 105-130.4 may carry forward only a portion of its net economic loss. After the required adjustments for income not taxable in the next succeeding year have been made, the allocable portion of such determined net economic loss deduction is deducted from the total amount of income allocated to this state. For example, a corporation allocating 50 percent of its net income or loss to North Carolina in a particular year in which it sustains a total net economic loss of one thousand dollars (\$1,000.00) may carry forward only five hundred dollars (\$500.00) to a subsequent year.

(b) Where the allocating corporation earns nonapportionable income subject to direct allocation outside North Carolina in a year succeeding the loss-year, the portion of the directly allocated income used to offset the loss brought forward is determined by applying to such income the allocation percentage applicable to the succeeding year.

History Note: Authority G.S. 105-130.8; 105-262;
Eff. February 1, 1976;
Amended Eff. January 1, 2005.

17 NCAC 05C .1702 APPORTIONABLE INCOME OR NONAPPORTIONABLE INCOME

For income tax purposes, whether a corporate partner's share of the partnership's net income is classified as apportionable income or nonapportionable income depends upon the facts in each case. Such income is classified as nonapportionable income where the corporate partner limits its connection to the partnership to the mere investment of funds or property and does not regularly or materially participate in the day-to-day operation of the partnership. Where the business of the partnership is directly or integrally related to the business of the corporate partner, the corporate partner's share of the partnership net income is classified as apportionable income. When classified as apportionable income, the corporate partner's apportionment factors shall include its proportionate share of the partnership's property, payrolls and sales. If such income is classified as nonapportionable income, it shall be included in the corporate partner's net taxable income and allocated in accordance with the allocation provisions of G.S. 105-130.4.

History Note: Authority G.S. 105-130.4; 105-262;
Eff. February 1, 1976;

*Amended Eff. January 1, 2005; January 1, 1994;
October 31, 1981.*

17 NCAC 05C .2404 DIVIDENDS RECEIVED FROM DISC

Dividends received by a corporate shareholder from a DISC must be included in the corporate shareholder's taxable income. Dividends received from a DISC by a corporate shareholder taxable in another state must be included in the corporate shareholder's apportionable income and apportioned to North Carolina. The term "dividends" means all amounts currently taxable under the Internal Revenue Code to corporate shareholders of a DISC whether or not distributed.

History Note: Authority G.S. 105-130.4; 105-262;
Eff. December 5, 1976;
Amended Eff. January 1, 2005; August 1, 2002.

17 NCAC 06B .0104 COMPLETING A RETURN

(a) A taxpayer must use the North Carolina income tax form for the year in which his or her taxable year begins.

(b) A person who files an income tax return for an unmarried individual who died during the taxable year must enter the date of the individual's death and the individual's name on the return.

(c) On a return, a taxpayer must furnish his or her social security number and the name and social security number of his or her spouse and must indicate whether the return is filed jointly or separately.

(d) The same filing status claimed on the Federal income tax return must be claimed on the North Carolina income tax return. However, if either the taxpayer or the taxpayer's spouse is a nonresident and had no North Carolina taxable income for the taxable year, the filing status MARRIED FILING SEPARATELY must be claimed.

(e) Each applicable line of the tax return must be completed and the entering of words or phrases, such as "unconstitutional" or "object - self incrimination" does not meet the requirement of completing each applicable line on the return.

(f) The tax must be computed accurately and, in the case of a delinquent return, the penalty and interest prescribed by statute must be added.

(g) If an individual has moved into or out of North Carolina during the tax year or is a nonresident with income from sources within North Carolina, the section on Form D-400, Computation of North Carolina Taxable Income for Part-Year Residents and Nonresidents, must be completed. Credit for tax paid to another state is not allowed to an individual moving into or out of this State unless the individual has income derived from and taxed by another state or country while a resident of this State.

(h) If a tax credit is claimed for tax paid to another state or country, there must be attached to the return a true copy of the return filed with the other state or country and a canceled check, receipt, or other proof of payment of tax to the other state or country.

(i) Every return must be signed by the taxpayer or his or her authorized agent, and joint returns must be signed by both spouses.

- (j) Where tax has been withheld, the state copy of the Wage and Tax Statement must be attached to the return.
- (k) Any additional information that will assist in the processing and auditing of a return must be indicated on the return or a worksheet or schedule attached to the return.
- (l) Anyone who is paid to prepare a return must sign the return in the space provided.

History Note: Authority G.S. 28A-15-8; 105-151; 105-152; 105-154; 105-155; 105-163.5(e); 105-163.7; 105-163.10; 105-251; 105-252; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 2005; August 1, 2002; July 1, 1999;
August 1, 1998; November 1, 1994; June 1, 1993;
October 1, 1991; June 1, 1990.

17 NCAC 06B .0605 RESIDENTIAL SOLAR ENERGY EQUIPMENT

History Note: Authority G.S. 105-129.15; 105-129.16A; 105-262;
Eff. June 1, 1982;
Amended Eff. July 1, 2000; June 1, 1995; June 1, 1993;
June 1, 1990; July 1, 1986;
Repealed Eff. February 1, 2005.

17 NCAC 06B .3407 SERVICE MEMBERS CIVIL RELIEF ACT

Certain sections of the Service members Civil Relief Act (formerly the Soldiers' and Sailors' Civil Relief Act of 1940) are pertinent to matters of federal and state taxation. With respect to payment of income tax, the act provides for the deferment of payment of income tax for a period of 180 days after military service ends if the service member's inability to pay the tax was caused by military service. No penalty or interest shall accrue during the period of deferment.

History Note: Authority G.S. 105-262; 50 U.S.C. 501; P.L. 108-189;
Eff. February 1, 1976;
Amended Eff. February 1, 2005.

17 NCAC 06B .3503 PARTNERSHIP RETURNS

(a) When Required -- A North Carolina partnership return, Form D-403, must be filed by every partnership doing business in North Carolina if a federal partnership return was required to be filed. The partnership return must be filed on or before April 15 if on a calendar year basis and on or before the 15th day of the fourth month following the end of the fiscal year if on a fiscal year basis. For individual income tax purposes, the term "business carried on in this State" means the operation of any activity within North Carolina regularly, continuously, and systematically for the purpose of income or profit. A sporadic activity, a hobby, or an amusement diversion does not come within the definition of a business carried on in this State. Income from an intangible source, including gain realized from the sale of intangible property received in the course of a business carried on in this State so as to have a taxable situs here

(including income in the distributive share of partnership income, whether distributed or not) is included in the numerator of the fraction used in determining the portion of federal taxable income that is taxable to North Carolina by a nonresident. The return must include the names and addresses of the individuals entitled to share in the net income of the partnership and must be signed by one of the partners and the individual preparing the return.

(b) NC K-1 -- A partnership must provide a completed Schedule NC K-1, or similar schedule, to each person who was a partner in the partnership at any time during the year reflecting that partner's share of the partnership's income, adjustments, tax credits, and tax paid by the manager of the partnership. The schedule must be provided to each partner on or before the day on which the partnership return is required to be filed. When reporting the distributive share of tax credits, a list of the amount and type of tax credits must be provided each taxpayer.

(c) Investment Partnerships -- A partnership whose only activity is as an investment partnership is not considered to be doing business in North Carolina. An investment partnership is a partnership that is not a dealer in securities, as defined in section 475(c)(1) of the Internal Revenue Code, and that derives income exclusively from buying, holding, and selling securities for its own account. If any of the partnership's income is from other activities, either within or outside this State or either received directly or flowing through from other pass-through entities, the partnership is not an investment partnership for North Carolina tax purposes. Other activities include but are not limited to providing services or products to customers and holding real property for appreciation and income. An investment partnership is not required to file an income tax return in North Carolina or pay income tax to North Carolina on behalf of its nonresident partners.

History Note: Authority G.S. 105-154(c); 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 2005; August 1, 2003; July 1, 2000;
August 1, 1998; May 1, 1994; June 1, 1993; July 1, 1991;
June 1, 1990.

17 NCAC 06B .3724 ALLOCATION OF INCOME ATTRIBUTABLE TO NONRESIDENTS

(a) If an estate or trust has income from sources outside of North Carolina and if any of the beneficiaries are nonresidents of North Carolina, the portion of federal taxable income of the Fiduciary that is subject to North Carolina tax must be determined. If there are no nonresident beneficiaries or if there is no gross income from dividends, interest, other intangibles or from sources outside North Carolina for the benefit of a nonresident beneficiary, the total income of the estate or trust is taxable to the fiduciary.

(b) The determination of the amount of undistributed income from intangible property which is for the benefit of a resident is based on the beneficiary's state of residence on the last day of the taxable year of the trust. In the case of both resident and nonresident beneficiaries, the determination of the amount of undistributed income from intangible property which is for the benefit of a resident is made on the basis that the resident

beneficiary's interest for the taxable year relates to the interest of both resident and nonresident income beneficiaries for the taxable year.

History Note: Authority G.S. 105-134.5; 105-160.2; 105-262;
Eff. June 1, 1990;
Amended Eff. February 1, 2005; June 1, 1993; October 1, 1991.

17 NCAC 06C .0112 SEAMEN

(a) The Vessel Worker Tax Fairness Act, 46 U.S.C. 11108 prohibits withholding of state income tax from the wages of a seaman on a vessel engaged in foreign, coastwide, intercoastal, interstate, or noncontiguous trade or an individual employed on a fishing vessel or any fish processing vessel. Vessels engaged in other activity do not come under the restriction; however, any seaman who is employed in coastwide trade between ports in this State may have tax withheld if such withholding is pursuant to a voluntary agreement between such seaman and his employer.

(b) With respect to income obtained while:

- (1) engaged as a pilot (licensed under section 7101 of Title 46 of the Code or under the laws of a state) on a vessel performing duties in more than one state; or
- (2) performing regularly assigned duties as a master, officer or crewman on a vessel operating on the navigable waters of more than one state; an individual is subject to income tax only in the state and political subdivision in which the individual resides.

(c) Seamen and fishing boat crewmen exempt from withholding as specified above, shall determine whether they meet the requirements for paying estimated income tax.

History Note: Authority G.S. 105-262; 46 U.S.C. Sec. 601 and 11108;
Eff. February 1, 1976;
Amended Eff. February 1, 2005; June 1, 1993; May 1, 1984;
February 21, 1979.

17 NCAC 06C .0119 WAGE AND TAX STATEMENTS

To meet the requirements of G.S. 105-163.7, an employer shall use the six-part Federal Form W-2 or any other alternate forms which have been designed for his payroll equipment if they provide the same information and the same number of copies as the official form. When completed, the state copies must show the employer's North Carolina withholding identification number; must designate the state tax as North Carolina tax; and the North Carolina gross wages must be separately stated if they are different from federal gross wages. Statements which do not meet the above requirements shall not be accepted and employees shall not be given credit for the tax withheld.

History Note: Authority G.S. 105-163.7; 105-254; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 2005; May 1, 1984.

17 NCAC 06C .0203 ANNUAL REPORTS

(a) At the end of each calendar year employers shall to furnish wage and tax statements, Form W-2 to employees and Form NC-1099PS to contractors from whom tax was withheld. Two copies must be furnished to the employee or contractor and one copy must be furnished to the Department. Pension payers must report pension income and State tax withheld on federal Form 1099-R. The pension payer must give the Department a copy of a 1099-R given to a recipient of a pension payment if the 1099-R shows State tax withheld.

(b) Reports of payments of income, interest, rents, premiums, dividends, annuities, remunerations, emoluments, fees, gains, profits, taxable meal reimbursements, and other determinable annual or periodic gains during a calendar year must be made on Information at the Source Reports, Form NC-1099, if the payments have not otherwise been reported. Form NC-1099 reports are not required to be filed if the payments have been reported to the Internal Revenue Service under the provisions of Section 6041 of the Code, the payments have otherwise been reported to the Department, or no North Carolina income tax was withheld from the payments. Notwithstanding the above, any person required to file Form NC-1099 NRS under the provisions of 17 NCAC 06B .3804(c) must do so regardless of any requirement to report the sale to the Internal Revenue Service.

History Note: Authority G.S. 105-154; 105-163.2A; 105-163.7; 105-262;
Eff. February 1, 1976;
Amended Eff. February 1, 2005; April 1, 2001; August 1, 1998;
June 1, 1993; February 3, 1992; October 1, 1991;
February 1, 1991.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 46 – BOARD OF PHARMACY

21 NCAC 46 .1414 DRUG DISTRIBUTION AND CONTROL

(a) MEDICATION ORDERS.

- (1) Pharmacists shall dispense medications from a health care facility pharmacy only upon receipt of a medication order. A mechanism shall be in place to verify the authenticity of the medication order. Oral orders shall be put in writing immediately and signed within the time frame established by regulatory agencies and health care facility policies and procedures.
- (2) All medication orders shall be received and reviewed by a pharmacist and, at a minimum, shall contain the:
 - (A) patient's name, location and other necessary identifying information such as history or medical records number;

- (B) medication name, strength, dosage form, route of and directions for administration. In the absence of a facility policy on interpretation of routes of administration, the route of administration must be specified;
 - (C) date the order was written; and
 - (D) prescriber's signature as set out in Subparagraph (a)(1) of this Rule (may include electronic signature or verification).
- (3) The health care facility pharmacy and the pharmacist-manager shall ensure that medication orders for patients requiring continuous drug therapy shall be entered into a patient medication profile, either manual or automated. The medication profile shall, at a minimum, contain the:
- (A) patient's name, location and important clinical data such as age, height, weight, sex, and allergies;
 - (B) medication name, strength, dosage form, route of and directions for administration;
 - (C) medication start date;
 - (D) medication discontinuance date; and
 - (E) identification of pharmacist responsible for or verifying technician entry of the medication order.
- (4) Abbreviations used in medication orders shall be agreed to, jointly adopted, and published by the medical, nursing, pharmacy, and medical records staff of the health care facility.
- (5) Medication orders shall be reviewed and discontinued or suspended, if appropriate, when the patient is transferred to the delivery room, operating room, or is admitted from another facility. A method to protect the patient from indefinite, open-ended drug orders must be provided. The prescriber shall be notified in a timely manner that the order shall be stopped before such action takes place by one or more of the following:
- (A) the routine monitoring of patient's drug therapy by a pharmacist;
 - (B) a health care facility-approved, drug class-specific, automatic stop order policy covering those drug orders not specifying a number of doses or duration of therapy; or
 - (C) a health care facility-approved automatic cancellation of all drug orders after a predetermined time interval unless rewritten by the prescriber.
- (6) Health care facilities which credential practitioners for prescribing privileges within the facility shall provide the health care facility pharmacy with credentialing information annually or immediately upon discharge or when privileges are suspended or terminated.
- (b) **DEVICES.** Devices shall be dispensed in accordance with Section .2600 of this Chapter.
- (c) **DISPENSING.** In health care facilities with 24 hour pharmacy services, all dispensing shall be done by a pharmacist. In health care facilities without 24 hour pharmacy services, Rule .1413 of this Section shall apply in the absence of a pharmacist.
- (d) **LABELING.**
- (1) The health care facility pharmacy and the pharmacist dispensing the drug shall ensure that all drugs dispensed from within a health care facility pharmacy are labeled and identified up to the point of administration;
 - (2) Whenever a drug is added to a parenteral admixture, it shall be labeled with a distinctive supplementary label indicating the name and amount of the drug added, expiration date, and expiration time, if applicable. For admixtures prepared outside the pharmacy, the pharmacist-manager shall develop policies and procedures for preparation and labeling.
- (e) **PARENTERAL MEDICATIONS.** The dispensing of parenteral medications shall be done in accordance with Section .2800 of this Chapter--Sterile Parenteral Pharmaceuticals.
- (f) **PATIENT CARE UNIT MEDICATION INVENTORIES.** This Paragraph does not apply to nursing facilities, assisted living facilities, and adult care homes.
- (1) The pharmacist-manager shall develop an approved drug list for each health care facility location. Non-controlled drugs may be stocked on a health care facility patient care unit in quantities limited to not more than five dosage units per drug when immediate availability is deemed essential to the patient's health and well-being. Drugs shall be stored in a manner that prevents unauthorized access and shall only be administered to a patient of the health care facility pursuant to a medication order.
 - (2) All controlled substances stocked within a health care facility that are not located within the facility's pharmacy or automated dispensing device must be accompanied by a disposition form issued from the pharmacy. This document shall at a minimum contain:
 - (A) the product name, strength, dosage form, and quantity supplied;
 - (B) the date transferred to the patient care unit by the pharmacy;
 - (C) the name of the pharmacy representative supplying, and the patient care unit representative receiving the drug;

- (D) the date, time, and amount of the drug removed from the patient care unit stock for administration; and
- (E) the patient name and identification of the person acquiring the product.
- (3) Exceptions to this Paragraph shall be made for use of automated dispensing devices provided that these devices meet all applicable rules for controlled substances contained therein.
- (4) When a dose of a controlled substance has been prepared for a patient but not used (i.e., refused, order canceled, or contaminated), it may be destroyed at the patient care unit. The destruction must be witnessed by a health care provider, such as a pharmacist, registered nurse, or licensed practical nurse. The pharmacist-manager shall ensure that details of the event, along with the identification of the two who effected and witnessed the destruction, are documented. If such record is separate from the disposition form, it shall be maintained uniformly with the corresponding disposition form.

(g) **ANCILLARY DRUG CABINET INVENTORIES.** (This Paragraph does not apply to nursing facilities, assisted living facilities, and adult care homes.) Drugs that are routinely prescribed by the medical staff in a health care facility shall be maintained in quantities limited to not more than five dosage units per drug as a supplementary inventory for use only when the pharmacy is closed. The pharmacist-manager shall, in connection with the appropriate committee of the health care facility, develop listings of those drugs to be included in such inventories. The pharmacist-manager shall, at a minimum, assure that:

- (1) access to such drug inventories is by locked cabinet(s) or other enclosure(s) constructed and secured to deny access to unauthorized persons;
- (2) only authorized personnel, as indicated by written policies and procedures, shall obtain access to the drug inventories;
- (3) only pre-packaged drugs are available therein, in amounts sufficient for immediate therapeutic requirements. Drugs shall be properly labeled, with drug name, strength, lot number and expiration date. Whenever access to such inventory is gained, a copy of the record of withdrawal and a copy of the written order for new drug orders shall be provided to the pharmacy. The record of withdrawal shall contain the following:
 - (A) the date of removal of the drug;
 - (B) the name, strength, dosage form, and quantity of drug removed;
 - (C) the name of the patient for whom the drug was ordered;

- (D) the name or identification code of the authorized personnel removing the drug from inventory;
 - (4) all drugs are reviewed no less often than quarterly to ensure their purity, potency, and integrity; and
 - (5) written policies and procedures are established to implement the requirements of this Rule.
- (h) **AUTOMATED DISPENSING OR DRUG SUPPLY DEVICES.** Automated Dispensing or Drug Supply Devices such as but not limited to Pyxis machines may be utilized in health care facility pharmacies and where a pharmacy permit exists in accordance with 21 NCAC 46 .1814.
- (i) **EMERGENCY KITS.** (This Paragraph does not apply to adult care homes or assisted living facilities) Drugs and devices may be provided in emergency kits for use by authorized personnel provided the pharmacist-manager, in conjunction with the medical staff of the health care facility, develop and implement written policies and procedures to ensure compliance with the following provisions:
- (1) the pharmacist-manager, or designee, and the medical staff of the health care facility jointly determine the drugs and devices, by identity and quantity, to be included in the kit. Drugs and devices included in the kit shall be limited to those for emergency use only and are not to be used for any other purpose.
 - (2) the emergency kit contains those drugs and devices which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent prolonged discomfort or risk of harm to patients;
 - (3) the emergency kit shall be stored in a secure, readily available location under the supervision of the nursing staff and sealed with a non-reusable, removable seal to prevent unauthorized access, and to ensure a proper environment for preservation of the drugs and devices within them. Policies and procedures shall be established to ensure the integrity of the kit at all times;
 - (4) the exterior of the emergency kit shall be labeled so as to clearly and unmistakably indicate that it is an emergency drug kit and is for use in emergencies only. In addition, a listing of the drugs and devices contained therein, including name, strength, and quantity of each drug or device shall be attached. Each emergency kit shall be inspected by a pharmacist or his designee every 30 days (90 days for long-term care facilities) to check for expiration dates and the integrity of the seal;
 - (5) all drugs and devices contained within the emergency kit shall be labeled, if applicable, with, at a minimum, the name, strength, lot number, manufacturer, and expiration date;

- (6) drugs and devices shall be removed from the emergency kit for administration to a patient only pursuant to a valid physician's order, by personnel authorized by the facility;
 - (7) whenever an emergency kit is opened, the pharmacy shall be notified. The pharmacist-manager or designee shall re-stock, re-seal, and return the kit to the unit within a reasonable length of time in order to prevent risk of harm to patients. The emergency drug kits shall be checked by an authorized person in accordance with written policies and procedures of the health care facility. In the event the kit is opened in an unauthorized manner, the pharmacy and other personnel designated by the pharmacist-manager of the facility shall be notified; and
 - (8) Emergency drugs that are controlled substances must be stored in compliance with 10A NCAC 26E .0408.
- (j) RECORDS.
- (1) The pharmacist-manager shall, in addition to the requirements for preserving prescription orders as set forth in G.S. 90-85.26, develop a system of daily accountability for medication compounding and dispensing that shall permit the identification of the responsible pharmacists and pharmacy technicians. Readily retrievable records of accountability shall be maintained for at least 30 days. At a minimum, this system shall identify all personnel who perform these activities and the pharmacist responsible for:
 - (A) interpretation and appropriateness of new medication orders;
 - (B) profile entry of new medication orders;
 - (C) dispensing of new medication orders including stat doses;
 - (D) daily cart fills;
 - (E) intravenous admixtures;
 - (F) compounded medications; and
 - (G) periodically assessing the quality of pharmacy procedures for preparation and release of drugs and devices for replenishment of floor stock, ancillary drug supplies, and automated dispensing devices in locations outside the pharmacy.
 - (2) Upon notification of medication errors resulting from the administration of an incorrect medication or dose, the pharmacist-manager shall document such medication error. Documentation shall include pertinent chronological information and include documentation on health care facility forms. These documents shall be archived in a readily retrievable manner, open for inspection, for a period of three years.
- (3) Upon notification of information that reasonably suggests that there is a probability a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient (see 21 NCAC 46 .2502(k) RESPONSIBILITY OF PHARMACIST-MANAGER), the pharmacist-manager shall retain all documents, labels, vial, supplies, substances and internal investigative reports relating to the event. All such items shall be maintained by the health care facility, accessible to the pharmacist-manager, and open to the Board of Pharmacy.
 - (4) The pharmacist-manager shall maintain records of ordering, receiving, dispensing or transfer of controlled substances. These records shall include, but are not limited to the following:
 - (A) Invoices or other such documents verifying the ordering and receipt of controlled substances;
 - (B) Perpetual inventories of controlled substances transferred to patient care units and other sites as allowed by this Rule (i.e., automated dispensing devices, emergency kits, etc.). These inventories shall record the transfer date; location transferred to; the identity of the drug; strength, dosage form, and quantity transferred; transferring pharmacist's name;
 - (C) Disposition records required by Paragraph (f)(4) of this Rule;
 - (D) A record of controlled substances dispensed directly to the patient to include the patient's name; date dispensed; dispensing pharmacist's name; name, strength, dosage form, and quantity of the drug dispensed. The records shall also document drugs returned and credited; and
 - (E) A perpetual inventory shall be maintained on all controlled substances awaiting destruction or return to a vendor.
 - (5) Automated systems may be used to collect and store information required by Subparagraph (j)(4) of this Rule provided such system allows for the immediate retrieval (via CRT display and hard-copy printout) of original medication order information and dispensing history consistent with criteria cited in 21 CFR .1306.
 - (6) With the exception of Subparagraph (j)(1) of this Rule, all records required by this Section shall be maintained for a period of three years. Such records shall be archived in a uniform

manner, retrievable to the pharmacy within 48 hours, and open for review, copying, or seizure by a member or designated employee of the Board.

History Note: Authority G.S. 90-85.6; 90-85.21; 90-85.32; 90-85.33; 90-85.34;
Eff. May 1, 1997;
Amended Eff. February 1, 2005; April 1, 2003; April 1, 1999;
August 1, 1998.

21 NCAC 46 .1602 LICENSE BY RECIPROCITY

- (a) An applicant for licensure without examination, must have:
- (1) Originally been licensed as a pharmacist by an examination equivalent to the North Carolina examination specified in Rule .1505(a)(1) of this Chapter;
 - (2) Achieved scores on an equivalent examination, such as the NABPLEX examination, which would qualify for licensure in this state at the time of examination; and
 - (3) Been licensed by a state which deems licensees from this state to be equivalent to the extent that they are suitable for licensure in that state without further substantial examination.
- (b) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of application.
- (c) The Board shall require an applicant for licensure without examination who has not practiced pharmacy within the previous five years to obtain additional practical experience and continuing education.
- (d) The Board shall also restrict licenses granted pursuant to this Rule for such period of time as the Board deems necessary to assure that the applicant can safely and properly practice pharmacy.

History Note: Authority G.S. 90-85.6; 90-85.20;
Eff. April 1, 1983;
Amended Eff. July 1, 2005; March 1, 2004; April 1, 2003;
July 1, 1996; May 1, 1989.

21 NCAC 46 .1612 REINSTATEMENT OF LICENSES AND PERMITS

- (a) All licenses renewed after March 1 are subject to the maximum original fee set out in G.S. 90-85.24 for applicants for licensure. All permits renewed after March 1 are subject to the original registration fee.
- (b) All applicants shall submit to the Board a signed release form, completed Fingerprint Record Card, and such other form(s) required to perform a criminal history check at the time of application.
- (c) The Board shall require applicants for reinstatement pursuant to G.S. 90-85.19 to obtain additional practical experience and continuing education.

(d) The Board shall also restrict licenses reinstated pursuant to G.S. 90-85.19 for such period of time as the Board deems necessary to assure that the applicant can safely and properly practice pharmacy.

History Note: Authority G.S. 90-85.19; 90-85.24;
Eff. April 1, 1999;
Amended Eff. July 1, 2005.

21 NCAC 46 .2502 RESPONSIBILITIES OF PHARMACIST-MANAGER

- (a) The pharmacist-manager shall assure that prescription legend drugs and controlled substances are safe and secure within the pharmacy.
- (b) The pharmacist-manager employed or otherwise engaged to supply pharmaceutical services may have a flexible schedule of attendance but shall be present for at least one-half the hours the pharmacy is open or 32 hours a week, whichever is less.
- (c) Whenever a change of ownership or change of pharmacist-manager occurs, the successor pharmacist-manager shall complete an inventory of all controlled substances in the pharmacy within 10 days. A written record of such inventory, signed and dated by the successor pharmacist-manager, shall be maintained in the pharmacy with other controlled substances records for a period of three years.
- (d) The pharmacist-manager shall develop and implement a system of inventory record-keeping and control which will enable that pharmacist-manager to detect any shortage or discrepancy in the inventories of controlled substances at that pharmacy at the earliest practicable time.
- (e) The pharmacist-manager shall maintain complete authority and control over any and all keys to the pharmacy and shall be responsible for the ultimate security of the pharmacy. A pharmacy shall be secured to prohibit unauthorized entry if no pharmacist will be present in the pharmacy for a period of 90 minutes or more.
- (f) These duties are in addition to the specific duties of pharmacist-managers at institutional pharmacies and pharmacies in health departments as set forth in the Rules in this Chapter.
- (g) A person shall not serve as pharmacist-manager at more than one pharmacy at any one time except for limited service pharmacies.
- (h) When a pharmacy is to be closed permanently, the pharmacist-manager shall inform the Board and the United States Drug Enforcement Administration of the closing, arrange for the proper disposition of the pharmaceuticals and return the pharmacy permit to the Board's offices within 10 days of the closing date. If possible, notice of the closing shall be given to the public by posted notice at the pharmacy at least 30 days prior to the closing date and 15 days after the closing date. Such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice during the 30 day period prior to the closing date. During the 30 day period prior to the closing date, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request. Absent specific instructions from the patient or customer, the

pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy for maintenance of patient therapy and shall inform the public of such transfer by posted notice at the pharmacy for 15 days after the closing date, if possible. Controlled substance records shall be retained for the period of time required by law.

(i) If possible, the pharmacist-manager shall ensure that notice of the temporary closing of any pharmacy for more than 14 consecutive days is given to the public by posted notice at the pharmacy at least 30 days prior to the closing date, and 15 days after the closing date. Such notice shall notify the public that prescription files may be transferred to a pharmacy of the patient's or customer's choice during the 30 day period prior to the closing date. During the 30 day period prior to the closing date, the pharmacist-manager, and the pharmacy's owner (if the owner is other than the pharmacist-manager), shall transfer prescription files to another pharmacy chosen by the patient or customer, upon request.

(j) The pharmacist-manager shall prepare a plan to safeguard prescription records and pharmaceuticals in the event of a natural disaster such as hurricane or flood.

(k) The pharmacist-manager shall separate from the dispensing stock all drug products more than six months out of date.

(l) The pharmacist-manager shall report to the Board of Pharmacy information that reasonably suggests that there is a probability that a prescription drug or device dispensed from a location holding a permit has caused or contributed to the death of a patient or customer. This report shall be filed in writing on a form provided by the Board within 14 days of the owner representative or pharmacist-manager's becoming aware of the event. The pharmacist-manager shall retain all documents, labels, vials, supplies, substances and internal investigative reports relating to the event. All such items shall be made available to the Board upon request.

(m) The Board shall not disclose the identity of a pharmacist-manager who makes a report under Paragraph (l) of this Rule, except as required by law. All reports made under Paragraph (l) of this Rule shall not be released except as required by law.

(n) Dispensing errors which are not detected and corrected prior to the patient receiving the medication shall be documented and reported to the pharmacist-manager. Documentation shall include pertinent chronological information and appropriate forms including the identity of individual(s) responsible. These documents, including action taken as part of a quality assurance plan, shall be archived in a readily retrievable manner and open for review, copying or seizure by the Board or its designated employees within 48 hours of a request for inspection for a period of three years. These documents shall be released only to the Board or its designated employees pursuant to an investigation and shall not otherwise be released except as required by law. Upon request by the Board or its designated employees, these documents shall be transmitted by the pharmacist-manager to an office of the Board.

(o) In any Board proceeding, the Board shall consider compliance with Paragraphs (l) and (n) of this Rule as a

mitigating factor and noncompliance with Paragraphs (l) and (n) of this Rule as an aggravating factor.

(p) The pharmacist-manager shall ensure that all starter doses of medication supplied to doctors' offices from the pharmacy are accompanied by written materials advising the patient that such doses of medication may be supplied by any pharmacy. Starter doses shall be limited to a 24 hour dose supply per patient.

History Note: Authority G.S. 90-85.6; 90-85.21; 90-85.25; 90-85.26; 90-85.32;

Eff. May 1, 1989;

Amended Eff. February 1, 2005; August 1, 2002;

December 1, 2001; April 1, 2001; April 1, 1999; July 1, 1996;

March 1, 1992; October 1, 1990.

21 NCAC 46 .2702 DEFINITIONS

For purposes of these Rules, the following terms are defined as follows:

- (1) **Authentication of Product History.** Identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical or other radioactive drug.
- (2) **Nuclear Pharmacy.** A pharmacy holding a permit issued by the North Carolina Board of Pharmacy and licenses issued by the Nuclear Regulatory Commission (NRC) and other state regulatory agencies, where prescriptions for radiopharmaceutical products are filled, compounded, or dispensed.
- (3) **Nuclear Pharmacy Practice.** A patient-oriented service that embodies the scientific knowledge and professional judgment required to improve and promote health through the assurance of the safe and efficacious use of radiopharmaceuticals.
- (4) **Nuclear Pharmacy Technician.** Any person involved in the dispensing of a radiopharmaceutical, not satisfying the definition of Qualified Licensed Professional; any such person must be registered as a Pharmacy Technician with the State Board of Pharmacy.
- (5) **Qualified Licensed Professional.** A non-pharmacist possessing a valid license issued by the North Carolina Medical Board, the North Carolina Board of Nursing, the North Carolina Dental Board or the North Carolina Board of Veterinary Medicine, and who has sufficient training and experience to safely handle and dispense radiopharmaceuticals as defined by the respective requirements of the regulations of the NRC or the state nuclear regulatory agencies.
- (6) **Qualified Nuclear Pharmacist.** A pharmacist currently licensed by the Board who meets the following standards:

- (a) Certification as a nuclear pharmacist by the "Board of Pharmaceutical Specialties"; or
- (b) Meets minimum standards of training for "authorized user status" of radioactive material in accordance with the licensure guide of the United States Nuclear Regulatory Commission or the appropriate state nuclear regulatory agencies as follows:
 - (i) Has received a minimum of 200 contact hours of instruction in nuclear pharmacy and the safe handling and use of radioactive materials from an approved college of pharmacy, including instruction in the following areas: radiation physics and instrumentation; radiation protection; mathematics of radioactivity; radiation biology; and radiopharmaceutical chemistry; and
 - (ii) Has a minimum of 500 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist.
- (7) Radiopharmaceutical Quality Assurance. The performance of appropriate chemical, biological and physical tests on potential radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history and the keeping of proper records.
- (8) Radiopharmaceuticals. Radioactive drugs shall include any article that exhibits spontaneous decay or disintegration of an unstable atomic nucleus, usually accompanied by the emission of ionizing radiation and any nonradioactive reagent kit or nuclide generator that is intended for use in the preparation of any such article.
- (9) Radiopharmaceutical Service. The procurement, storage, handling, preparation, labeling, quality assurance testing, dispensing, delivery, record-keeping and disposal of radiopharmaceuticals and other radioactive materials.
- (10) Test Assessment. Conducting quality assurance evaluation necessary to ensure the integrity of the test.

History Note: Authority G.S. 90-85.6; 90-85.34; Eff. October 1, 1990; Amended Eff. February 1, 2005.

21 NCAC 46 .2703 OBTAINING A NUCLEAR PHARMACY PERMIT

In order to obtain a nuclear pharmacy permit, the person seeking such a permit shall submit an application to the Board certifying that he or she is a pharmacist currently licensed by the Board and that he or she is a qualified nuclear pharmacist as defined in Rule .2702 of this Section. The application shall describe the location, time and manner by which the contact hours required by Rule .2702(6) of this Section were obtained by the applicant and shall be submitted under oath.

History Note: Authority G.S. 90-85.6; 90-85.34; Eff. October 1, 1990; Amended Eff. February 1, 2005.

21 NCAC 46 .2704 REQ FOR PHARMACIES PROVIDING RADIOPHARMACEUTICAL SERVICES

- (a) The permit to operate a pharmacy providing radiopharmaceutical services shall be issued by the Board only to a qualified nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radiopharmaceuticals shall be under the direct supervision of a qualified nuclear pharmacist. A qualified nuclear pharmacist shall be responsible for all operations of the pharmacy related to radiopharmaceutical services and shall be in personal attendance at all times that the pharmacy renders radiopharmaceutical services.
- (b) In emergency situations, and in the absence of a qualified nuclear pharmacist, designated qualified licensed professionals as identified by the pharmacist-manager in established written policies and procedures may have access to the area designated as the nuclear pharmacy area, and these individuals may prepare single doses of radiopharmaceuticals for the immediate emergency only and must document such activities.
- (c) The nuclear pharmacy area shall be secured from entry by unauthorized personnel as identified by the pharmacist-manager in established written policies and procedures.
- (d) Nuclear pharmacies shall maintain records of acquisition, inventory and disposition of all radiopharmaceuticals in accordance with Section .2300 of this Chapter and the applicable regulations of the North Carolina Division of Radiation Protection.
- (e) All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area that provides sufficient protection from radioactivity of all areas surrounding the nuclear pharmacy area. Floor plans shall be submitted and approved by the Board staff before a nuclear pharmacy permit is issued.
- (f) Radiopharmaceuticals are to be dispensed only upon a prescription or medication order from a licensed medical practitioner authorized to possess, use and administer radiopharmaceuticals.
- (g) The library of a nuclear pharmacy shall contain, in addition to the volumes required by Rule .1601(a)(3) of this Chapter,

copies of current state and federal regulations governing the safe storage, handling, use, dispensing, transport, and disposal of radiopharmaceuticals.

(h) All pharmacies performing Radiopharmaceutical Services shall have in effect a procedures manual setting forth the procedures and policies of the pharmacy regarding Radiopharmaceutical Quality Assurance. This manual shall at all times be readily available for review by Board personnel.

(i) Permit holders must obtain licensure from the North Carolina Division of Radiation Protection and the number of that license. Copies of the Division's inspection report shall be made available upon request for inspection by Board personnel.

*History Note: Authority G.S. 90-85.6; 90-85.34;
Eff. October 1, 1990;
Amended Eff. February 1, 2005.*

21 NCAC 46 .3301 REGISTRATION

(a) Following initial registration with the Board, registration of a pharmacy technician shall be renewed annually and shall expire on December 31. It shall be unlawful to work as a pharmacy technician more than 60 days after expiration of the registration without renewing the registration. A registration expired more than 60 days may be renewed upon written request and upon payment of the registration fee and a data processing fee of eleven dollars (\$11.00).

(b) The current registration of a pharmacy technician shall be readily available for inspection by agents of the Board.

(c) The training program described in G.S. 90-85.15A(b) is not required for students enrolled in a community college pharmacy technician program.

(d) Volunteer pharmacy technicians providing services at a facility which has a pharmacy permit designated as a free clinic shall complete the training program described in G.S. 90-85.15A(b) but need not register with the Board.

*History Note: Authority G.S. 90-85.6; 90-85.15A;
150B-19(5)(e);
Eff. April 1, 2003;
Amended Eff. February 1, 2005.*

21 NCAC 46 .3401 DEFINITIONS

For purposes of these Rules, the following terms are defined as follows:

- (1) "Automated medication system" means a robotic, mechanical or computerized device that is not used for medication compounding and is designed to:
 - (a) Distribute medications in a licensed health care facility that holds a pharmacy permit; or
 - (b) Package medications for final distribution by a pharmacist.
- (2) "Centralized automated medication system" means an automated medication system located in a pharmacy department from which medication is distributed or packaged for final distribution by a pharmacist.

- (3) "Decentralized automated medication system" means automated medication systems that are located outside of a pharmacy department but within the same institution.
- (4) "Distribution" means the process of providing a drug to an individual authorized to administer medications and licensed as a health care provider in the state of North Carolina pursuant to an order issued by an authorized prescriber.
- (5) "Medication" means a medicinal drug or proprietary preparation.
- (6) "High risk override medication" means a single dose of medication that may be removed from a decentralized automated medication system prior to pharmacist review because the Multidisciplinary Committee has determined that the clinical status of the patient would be compromised by delay.
- (7) "Low risk override medication" is a medication determined by the Multidisciplinary Committee to have a low risk of drug allergy, drug interaction, dosing error, or adverse patient outcome, and may be removed from a decentralized automated medication system independent of a pharmacist's review of the medication order or clinical status of the patient.
- (8) "Physician controlled medication" is a medication ordered, prepared or administered by a physician.

*History Note: Authority G.S. 90-85.6; 90-85.32; 90-85.33;
Eff. April 1, 1999;
Amended Eff. February 1, 2005; August 1, 2002;
Recodified from 21 NCAC 46 .1814 Eff. February 1, 2005.*

21 NCAC 46 .3402 GENERAL REQUIREMENTS FOR THE USE OF AUTOMATED MEDICATION SYSTEMS

General Requirements for the Use of Automated Medication Systems include the following:

- (1) The consultant pharmacist of record or pharmacist-manager shall be responsible for:
 - (a) Maintaining a record of each transaction or operation;
 - (b) Controlling access to the system;
 - (c) Maintaining policies and procedures for:
 - (i) Operating of the automated medication system;
 - (ii) Training personnel who use the automated medication system;
 - (iii) Maintaining patient services whenever the automated medication system is not operating; and

- (iv) Defining a procedure for a pharmacist to grant access to the medication in the system or to deny access to the medication in the system.
- (d) Security of the system;
- (e) Assuring that a patient receives the pharmacy services necessary for good pharmaceutical care in a timely manner;
- (f) Assuring that the system maintains the integrity of the information in the system and protects patient confidentiality;
- (g) Establishing a comprehensive Quality Assurance program;
- (h) Establishing a procedure for stocking or restocking the automated medication system; and
- (i) Insuring compliance with all requirements for packaging and labeling.
- (2) A pharmacist shall perform prospective drug use review and approve each medication order prior to administration of a medication except a high risk override medication, a low risk override medication or a physician controlled medication.
- (3) A pharmacist shall perform retrospective drug use review for a high risk override medication and a low risk override medication.

History Note: Authority G.S. 90-85.6; 90-85.32; 90-85.33; Eff. February 1, 2005.

21 NCAC 46 .3403 MULTIDISCIPLINARY COMMITTEE FOR DECENTRALIZED AUTOMATED MEDICATION SYSTEMS

- (a) The consultant pharmacist of record or pharmacist-manager shall convene or identify a multidisciplinary committee, which is charged with oversight of the decentralized automated medication system.
- (b) The Multidisciplinary Committee shall:
 - (1) Include at least one pharmacist;
 - (2) Establish the criteria and process for determining which medication qualifies as a high risk override medication or a low risk override medication in a decentralized automated medication system; and
 - (3) Develop policies and procedures regarding the decentralized automated medication system.

History Note: Authority G.S. 90-85.6; 90-85.32; 90-85.33; Eff. February 1, 2005.

21 NCAC 46 .3404 STOCKING OR RESTOCKING OF AN AUTOMATED MEDICATION SYSTEM

- (a) Medications in an Automated Medication System shall be stocked or restocked by a pharmacist or by a pharmacy technician supervised by a pharmacist as satisfied by Paragraph (d)(2) of this Rule.
- (b) The stocking or restocking of an automated medication system shall follow one of the following procedures to ensure correct medication selection:
 - (1) A pharmacist shall conduct and document a daily audit of medications placed or to be placed into an automated medication system that may include random sampling.
 - (2) A bar code verification, electronic verification, or similar verification process shall be utilized to assure correct selection of medication placed or to be placed into an automated medication system. The utilization of a bar code, electronic, or similar verification technology shall require an initial quality assurance validation, followed by a quarterly quality assurance review by a pharmacist.
- (c) The pharmacist performing the quality assurance review shall maintain a record of the quality assurance process that occurred and the pharmacist approval of the medication stocking, restocking or verification process.
- (d) Medication Reuse. Medication that has been removed from the automated medication system shall not be replaced into the system unless:
 - (1) a pharmacist has examined the medication, the packaging, and the labeling and determined that reuse of the medication is appropriate; or
 - (2) specific medications, such as multi-dose vials, have been exempted by the Multidisciplinary Committee.

History Note: Authority G.S. 90-85.6; 90-85.32; 90-85.33; Eff. February 1, 2005.

21 NCAC 46 .3405 CENTRALIZED AUTOMATED MEDICATION SYSTEMS

- A pharmacist utilizing a centralized automated medication system may distribute patient specific medications within the licensed health care facility without checking each individual medication selected or packaged by the system, if:
 - (1) The initial medication order has been reviewed and approved by a pharmacist; and
 - (2) The medication is distributed for subsequent administration by a health care professional permitted by North Carolina law to administer medication.

History Note: Authority G.S. 90-85.6; 90-85.32; 90-85.33; Eff. February 1, 2005.

21 NCAC 46 .3406 QUALITY ASSURANCE PROGRAM

- The consultant pharmacist of record or pharmacist-manager shall be responsible for establishing a quality assurance program for

the automated medication system. The program shall provide for:

- (1) Review of high risk override medication and low risk override medication utilization;
- (2) Investigation of a medication error related to the automated medication system;
- (3) Review of a discrepancy or transaction reports and identification of patterns of inappropriate use or access;
- (4) Review of the operation of the system;
- (5) Integration of the automated medication system quality assurance program with the overall continuous quality improvement program of the pharmacy; and
- (6) Assurance that individuals working with the automated medication system receive appropriate training on operation of the system and procedures for maintaining pharmacy services when the system is not in operation.

History Note: Authority G.S. 90-85.6; 90-85.32; 90-85.33; Eff. February 1, 2005.

21 NCAC 46 .3407 RECORD KEEPING

- (a) The consultant pharmacist of record or pharmacist-manager shall maintain records related to the automated medication system for the system in a readily retrievable manner.
- (b) The following records shall be maintained for at least three years.

- (1) Daily audits of stocking or restocking, if applicable;
- (2) Daily audits of the output of a centralized automated medication system, if applicable; and
- (3) Transaction records for all non-controlled medications or devices distributed by the automated medication system.

(c) The following records shall be maintained for at least three years:

- (1) Any report or analysis generated as part of the quality assurance program;
- (2) A report or database related to access to the system or any change in the access to the system or access to medication in the system; and
- (3) Transaction records from the automated medication system for all controlled substances dispensed or distributed.

History Note: Authority G.S. 90-85.6; 90-85.32; 90-85.33; Eff. February 1, 2005.

21 NCAC 46 .3408 COMPLIANCE

The consultant pharmacist of record or pharmacist-manager shall assure compliance with all requirements of the Pharmacy Practice Act and Board rules.

History Note: Authority G.S. 90-85.6; 90-85.32; 90-85.33; Eff. February 1, 2005.

This Section contains information for the upcoming meeting of the Rules Review Commission on Thursday March 17, 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, March 14, 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

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

**RULES REVIEW COMMISSION
FEBRUARY 17, 2005
MINUTES**

The Rules Review Commission met on Thursday, February 17, 2005, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Graham Bell, 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:

Julia Lohman	Sheriffs' Education & Training Standards Comm.
Isaiah Green, Jr.	Equal Treatment Now/NC
John Hoomani	Department of Labor
Souk Rios	NC Cosmetic Art Examiners
Stefanie Shore	NC Cosmetic Art Examiners
Reed Fountain	Plumbing, Heating & Fire Sprinkler Contractors Board
Thomas Allen	DENR/DAQ
Dana Sholes	Office of Administrative Hearings
Julie Brincefield	Office of Administrative Hearings
Camille Winston	Office of Administrative Hearings
Julian Mann	Office of Administrative Hearings
Sharon Howard	Office State Personnel
Peggy Oliver	Office State Personnel
Drake Maynard	Office State Personnel
Joal Broun	Secretary of State

APPROVAL OF MINUTES

The meeting was called to order at 10:07 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.

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the January 19, 2005 meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

13 NCAC 7F .0606: Department of Labor – The Commission approved the rewritten rule submitted by the agency with Commissioners Bell, Hilliard and Settle opposed. Ms. Hayman voted to approve the rule. Commissioners Gray and Saunders did not vote or participate in discussion. At least ten letters requesting legislative review were also received.

15A NCAC 2Q .0102: Environmental Management Commission – This rule was sent to the Office of State Budget and Management for determination of whether the rule has a substantial economic impact at the request of William Arent of the Carolinas Ready Mixed Concrete Association back in November. The Office of State Budget and Management found that this rule does not have a substantial economic impact. This rule was approved by the commission. At least ten letters requesting legislative review were also received.

LOG OF FILINGS

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

25 NCAC 1D .1924: State Personnel Commission – The Commission objected to the rule due to ambiguity. It is not clear what the agency is trying to say in paragraph (b). Paragraph (a) requires compliance with the FLSA. Since “special provisions,” must not conflict with the FLSA, it is not clear what this paragraph is intended to add. If this is intended to be some other type waiver provision, it is not clear what rules this applies to nor what the specific guidelines are for granting the waiver.

25 NCAC 1J .0615: State Personnel Commission – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (a), it is not clear when the State Personnel Director will approve the extension of an investigatory placement. This amounts to a waiver or modification provision without specific guidelines in violation of G.S. 150B-19(6). This objection applies to existing language in the rule.

25 NCAC 1J .1408: State Personnel Commission - The Commission objected to the rule due to ambiguity. In (b), it is not clear what constitutes “an unexcused failure to attend mediation” or who has the authority to excuse the failure.

25 NCAC 1J .1409: State Personnel Commission - The Commission objected to the rule due to ambiguity. In (a)(6), it is not clear what is meant by “as needed based on proportional requirements of the agency”. In (b), it is not clear what constitutes “an unexcused failure to attend mediation” or who has the authority to excuse the failure.

25 NCAC 1J .1410: State Personnel Commission - The Commission objected to the rule due to lack of statutory authority and ambiguity. In (b), there is no authority cited for the office of State Personnel to develop policies and procedures (adopt rules). The State Personnel Commission is the agency given rulemaking authority, and there is not authority cited for the Commission to delegate that authority. In (c), it is not clear what the qualifications are for mediators outside state government. In (d), there is no authority cited for OSP to adopt rules setting mediator training requirements. SPC is the rulemaking agency. In (e), there is no authority cited for OSP to adopt rules setting a Mediator Code of Conduct.

25 NCAC 1K .0104: State Personnel Commission – The Commission objected to the rule due to ambiguity. In (4), it is not clear what is meant by “culturally disadvantaged employees”. This objection applies to existing language in the rule.

25 NCAC 1K .0212: State Personnel Commission - The Commission objected to the rule due to ambiguity. It is not clear what the room fees are. Establishing fees is specifically in the definition of “Rule” in the APA.

25 NCAC 1O .0206: State Personnel Commission – The Commission objected to the rule due to ambiguity. In (b)(5), it is not clear what other information will be requested by the Office of State Personnel on annual reports.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca provided a draft of rules concerning how the Commission should handle letters regarding certain rules that have been or may be filed with the Rules Review Commission. The Commission reviewed the draft and asked Mr. DeLuca to work on them further before they take action. The Commission also asked Mr. DeLuca to draft a form letter that would accompany any return of those letters.

The meeting adjourned at 11:30 a.m.

The next meeting of the Commission is Thursday, March 17, 2005 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

**LIST OF APPROVED PERMANENT RULES
February 17, 2005 Meeting**

COMMERCE, DEPARTMENT OF

<u>Manufacturing Wage Test</u>	04	NCAC	01E	.0303
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SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

<u>Suspension: Revocation: or Denial of Certification</u>	12	NCAC	10B	.0204
<u>Period of Suspension: Revocation: or Denial</u>	12	NCAC	10B	.0205
<u>Summary Suspensions: or Denials</u>	12	NCAC	10B	.0206
<u>Sheriff Responsibilities</u>	12	NCAC	10B	.1701
<u>Instructors</u>	12	NCAC	10B	.1702
<u>Minimum Training Requirements</u>	12	NCAC	10B	.1703
<u>Domestic Violence In-Service Training Program Specifications</u>	12	NCAC	10B	.1704
<u>Failure to Complete in-Service Domestic Violence Training...</u>	12	NCAC	10B	.1705
<u>Topical Areas</u>	12	NCAC	10B	.2002

LABOR, DEPARTMENT OF

<u>Non-Ionizing Radiation</u>	13	NCAC	07F	.0606
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ENVIRONMENTAL MANAGEMENT COMMISSION

<u>Activities Exempted from Permit Requirements</u>	15A	NCAC	02Q	.0102
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EDUCATION, BOARD OF

<u>Purchasing Flexibility Exemption</u>	16	NCAC	06B	.0108
<u>Definitions</u>	16	NCAC	06D	.0501
<u>State Graduation Requirements</u>	16	NCAC	06D	.0503
<u>Local Accountability Procedures</u>	16	NCAC	06D	.0505
<u>Students with Disabilities</u>	16	NCAC	06D	.0506
<u>Students with Limited English Proficiency</u>	16	NCAC	06D	.0507
<u>Annual Performance Standards, Grades K-12</u>	16	NCAC	06G	.0305
<u>Annual Performance Standards</u>	16	NCAC	06G	.0312
<u>Alternative Schools</u>	16	NCAC	06G	.0313
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GENERAL CONTRACTORS, LICENSING BOARD FOR

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<u>Application for Payment</u>	21	NCAC	12	.0903

PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS FOR

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<u>Heating: Group 3 License Required</u>	21	NCAC	50	.0508
<u>Limited Fire Sprinkler Inspection</u>	21	NCAC	50	.0513
<u>Limited Fire Sprinkler Inspection Contractor License</u>	21	NCAC	50	.0514
<u>Limited Fire Sprinkler Maintenance Technician License</u>	21	NCAC	50	.0515
<u>Examination Fees</u>	21	NCAC	50	.1101
<u>License Fees</u>	21	NCAC	50	.1102

STATE PERSONNEL COMMISSION

<u>Reduction in Force</u>	25	NCAC	01C	.1004
<u>Overtime Compensation</u>	25	NCAC	01D	.1925
<u>Compensation-Non-exempt</u>	25	NCAC	01D	.1928
<u>Hourly Rate of Pay</u>	25	NCAC	01D	.1929
<u>Non-Overtime Workweeks</u>	25	NCAC	01D	.1930
<u>Hours Worked</u>	25	NCAC	01D	.1932
<u>Unauthorized Work</u>	25	NCAC	01D	.1933
<u>On Call</u>	25	NCAC	01D	.1934
<u>Meal Period</u>	25	NCAC	01D	.1936
<u>Training Time</u>	25	NCAC	01D	.1938
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<u>Recordkeeping</u>	25	NCAC	01D	.1940
<u>Executive Administrative and Professional Employees</u>	25	NCAC	01D	.1941
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<u>Special Provisions</u>	25	NCAC	01D	.1945
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<u>Volunteers</u>	25	NCAC	01D	.1950
<u>Overtime Compensation Prohibited: Exempt Employees</u>	25	NCAC	01D	.1951
<u>Amount of Career Growth Recognition Award</u>	25	NCAC	01D	.2502
<u>Employees Eligible for Performance Bonus</u>	25	NCAC	01D	.2511
<u>General Provisions</u>	25	NCAC	01J	.0501
<u>Agency Responsibilities</u>	25	NCAC	01J	.0502
<u>Minimum Procedural Requirements</u>	25	NCAC	01J	.0503
<u>Alternative Dispute Resolution</u>	25	NCAC	01J	.0504
<u>Minimum Procedural Requirements-Alternative Dispute Resolution</u>	25	NCAC	01J	.0505
<u>Discrimination</u>	25	NCAC	01J	.0506
<u>Leave In Connection with Grievances</u>	25	NCAC	01J	.0507
<u>SPC Approval of ADR Agreement</u>	25	NCAC	01J	.0508
<u>Agency Grievance Reports</u>	25	NCAC	01J	.0509
<u>Final Agency Action</u>	25	NCAC	01J	.0510
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<u>General Provisions</u>	25	NCAC	01J	.1201
<u>Agency Responsibilities</u>	25	NCAC	01J	.1202
<u>Agency Grievance Reports</u>	25	NCAC	01J	.1203
<u>Discrimination and Retaliation/Special Provisions</u>	25	NCAC	01J	.1204
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<u>Time Limits</u>	25	NCAC	01J	.1206
<u>Final Agency Action</u>	25	NCAC	01J	.1207
<u>Leave In Connection with Grievances</u>	25	NCAC	01J	.1208
<u>Minimum Procedural Requirements</u>	25	NCAC	01J	.1301
<u>Minimum Procedural Requirements</u>	25	NCAC	01J	.1401
<u>Flexibility</u>	25	NCAC	01J	.1402
<u>Informal Meeting with Supervisor</u>	25	NCAC	01J	.1403
<u>Mediation Procedure</u>	25	NCAC	01J	.1404
<u>Conclusion of Mediation</u>	25	NCAC	01J	.1405
<u>Limitations on a Mediation Agreement</u>	25	NCAC	01J	.1406
<u>Post Mediation</u>	25	NCAC	01J	.1407
<u>Agency Procedural Requirements for Employee Mediation and...</u>	25	NCAC	01J	.1411
<u>Office of State Personnel Responsibilities for Employee m...</u>	25	NCAC	01J	.1412
<u>Centers of Responsibility</u>	25	NCAC	01K	.0105
<u>Cost of Training</u>	25	NCAC	01K	.0106
<u>Office of State Personnel Human Resource Development</u>	25	NCAC	01K	.0209
<u>Office of State Personnel Human Resource Development Grou...</u>	25	NCAC	01K	.0210
<u>Programs</u>	25	NCAC	01K	.0211
<u>Location and Hours of Operation</u>	25	NCAC	01K	.0214
<u>Determination of Need for Training</u>	25	NCAC	01K	.0402
<u>Selection of Non-Government Sources</u>	25	NCAC	01K	.0403
<u>Procedure for Approval of Non-State Sources</u>	25	NCAC	01K	.0404
<u>NC Certified Public Manager Program</u>	25	NCAC	01K	.0701
<u>NC Certified Public Manager Program Purpose</u>	25	NCAC	01K	.0702
<u>NC Certified Public Manager Program Accreditation</u>	25	NCAC	01K	.0703
<u>NC Certified Public Manager Program Participation</u>	25	NCAC	01K	.0705
<u>Certificate of Completion of NC Certified Public Manager ...</u>	25	NCAC	01K	.0706
<u>Funding for NC Certified Public Manager Program</u>	25	NCAC	01K	.0708
<u>Policy</u>	25	NCAC	01O	.0101
<u>Performance Management Process</u>	25	NCAC	01O	.0201
<u>Components of an Operative System</u>	25	NCAC	01O	.0202
<u>Relationship/Performance Management and Other Human Resou...</u>	25	NCAC	01O	.0203
<u>Responsibilities of the State Personnel Commission</u>	25	NCAC	01O	.0204
<u>Responsibilities of the Office of State Personnel</u>	25	NCAC	01O	.0205
<u>In General</u>	25	NCAC	01O	.0301
<u>Benefits</u>	25	NCAC	01O	.0302
<u>The Performance Management Process</u>	25	NCAC	01O	.0303
<u>Components of an Operative System</u>	25	NCAC	01O	.0304

AGENDA
RULES REVIEW COMMISSION
March 17, 2005, 10:00 A.M.

- (I) Call to Order and Opening Remarks
- (II) Review of minutes of last meeting
- (III) Follow Up Matters
 - State Personnel Commission – 25 NCAC 1D .1924 (Bryan)
 - State Personnel Commission – 25 NCAC 1J .0615; .1408; .1409; .1410 (Bryan)
 - State Personnel Commission – 25 NCAC 1K .0104; .0212 (Bryan)
 - State Personnel Commission – 25 NCAC 1O .0206 (Bryan)
- (IV) Review of Rules (Log Report #219)
- (V) Review of Temporary Rules (if any)
- (VI) Commission Business

Next meeting: April 21, 2005

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	
Jason Israel Chandler v. Dept. Crime Control & Public Safety, Victim Compensation Services	04 CPS 1368	Lassiter	01/10/05	
Regina Rose Hargrave v. Dept. Crime Control & Public Safety, Victim Compensation Services	04 CPS 1500	Lassiter	01/10/05	
Isaac Cornell Mitchell v. Victim and Justice Services	04 CPS 1529	Gray	01/13/05	
John Selden Clem v. State Highway Patrol, Trooper C.J. Owens	04 CPS 1705	Chess	11/17/04	
Ricky Nelson Allen v. Dept. Crime Control & Public Safety	04 CPS 1916	Lassiter	01/05/05	
Bennett Lee Sullivan v. Johnston County Sheriff's Dept.	04 CPS 2041	Wade	01/06/05	
Delphine Holder v. Crime Control & Public Safety, Victim Compensation Services Division	04 CPS 2135	Chess	01/05/05	
<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	

DEPARTMENT OF ADMINISTRATION

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 Medical Assistance	03 DHR 1113	Gray	10/15/04
Olufemi 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
Mooreville 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
Donna R. Gardner v. Health Care Personnel Registry, DHHS, Div of Facility Services	04 DHR 0048	Gray	09/17/04
Johnny Rouse v. DHHS, Div of Facility Services	04 DHR 0107	Wade	10/07/04
Alisa Hodges Yarborough v. DHHS, DFS	04 DHR 0176	Elkins	07/19/04
Chinedu Eucharia Akamelu v. DHHS, Division of Facility Services	04 DHR 0185	Elkins	11/23/04
LaDunna K. Brewington v. DHHS, Div of Medical Assistance	04 DHR 0192	Mann	06/09/04
Martha Williams, Kidztz Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04
Mary P. Daniels v. DHHS	04 DHR 0232	Gray	08/09/04
Terry T. Nixon v. DHHS, Division of Facility Services	04 DHR 0287	Lassiter	01/05/05
Paulette Simato v. DHHS, Div of Facility Services	04 DHR 0302	Conner	09/22/04
Eula P. Street v. DHHS, DFS	04 DHR 0332	Elkins	07/14/04
Donnell Williams v. Harnet County DSS	04 DHR 0334	Conner	06/28/04
Terry William Waddell v. Medicaid/NC Health Choice	04 DHR 0335	Mann	06/04/04
Peter Young v. DHHS	04 DHR 0372	Conner	10/08/04
Paula Una Simon v. DHHS	04 DHR 0386	Chess	09/10/04
Nathan E. Lang vs DHHS	04 DHR 0439	Conner	06/23/04
Johnny Street v. DHHS	04 DHR 0441	Wade	10/19/04
Phyllis S. Weaver v. DHHS	04 DHR 0457	Conner	07/19/04
Beverly Manago v. DHHS, Division of Facility Services	04 DHR 0473	Chess	11/30/04
Bervin D. Pearson Sr. v. DHHS, Broughton Hospital	04 DHR 0476	Morrison	09/09/04
Tracy M. Anderson v. DHHS, Div. of Facility Services	04 DHR 0501	Conner	09/14/04
Bio-Medical Applications of NC, Inc., v. DHHS, Div. of Facility Services, S CON , Section, Health Systems Management, Inc, (Lessor) and Clayton Dialysis Center., Inc. (Lessee)	04 DHR 0516	Elkins	12/17/04
Ray J. Bobbitt v. Nash County Dept. of Social Services	04 DHR 0529	Elkins	07/13/04
Connie Watt Redice v. DHHS	04 DHR 0546	Lassiter	06/29/04
Edrica Mekoyo v. DHHS, Div. of Facility Services	04 DHR 0560	Gray	09/17/04
Shirly Thaggard v. DHHS, Div. of Facility Services	04 DHR 0588	Morrison	11/05/04
Maggie E. Clinding v. DHHS, Div. of Facility Services	04 DHR 0590	Conner	11/08/04
Judith Marie Carson v. DHHS, Broughton Hospital	04 DHR 0594	Gray	10/08/04
Francho Peoples v. DHHS, Division of Medical Assistance	04 DHR 0596	Elkins	11/23/04
Emelie Kashangura v. DHHS, DFS	04 DHR 0602	Elkins	07/14/04
Rush Street Food Mart, Ghassan Dahir v. DHHS, WIC, Div. of Public Health	04 DHR 0640	Elkins	09/24/04
Zack's Food Mart, Nidal Dahir v. DHHS, WIC, Div of Public Health	04 DHR 0641	Elkins	09/24/04
Sabrina Betts v. NC Health Personnel Registry	04 DHR 0644	Lassiter	06/02/04
Velma J. Thomas, Thomas Child Care v. Div of Child Development	04 DHR 0645	Conner	12/03/04
Amy Hensley v. DHHS	04 DHR 0696	Elkins	09/01/04
Tanisha Mitchell v. DHHS, Div. of Facility Services	04 DHR 0787	Mann	06/23/04
Rudolph Lofton v. Medicaid Program	04 DHR 0788	Wade	11/23/04
Stacey Curtis v. Dorothea Dix Hospital	04 DHR 0791	Lassiter	09/01/04
Michelle Cross v. DHHS	04 DHR 0811	Morrison	11/24/04
Progressive Child Care, Inc. Drake Groves/Director v. Div of Child Development c/o Forsyth County Department of Social Services	04 DHR 0844	Mann	09/22/04
Tanya H. Dey v. Medicaid	04 DHR 0864	Elkins	11/10/04

Judy W. Dickson v. DHHS, Div. of Facility Services	04 DHR 0865	Elkins	10/11/04
Fox's Tot, Inc., Connie Fox v. DHHS	04 DHR 0881	Elkins	07/20/04
Oyetoun M Oladipo v. Health Care Personnel Registry, DHHS	04 DHR 0887	Morrison	09/23/04
Linda Brown v. DHHS, Div. of Medical Assistance	04 DHR 0919	Gray	01/19/05
K.E.C., Jr., by parent or guardian, E.D.C v. Division of Mental Health, Developmental Disabilities, and Substance Abuse Services	04 DHR 0967	Mann	12/10/04
Kids Kingdon Christian Learning Center, Inc., v. Div. of Child Development, Regulatory Services Section	04 DHR 0974	Conner	08/10/04
Winfred Keene v. Health Care Personnel Registry Section	04 DHR 0976	Lassiter	10/18/04
Sandra Elaine Patrick v. DHHS, Div of Facility Services	04 DHR 1073	Conner	10/01/04
Roger Penland, Jr v. DHHS, Division of Facility Services	04 DHR 1096	Gray	11/29/04
New Beginnings Childcare v. Div. of Child Dev. & Lee Co. DSS	04 DHR 1112	Lassiter	08/18/04
Roberta Bell v. DHHS, Div of Medical Assistance	04 DHR 1134	Wade	09/15/04
Manley Yates & Cynthis Yates, Ham Grocery, Inc. v. DHHS, WIC	04 DHR 1136	Elkins	09/14/04
Grace A. Wright v. Wake County Human Services Program Integrity – Dedi H. Bateman	04 DHR 1152	Mann	09/23/04
Michael J. Shelton, Pinnacle Homes #2 v. DHHS, Div. of Medical Asst	04 DHR 1166	Gray	09/03/04
Wade Assisted Living, Inc., T/A Laurie Edwards	04 DHR 1174	Wade	11/08/04
Charlynn Keough v. Cherokee Co. DSS, BeBe McClure	04 DHR 1225	Wade	01/24/05
S.H., by his parent/guardian D.H. v. DHHS	04 DHR 1250	Creech	11/30/04
Alicia Colon v. DHHS, Division of Facility Services	04 DHR 1280	Mann	11/16/04
Monica Dockery v. DHHS	04 DHR 1281	Wade	12/02/04
Julia Matheson v. DHHS, Div. of Facility Services	04 DHR 1301	Wade	10/19/04
Faye Rice, CEO Rice & Rice Co., Inc v. Marvin Sanders DHHS, Div of MH Dev. Disabilities	04 DHR 1303	Wade	01/24/05
Martha Abare v. DHHS, Div. of Facility Services	04 DHR 1310	Wade	11/01/04
Lakresha McIver v. Health Care Registry	04 DHR 1330	Elkins	11/10/04
Vonzella Malone v. DHHS, Division of Facility Services	04 DHR 1331	Gray	11/23/04
Renita M. Walton v. DHHS, Div of Facility Services	04 DHR 1359	Wade	10/14/04
Elizabeth D. Hedgepeth v. Dept. of Health Services	04 DHR 1364	Elkins	11/10/04
Cydra Pajiete Seegers v. DHHS, Div. of Facility Services	04 DHR 1366	Mann	11/09/04
Ghazaelle Abdel-Kader v. DHHS, WIC, Division of Public Health	04 DHR 1373	Gray	12/15/04
Adib Abdullah v. DHHS	04 DHR 1380	Gray	10/22/04
Madeleine C. Pacheco v. DHHS, Div. of Facility Services	04 DHR 1381	Wade	10/14/04
Red Sea Grocery, Weldegebril Ucheab v. DHHS	04 DHR 1453	Elkins	01/04/05
Charlenia Ferguson v. Child Care Division	04 DHR 1489	Mann	01/07/05
Kathleen Barker v. DHHS	04 DHR 1584	Gray	01/04/05
Anita Whitehurst v. MRNC	04 DHR 1620	Chess	12/08/04
Olivera Leross Langston v. Cherry Hospital	04 DHR 1802	Chess	12/09/04

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

DEPARTMENT OF JUSTICE

Larry Mitchel Batton, Jr. v. Crimianl Justice Educ. & Training Stds. Comm	03 DOJ 1067	Lassiter	06/15/04
Steve A. Matthews v. Sheriff's Educ. & Traning Stds. Comm	03 DOJ 1702	Conner	05/10/04
Cindy L. Schumacher v. Sheriff's Educ. & Traning Stds. Comm	03 DOJ 2341	Chess	12/29/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Trning Standards Commission	03 DOJ 2354	Mann	07/19/04
Tony M. Evans and Kristopher D. Harris v. Criminal Justice Educ. & Trning Standards Commission	03 DOJ 2355	Mann	07/19/04
Addie Joanne Foreman v. Private Protective Services Board	03 DOJ 2405	Elkins	08/26/04
Charles Robert Branham v. Criminal Justice Educ & Training Stds. Comm.	03 DOJ 2431	Conner	06/22/04
Robert R. Johnson, Jr. v. Sheriff's Education & Training Standards Comm.	04 DOJ 0062	Chess	08/23/04
Bernard Cotton v. DOJ	04 DOJ 0063	Chess	06/03/04
Robert Alan Kilpatrick v. Criminal Justice Educ. & Training Standards Comm	04 DOJ 0259 ²	Wade	01/10/05
Linnell Davis, Jr. v. Private Protective Services Board	04 DOJ 0299	Elkins	08/26/04
Jason Oneil Rice v. Sheriffs' Education & Training Standards Comm.	04 DOJ 0318	Mann	06/24/04
Lisa Anne Weaver v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0490	Wade	11/01/04
Guy Wesly Prevette v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0511	Chess	07/08/04
Connelly Allen Locklear v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0514	Gray	07/15/04
Creo Melvin Mciver, II v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0567	Gray	10/15/04
Roger Wayne Alvarico v. Sheriffs' Education & Training Standards Comm	04 DOJ 0636	Gray	11/29/04
Charlie Ray Hunt v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 0658	Gray	09/20/04
George Williams, Jr., v. Criminal Justice Educ. & Training Standards Comm.	04 DOJ 0688	Wade	10/29/04
John Allen Hester, Jr. v. Private Protective Services Board	04 DOJ 0707	Gray	01/14/05
Robert Dustin Bryant v. Private Protective Services Board	04 DOJ 0708	Gray	11/16/04
Joshua Adam Greene v. Sheriffs' Education & Training Standards Comm	04 DOJ 0730	Mann	10/08/04
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George Eugene White v. Sheriffs' Education & Training Standards Comm	04 DOJ 0732	Wade	10/04/04
Jerry Adrian Crawley v. Sheriffs' Education & Training Standards Comm	04 DOJ 0828	Gray	09/16/04
Maureen Cleary Williams v. Sheriffs' Education & Training Standards Comm	04 DOJ 0829	Mann	07/28/04
Tommy Dwight Hunt v. Sheriffs' Educ & Training Stds. Comm	04 DOJ 0830	Elkins	08/24/04
Michael Lee Millner v. Sheriffs' Educ & Training Stds. Comm	04 DOJ 0831	Gray	12/16/04
David R. Pacheco v. Criminal Justice Educ. & Training Standards Comm	04 DOJ 0966	Gray	11/16/04
Murphy D. Riggan v. Criminal Justice Educ & Training Standards Comm	04 DOJ 0985	Gray	11/19/04
Lance Tyree Rice v. Criminal Justice Educ. & Training Standards Comm	04 DOJ 1013	Morrison	10/29/04
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