

NORTH CAROLINA

REGISTER



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April 15, 2005

This issue contains documents officially filed through March 24, 2005.

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

NORTH CAROLINA REGISTER
 Publication Schedule for January 2005 – December 2005

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

EXPLANATION OF THE PUBLICATION SCHEDULE

This Publication Schedule is prepared by the Office of Administrative Hearings as a public service and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2C .0302 and the Rules of Civil Procedure, Rule 6.

GENERAL

The North Carolina Register shall be published twice a month and contains the following information submitted for publication by a state agency:

- (1) temporary rules;
- (2) notices of rule-making proceedings;
- (3) text of proposed rules;
- (4) text of permanent rules approved by the Rules Review Commission;
- (5) notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165;
- (6) Executive Orders of the Governor;
- (7) final decision letters from the U.S. Attorney General concerning changes in laws affecting voting in a jurisdiction subject of Section 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H;
- (8) orders of the Tax Review Board issued under G.S. 105-241.2; and
- (9) other information the Codifier of Rules determines to be helpful to the public.

COMPUTING TIME: In computing time in the schedule, the day of publication of the North Carolina Register is not included. The last day of the period so computed is included, unless it is a Saturday, Sunday, or State holiday, in which event the period runs until the preceding day which is not a Saturday, Sunday, or State holiday.

FILING DEADLINES

ISSUE DATE: The Register is published on the first and fifteen of each month if the first or fifteenth of the month is not a Saturday, Sunday, or State holiday for employees mandated by the State Personnel Commission. If the first or fifteenth of any month is a Saturday, Sunday, or a holiday for State employees, the North Carolina Register issue for that day will be published on the day of that month after the first or fifteenth that is not a Saturday, Sunday, or holiday for State employees.

LAST DAY FOR FILING: The last day for filing for any issue is 15 days before the issue date excluding Saturdays, Sundays, and holidays for State employees.

NOTICE OF TEXT

EARLIEST DATE FOR PUBLIC HEARING: The hearing date shall be at least 15 days after the date a notice of the hearing is published.

END OF REQUIRED COMMENT PERIOD: An agency shall accept comments on the text of a proposed rule for at least 60 days after the text is published or until the date of any public hearings held on the proposed rule, whichever is longer.

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

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

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

North Carolina Department of Labor
Division of Occupational Safety and Health
4 West Edenton Street
Raleigh, NC 27601

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150-B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Part 1926 promulgated as of January 5, 2005, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions concerning:

- Methylene-dianiline in Construction
(69 FR 70373, December 6, 2004)

The *Federal Register* (FR), as cited above, contains both technical and economic discussions that explain the basis for each change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
4 West Edenton Street
Raleigh, North Carolina 27601

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

A. John Hoomani, General Counsel
North Carolina Department of Labor
Legal Affairs Division
4 West Edenton Street
Raleigh, NC 27601

North Carolina Department of Labor
Division of Occupational Safety and Health
4 West Edenton Street
Raleigh, NC 27601

(919) 807-2875

NOTICE OF VERBATIM ADOPTION OF FEDERAL STANDARDS

In consideration of G.S. 150-B-21.5(c) the Occupational Safety and Health Division of the Department of Labor hereby gives notice that:

- rule changes have been submitted to update the *North Carolina Administrative Code* at 13 NCAC 07F .0501 to incorporate by reference the occupational safety and health related provisions of Title 29 of the *Code of Federal Regulations* Part 1926 promulgated as of December 14, 2004, except as specifically described, and
- the *North Carolina Administrative Code* at 13 NCAC 07A .0301 automatically includes amendments to certain parts of the *Code of Federal Regulations*, including Title 29, Part 1904—Recording and Reporting Occupational Injuries and Illnesses.

This update encompasses recent verbatim adoptions concerning:

- Fire Protection and Shipyard Employment Standards
(67 FR 55668-55708, September 14, 2004)

The *Federal Register* (FR), as cited above, contains both technical and economic discussions that explain the basis for each change.

For additional information, please contact:

Bureau of Education, Training and Technical Assistance
Occupational Safety and Health Division
North Carolina Department of Labor
4 West Edenton Street
Raleigh, North Carolina 27601

For additional information regarding North Carolina's process of adopting federal OSHA Standards verbatim, please contact:

A. John Hoomani, General Counsel
North Carolina Department of Labor
Legal Affairs Division
4 West Edenton Street
Raleigh, NC 27601

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

Notice of Rule-making Proceedings is hereby given by N.C. Building Code Council in accordance with G.S. 150B-21.5(d).

Citation to Existing Rule Affected by this Rule-Making: *North Carolina Administrative, Building, Energy Conservation, Fire Prevention, Fuel Gas, Mechanical, Plumbing, and Rehabilitation Codes.*

Authority for Rule-making: *G.S. 143-136; 143-138.*

Reason for Proposed Action: *To incorporate changes in the NC Building Codes as a result of rulemaking petitions filed with the NC Building Code Council and to incorporate changes proposed by the Council.*

Public Hearing: *June 13, 2005, 1:00PM, NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603.*

Comment Procedures: *Written comments may be sent to Barry Gupton, Secretary, NC Building Code Council, c/o NC Department of Insurance, 322 Chapanoke Road, Suite 200, Raleigh, NC 27603. Comment period expires on June 14, 2005.*

Statement of Subject Matter:

1. Request by Cyrus Dastur, Advanced Energy, to modify the Residential Code, Sections R318 and R409 related to foam plastic flamespread.

The following revised language was given to the Council for consideration during the work session on Monday, March 7, 2005:

R318.2.3 Attics and crawl spaces. Within attics and crawl spaces where entry is made only for service utilities, foam plastic shall be protected against ignition by 1 ½ inch-thick (38mm) mineral fiber insulation, ¼-inch thick (6.4mm) wood structural panels, 3/8-inch (9.5mm) particleboard, ¼-inch (6.4mm) hardboard, 3/8-inch (9.5mm) gypsum board, or corrosion-resistant steel having a base metal thickness of 0.016 inch (0.406mm).

~~Within crawl spaces, foam plastic use is governed by R409.8.2.~~

R409.8.2 Foam plastic fire safety. Foam plastic insulation may be installed inside crawl spaces without a thermal ~~cover~~ barrier or ignition barrier when the insulation product has been tested in accordance with ~~ASTM E 84 have a flame spread rating of not more than 25 and a smoke developed rating of not more than 450~~ section R318.3. Foam plastic tested in accordance with section R318.3 shall be installed according to the limitations stated in the ICC Evaluation Service National Report (ICC NER) for the product. Foam plastics that have not been tested to meet these ratings shall be protected against ignition ~~by covering them with a thermal barrier.~~ Acceptable thermal barriers include but are not limited to ~~1/2 inch cement board, metal foil sheets, metal foil tape, steel or aluminum metal sheets or other approved materials installed in such a manner that the foam is not exposed~~ per section R318.2.3.

Exception: Foam plastic insulation located in closed crawl spaces ~~used as conditioned spaces or plenums as defined in section R409.5.5 Conditioned Space or section R409.6 Plenums~~ shall be protected against ignition by an approved thermal barrier.

John Wiggins, Underwriters Laboratories, spoke to the Council regarding his opposition to removing the flame spread unless it is addressed elsewhere. Marshall Knight made a motion to grant this petition. Barry Maness seconded the motion. The motion carried.

2. Other petitions for Rulemaking. Leslie Young, NC State University Center for Universal Design, introduced a petition for rulemaking regarding the NC Rehab Pilot Code. Ms. Young requested the following statement be added in Section 1.1 of the NC Rehab Code:

All references to accessibility in the NC Rehab Code shall mean the 1999 NC Accessibility Code with 2002 and 2004 Amendments.

Butch Simmons made a motion to grant this petition. John Hitch seconded the motion. The motion carried.

3. Request by the staff of the NC Department of Insurance to adopt the following codes:

- A. 2006 NC Administrative Rules and Policies

- B. 2003 International Building Code
Chapters 1-15 (with 2006 NC Amendments)
Chapters 16-end (with 2002 NC Amendments)
- C. 2003 International Energy (with 2002 NC Amendments)
- D. 2003 International Fire Prevention Code (including 2004 IFC Supplement)
- E. 2003 International Fuel Gas Code (with 2006 NC Amendments)
- F. 2003 International Mechanical Code (with 2002 NC Amendments)
- G. 2003 International Plumbing Code (with 2002 NC Amendments)

The Initial Public Hearing was held on March 7, 2005. The Second Public Hearing is scheduled for June 13, 2005. A Third Public Hearings is tentatively scheduled for July 2005 with Final Adoption anticipated on September 13, 2005.

Barry Gupton, NCDOI, spoke to the Council regarding this item. Mr. Gupton stated that the intent of these code adoptions is to also include any modifications made by the current ad hoc committees. Marshall Knight made a motion to Grant the Petition for the adoption of the codes. Butch Simmons seconded the motion. The motion carried (December 2004). The 2006 NC Administrative Rules and Policies is a reorganization and rewrite of the 2002 NC Administration and Enforcement Requirements Code. The 2003 IBC, Chapters 1-15 and the 2003 IFGC Ad Hoc Committees have completed their reviews for the 2006 NC Amendments. The 2006 NC Amendment documents for the 2003 IBC, Chapters 1-15 and the 2003 IFGC will be available online at the following site on or before May 16, 2005: www.ncbuildingcodes.com (click on NC State Building Codes)

4. Request by Patrick Granson to modify the 2002 NC Building Code as follows:

308.5.2 Child care facility. A facility that provides supervision and personal care on less than a 24-hour basis for more than five children 2 ½ years of age or less and when the rooms where such children are cared for are located on the level of exit discharge shall be classified as Group I-4. For children older than 2 ½ years of age shall comply with 1007.6 North Carolina State Building Code.

Patrick Granson with Mecklenburg County Code Enforcement spoke to the council on behalf of this item. Al Bass made a motion to grant the petition. Alan Perdue seconded the motion. The motion carried (December 2004).

This code change is proposed to clarify that Group I-4 facilities for young children are required to be on the level of exit discharge. Barry Gupton, NCDOI offered the following amendment to 419.1.1 in lieu of the proposed amendment to 308.5.2.

419.1.1 Location. Rooms where occupants receive care in I-4 and R-3 adult and child care facilities shall be on the level of exit discharge.

U.S. Department of Justice

Civil Rights Division

JDR:MSR:NT:maf
DJ 166-012-3
2005-0233

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

March 7, 2005

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

Dear Mr. Holec:

This refers to the designation of annexation 04-64 into District 5 for 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 January 24, 2005.

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 change. In addition, as authorized by Section 5, we reserve the right to reexamine this submission if additional information that would otherwise require an objection comes to our attention during the remainder of the sixty-day review period. Procedures for the Administration of Section 5 of the Voting Rights Act (28 C.F.R. 51.41 and 51.43).

Sincerely,

Joseph D. Rich
Chief, Voting Section

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

Alpha Mill, LLC

Pursuant to N.C.G.S. § 130A-310.34, Alpha Mill, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property consists of a main parcel that comprises approximately 5.77 acres located at the northwest corner of East 12th Street and North Brevard Street and a second, 0.69-acre parcel located at the northeast corner of East 12th Street and North Brevard Street. Environmental contamination exists on the Property in soil and groundwater. Alpha Mill, LLC has committed itself to redevelopment for no uses other than residential apartments, and possibly commercial or retail businesses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Alpha Mill, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed by contacting Tom Warshauer, Economic Development Manager, at the Charlotte City Managers Office, 600 East Trade Street, Charlotte, NC, 28202, at twarshauer@ci.charlotte.nc.us, or at 704-336-4522; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-2801, ext. 336, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents. Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. All such comments and requests should be addressed as follows:

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

The effective date of this Notice is April 15, 2005.

North Carolina Medical Care Commission Public Hearing

Pursuant to Temporary Rule 10A NCAC 13B .3302(j) - Minimum Provisions of Patients' Bill of Rights, the North Carolina Medical Care Commission will be holding a public meeting at 9:00 a.m., May 13, 2005, Room 201, Council Building, Dorothea Dix Campus, 701 Barbour Drive, Raleigh, NC to provide Duke University Medical Center the opportunity to present and discuss a research study involving Polyheme, a synthetic blood substitute. The research study involves administration of Polyheme prior to and after arrival at the hospital to certain trauma patients that have experienced significant blood loss. Since some patients may not be able to give informed consent prior to participation in the study, Duke is planning to waive informed consent for these patients as allowed by the above cited Temporary Rule and applicable U.S. Department of Health and Human Services and U.S. Food and Drug Administration regulations.

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

Dillon Properties, LLC

Pursuant to N.C.G.S. § 130A-310.34, Dillon Properties, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property"). The Property consists of approximately 14 acres and is located at 6700 Ward Boulevard in Wilson, Wilson County, North Carolina. Environmental contamination exists on the Property in groundwater. Dillon Properties, LLC has committed itself to redevelop the Property for industrial, commercial, retail, office, residential, recreational, institutional, entertainment venue or open space uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Dillon Properties, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35. The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Wilson County Public Library, Reference Department, 249 Nash St. West, Wilson, N.C. by contacting Brenda Barnes at 252-237-5535 and also at the City of Wilson, City Manager's Office, 112 N. Goldsboro St., Wilson, N.C. by contacting Assistant City Manager, Alice Freeman at 252-399-2300; or at 401 Oberlin Rd., Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 733-2801, ext. 336, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents. Written public comments may be submitted to DENR within 45 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

The effective date of this Notice is April 15, 2005.

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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to amend the rule cited as 10A NCAC 13B .3302.

Proposed Effective Date: August 1, 2005

Public Hearing:

Date: June 2, 2005

Time: 2:00 p.m.

Location: Division of Facility Services, Council Building, Dorothea Dix Campus, 701 Barbour Drive, Room 201, Raleigh, NC

Reason for Proposed Action: This rule requires informed consent by the patient prior to participation in any research study. Subsequent to the rule being made effective, the U.S. Department of Health and Human Services and the U.S. Food and Drug Administration put in place new regulations, which allowed exceptions to informed consent requirements when conducting certain types of research, including emergency research. This proposed amendment would allow for exceptions to the informed consent requirements under certain circumstances and allow certain types of research including emergency to proceed. This rule was amended through temporary procedures and this rule-making will facilitate the permanent rule making process.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rules by submitting written comments on the proposed rules. They may also object by attending the public hearing and personally voice their objections during that time. Objections should be sent to Mercidee Benton, Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone 919-855-3750, fax 919-733-2757, email mercidee.benton@ncmail.net.

Written comments may be submitted to: Mercidee Benton, Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone 919-855-3750, fax 919-733-2757, email mercidee.benton@ncmail.net.

Comment period ends: June 14, 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 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13B – LICENSING OF HOSPITALS

SECTION .3300 - PATIENT'S BILL OF RIGHTS

10A NCAC 13B .3302 MINIMUM PROVISIONS OF PATIENT'S BILL OF RIGHTS

- (a) A patient has the right to respectful care given by competent personnel.
- (b) A patient has the right, upon request, to be given the name of his attending physician, the names of all other physicians directly participating in his care, and the names and functions of other health care persons having direct contact with the patient.
- (c) A patient has the right to every consideration of his privacy concerning his own medical care program. Case discussion, consultation, examination, and treatment are considered confidential and should be conducted discreetly.
- (d) A patient has the right to have all records pertaining to his medical care treated as confidential except as otherwise provided by law or third party contractual arrangements.
- (e) A patient has the right to know what facility rules and regulations apply to his conduct as a patient.
- (f) The patient has the right to expect emergency procedures to be implemented without unnecessary delay.
- (g) The patient has the right to good quality care and high professional standards that are continually maintained and reviewed.
- (h) The patient has the right to full information in laymen's terms, concerning his diagnosis, treatment and prognosis, including information about alternative treatments and possible complications. When it is not possible or medically advisable to

give such information to the patient, the information shall be given on his behalf to the patient's designee.

(i) Except for emergencies, the physician must obtain the necessary informed consent prior to the start of any procedure or treatment, or both.

(j) A patient has the right to be advised when a physician is considering the patient as a part of a medical care research program or donor program. Informed consent must be obtained prior to actual participation in such program and the patient or legally responsible party, may, at any time, refuse to continue in any such program to which he has previously given informed consent.

(1) An Institutional Review Board (IRB) may waive or alter the informed consent requirement if it reviews and approves a research study in accord with federal regulations for the protection of human research subjects including U.S. Department of Health and Human Services (HHS) regulations under 45 CFR Part 46 and U.S. Food and Drug Administration (FDA) regulations under 21 CFR Parts 50 and 56.

(2) For any research study proposed for conduct under an FDA "Exception from Informed Consent Requirements for Emergency Research" or an HHS "Emergency Research Consent Waiver" in which informed consent is waived but community consultation and public disclosure about the research are required, any facility proposing to be engaged in the research study also must verify that the proposed research study has been registered with the North Carolina Medical Care Commission.

(3) When the IRB reviewing the research study has authorized the start of the community consultation process required by the federal regulations for emergency research, but before the beginning of that process, notice of the proposed research study by the facility shall be provided to the North Carolina Medical Care Commission. The notice shall include:

- (A) the title of the research study;
- (B) a description of the research study, including a description of the population to be enrolled;
- (C) a description of the planned community consultation process, including currently proposed meeting dates and times;
- (D) an explanation of the way that people choosing not to participate in the research study may opt out; and
- (E) contact information including mailing address and phone number for the IRB and the principle investigator.

(4) The Medical Care Commission may publish all or part of the above information in the North Carolina Register, and may require the

institution proposing to conduct the research study to attend a public meeting of the Commission to present and discuss the study or the community consultation process proposed.

(k) A patient has the right to refuse any drugs, treatment or procedure offered by the facility, to the extent permitted by law, and a physician shall inform the patient of his right to refuse any drugs, treatment or procedures and of the medical consequences of the patient's refusal of any drugs, treatment or procedure.

(l) A patient has the right to assistance in obtaining consultation with another physician at the patient's request and expense.

(m) A patient has the right to medical and nursing services without discrimination based upon race, color, religion, sex, sexual preference, national origin or source of payment.

(n) A patient who does not speak English shall have access, when possible, to an interpreter.

(o) The facility shall provide a patient, or patient designee, upon request, access to all information contained in the patient's medical records. A patient's access to medical records may be restricted by the patient's attending physician. If the physician restricts the patient's access to information in the patient's medical record, the physician shall record the reasons on the patient's medical record. Access shall be restricted only for sound medical reason. A patient's designee may have access to the information in the patient's medical records even if the attending physician restricts the patient's access to those records.

(p) A patient has the right not to be awakened by hospital staff unless it is medically necessary.

(q) The patient has the right to be free from needless duplication of medical and nursing procedures.

(r) The patient has the right to medical and nursing treatment that avoids unnecessary physical and mental discomfort.

(s) When medically permissible, a patient may be transferred to another facility only after he or his next of kin or other legally responsible representative has received complete information and an explanation concerning the needs for and alternatives to such a transfer. The facility to which the patient is to be transferred must first have accepted the patient for transfer.

(t) The patient has the right to examine and receive a detailed explanation of his bill.

(u) The patient has a right to full information and counseling on the availability of known financial resources for his health care.

(v) A patient has the right to expect that the facility will provide a mechanism whereby he is informed upon discharge of his continuing health care requirements following discharge and the means for meeting them.

(w) A patient cannot be denied the right of access to an individual or agency who is authorized to act on his behalf to assert or protect the rights set out in this Section.

(x) A patient has the right to be informed of his rights at the earliest possible time in the course of his hospitalization.

Authority G.S. 131E-75; 131E-79; 131E-117; 143B-165.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Medical Care Commission intends to amend the rule cited as 10A NCAC 13B .4511.

Proposed Effective Date: August 1, 2005

Public Hearing:

Date: June 10, 2005

Time: 10:00 a.m.

Location: Division of Facility Services, Council Building, Dorothea Dix Campus, 701 Barbour Drive, Room 142, Raleigh, NC

Reason for Proposed Action: The NC Medical Care Commission is proposing to amend this rule. The rule is being proposed for amendment to make it more consistent with current Joint Commission on the Accreditation of Healthcare organizations (JCAHO) medication administration standards. Most hospitals in the state current must comply with the standards since they are accredited by the JCAHO. NOTE – The change (in italics) in Paragraph (m) is pending review at the Rules Review Commission.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rules by submitting written comments on the proposed rules. They may also object by attending the public hearing and personally voice their objections during that time. Objections should be sent to Mercidee Benton, Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone 919-855-3750, fax 919-733-2757, email mercidee.benton@ncmail.net.

Written comments may be submitted to: Mercidee Benton, Division of Facility Services, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone 919-855-3750, fax 919-733-2757, and email mercidee.benton@ncmail.net.

Comment period ends: June 14, 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 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13B – LICENSING OF HOSPITALS

SECTION .4500 - PHARMACY SERVICES AND MEDICATION ADMINISTRATION

10A NCAC 13B .4511 MEDICATION ADMINISTRATION

(a) A facility shall establish and maintain policies and procedures governing the administration of medications which shall be enforced and implemented by administration and staff. Policies and procedures shall include, but shall not necessarily be limited to:

- (1) accountability of controlled substances as defined by the G.S. 90, Article 5; and
(2) dispensing and administering behavior modifying drugs, and psychotherapeutic agents; insulin; intravenous fluids and medications; cardiovascular drugs; antibiotics; and cytotoxic and related agents storage, distribution, administration and monitoring the effects of medications.

- (b) All medications and treatments shall be administered and discontinued in accordance with signed medical staff orders which are recorded in the patient's medical record.
(c) The categories of staff that are privileged to administer medications shall be delineated by the operational policies of the facility. These policies shall be in agreement with current rules of North Carolina Occupational Boards for each category of staff.
(d) Medications shall be scheduled and administered according to the established policies of the facility.
(e) Variances to the medication administration policy shall be reviewed and evaluated by the nurse executive or her designee.
(f) The person administering medications shall identify each patient in accordance with the facility's policies and procedures prior to administering any medication.
(g) Medication administered to a patient shall be recorded in the patient's medication administration record immediately after administration in accordance with the facility's policies and procedures.
(h) Omission of medication and the reason for the omission shall be indicated in the patient's medical record.
(i) The person administering medications which are ordered to be given as needed (PRN) shall justify the need for the same in the patient's medical record.
(j) Medication administration records shall provide identification of the drug and strength of drug, quantity of drug administered, route administered, name and title of person administering the medication, and time and date of administration.
(k) Self-administration of medications shall be permitted only if prescribed by the medical staff. Directions must be printed on the container.

(l) The administration of one patient's medications to another patient is prohibited except in the case of an emergency. In the event of such as emergency, steps shall be taken by a pharmacist to ensure that the borrowed medications shall be replaced and so documented.

(m) Verbal orders shall be countersigned in accordance with Rule ~~3707(e)~~ 3707(c) of this Subchapter.

Authority G.S. 131E-79.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Medical Assistance intends to repeal the rule cited as 10A NCAC 22O .0121.

Proposed Effective Date: August 1, 2005

Public Hearing:

Date: May 11, 2005

Time: 9:15 a.m.

Location: Kirby Building, Room 132, 1985 Umstead Drive, Raleigh, NC

Reason for Proposed Action: Session Law 2001-424, Section 21.20 exempted the Department of Health and Human Services, Division of Medical Assistance from the Administrative Procedures Act Rule-making Process for Medical Coverage Policies. This rule is a Medical Coverage Policy and thereby exempt from the APA, but subject to the promulgation legislation set out in S.L. 2001-424. The policy for Durable Medical Equipment has been promulgated through the mandated process and approved as a Division of Medical Assistance Policy. Therefore, to maintain concurrence with the Session Law, the Department of Health and Human Services, Division of Medical Assistance proposed to repeal this rule.

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

Written comments may be submitted to: Kris M. Horton, 2501 Mail Service Center, Raleigh, NC 27699-2501 or fax 919-733-6608.

Comment period ends: June 14, 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 22 - MEDICAL ASSISTANCE ELIGIBILITY

SUBCHAPTER 22O - MEDICAL ASSISTANCE PROVIDED

SECTION .0100 - GENERAL

10A NCAC 22O .0121 DURABLE MEDICAL EQUIPMENT

(a) Medically necessary durable medical equipment (DME) is covered by the Medicaid program when it is prescribed by a physician. Prior approval must be obtained from the Division of Medical Assistance, or its designated agent.

(b) Payment for durable medical equipment is limited to the official, approved DME list established by the Division of Medical Assistance. Additions, deletions or revisions to the DME list are approved by the Director of the Division of Medical Assistance upon recommendation of DMA staff and consultants. Only items determined to be medically necessary, effective and efficient may be included.

(c) Providers must meet the following conditions to qualify for participation in the Medicaid Program:

- (1) Not accept prescriptions for Medicaid covered equipment from any physician or practitioner who has an ownership interest in the provider's DME business, and
(2) Be enrolled and participate in Medicare as a DME supplier, and
(3) Provide services on an emergency basis 24 hours per day, seven days per week for life sustaining equipment, and
(4) Be located within the boundaries of NC or in an adjoining state from whom NC recipients living on the border use the provider as a general practice, and
(5) Be either:
(A) A business entity authorized to conduct business in the state or in the locality where the business site is located. Proof of authorization shall include a certificate of assumed name, certificate of authority,

~~certificate of good standing, license, permit, or privilege license, or
(B) A Medicaid enrolled home health agency, a state agency, a local health department, a local lead agency for the Community Alternatives Program for Disabled Adults, or mentally retarded or developmentally disabled, or an agency that provides case management for the Community Alternative Program for children.~~

concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

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

CHAPTER 16 - ACTUARIAL SERVICES DIVISION

SECTION .0200 - INDIVIDUAL ACCIDENT AND HEALTH INSURANCE

11 NCAC 16 .0205 DATA REQUIREMENTS FOR RATE REVISION SUBMISSION

(a) With respect to any individual accident and health insurance policy governed by Articles 1 through 64 of Chapter 58 for which an adjustment of premium rate to in force policies is allowed by law, the insurer shall submit an actuarial memorandum describing and demonstrating the development of any requested premium rate revision. The actuarial memorandum shall contain a subsection clearly identified as "Additional Data Requirements." The initial rate revision filing shall be submitted to and stamped received by the Department's Life and Health Division. An insurer shall submit all data required by this Rule within 45 days after the date that the initial rate revision filing is stamped received. Subsequent data submissions on incomplete initial rate revision filings shall be made directly to the Department's Actuarial Services Division within the 45 day period. An insurer may continue to submit data in accordance with data submission procedures followed before the effective date of this Rule for a period not to exceed one year after the effective date of this Rule if an authorized officer of the insurer certifies to the Commissioner that the insurer's current information system cannot assemble data as required by this Rule. The data required in the "Additional Data Requirements" subsection shall include:

- (1) Identification of the submitted data as North Carolina or countrywide and consistent use of this data identification throughout this Section.
- (2) Identification of all policy forms by approved North Carolina policy form number.
- (3) The month, year, and percentage amount of all previous rate revisions.
- (4) The month and year that the rate revision is scheduled to be implemented (hereinafter referred to as the "implementation date").
- (5) The type of renewability provision contained in each policy form, ~~e.g., guaranteed renewable form;~~ e.g., guaranteed renewable.
- (6) The type of coverage provided by each policy form, ~~e.g., medical form;~~ e.g., medical expense.
- (7) Identification of the type of rating methodology; e.g., issue age, attained age, community rate or other.
- ~~(7)~~(8) The National Association of Insurance Commissioners minimum guideline loss ratio

Authority G.S. 108A-25(b); 42 C.F.R. 440.70(b)(3).

TITLE 11 – DEPARTMENT OF INSURANCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to amend the rule cited as 11 NCAC 16 .0205.

Proposed Effective Date: August 1, 2005

Public Hearing:

Date: May 3, 2005

Time: 11:00 a.m.

Location: Dobbs Building, Third Floor Hearing Room, Raleigh, NC

Reason for Proposed Action: *The amendment is necessary to acquire additional durational data needed to analyze requests for revisions for Medicare supplement insurance and long-term care insurance.*

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to the amendment of this rule until the expiration of the comment period on June 14, 2005.*

Written comments may be submitted to: *Ellen K. Sprenkel, 1201 Mail Service Center, Raleigh, NC 27699-1201, phone 919-733-4529, fax 919-733-6495, email esprenke@ncdoi.net.*

Comment period ends: June 14, 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

- and, if different, the insurer's minimum guideline loss ratio.
- ~~(8)~~(9) The average annual premium for North Carolina and countrywide before and after the implementation of the rate revision.
- ~~(9)~~(10) The number of North Carolina and countrywide policyholders affected by the rate revision.
- ~~(10)~~(11) The requested rate revision percentage attributable to experience.
- ~~(11)~~(12) The requested rate revision percentage attributable to changes in benefits promulgated by Medicare, if ~~applicable~~ applicable, and the calculation used to develop this percentage.
- ~~(12)~~(13) Identification and actuarial justification of all groupings of policy forms.
- ~~(13)~~(14) The historical calendar year earned premium subdivided by duration and expressed on an actual and a current premium rate basis for the period of time from the earliest date that experience is recorded to the most recent date experience is recorded.
- ~~(14)~~(15) The "expected" incurred loss ratios by duration based upon original pricing assumptions for all policy durations considered in the original pricing duration one through the latest duration contained within the fifth year following the implementation date.
- ~~(15)~~(16) The "expected" lapse rates by duration based upon original pricing assumptions for all policy durations considered in the original pricing, including assumptions for voluntary lapse rates and mortality rates, duration one through the latest duration contained within the fifth year following the implementation date.
- ~~(16)~~(17) The "actual" lapse rates for duration one through the duration coinciding with the calendar year for which the most recent experience is recorded.
- ~~(17)~~(18) The historical calendar year incurred claims, for other than Medicare supplement insurance, covering the period of time from the earliest date that experience is recorded to the most recent date experience is recorded.
- ~~(18)~~(19) The historical calendar year incurred claims, for Medicare supplement insurance, expressed on an actual and a current benefit level basis covering the period of time from the earliest date experience is recorded to the most recent date experience is recorded.
- ~~(19)~~(20) A count of the number of incurred claims for each calendar year of data provided; which means the total number of claims reported during the calendar year (whether paid or in the process of payment), plus the number of incurred but not reported claims at the end of the calendar year, minus the number of incurred but not reported claims at the beginning of the calendar year. For disability income insurance, only the initial claim payment for each period of disablement shall be counted. For each type of medical expense benefit, only the initial claim payment per cause shall be counted; for example, payments for continuation of a claim, such as refills on a prescription drug, are to be excluded from the incurred claim count.
- ~~(20)~~(21) An estimation of the amount of policy year exposure contributed by all policyholders within each calendar year of data provided.
- ~~(21)~~(22) A statement declaring whether this is an open block of business or a closed block of business.
- ~~(22)~~(23) An estimation of the annual earned premium on new issues stated at the current premium rate basis for the period of time from the date that the most recent experience is last recorded to a date not exceeding the fifth year following the implementation date.
- ~~(23)~~(24) The number of months that the rate will be guaranteed to an individual policyholder.
- ~~(24)~~(25) The rate revision implementation method, such as the next premium due date following a given date, the next policy anniversary date, or otherwise; if otherwise, an explanation must be included.
- ~~(25)~~(26) A statement declaring the month and year of the earliest anticipated date of the next rate revision.
- ~~(26)~~(27) An explanation and actuarial justification of the apportionment of the aggregate rate revision within each policy form or between policy forms that have been grouped; and a demonstration that the apportionment of the aggregate rate revision yields the same premium income as if the rate revision had been applied uniformly.
- ~~(27)~~(28) An explanation and actuarial justification, if applicable, for changing any factor that affects the premium.
- ~~(28)~~(29) An explanation of the effect that the rate revision will have on the incurred loss ratio on those policies in force for three years or more as exhibited in the Medicare Supplement Experience Exhibit of the Annual Statement.
- ~~(29)~~(30) The name, address, and telephone number of an insurance company representative who will be available to answer questions relating to the rate revision.
- (b) For the following individual accident and health policies, except Medicare supplement and long-term care, data is not required to be subdivided by policy year duration; and the data ~~in Subparagraphs (a)(14), (a)(15), and (a)(16) in Subparagraphs (a)(15), (a)(16), and (a)(17) of this Rule~~ may be omitted:
- (1) ~~short term non-renewable, e.g. airline non-renewable; e.g., airline trip, student, or accident;~~

- (2) annual renewable term that are repriced every year; and
- (3) any closed block of business for which all in force policies have exceeded the seventh year duration.

Authority G.S. 58-2-40(1); 58-51-95; 58-63-15(7)b.

TITLE 12 – DEPARTMENT OF JUSTICE

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09B .0204, .0209; 09F .0104, .0106.

Proposed Effective Date: August 1, 2005

Public Hearing:

Date: May 19, 2005

Time: 1:00 p.m.

Location: Department of Correction, Office of Staff Development & Training, 2211 Schiefelin Road, Apex, NC

Reason for Proposed Action:

12 NCAC 09B .0204 – This rule is amended to change the number of trainees allowed to be enrolled in a Criminal Justice Instructor Training Course from 18 to 16 students per course. This change will allow for more time to evaluate students' performance in the course.

12 NCAC 09B .0209 – This rule is amended to reflect updates to the Criminal Justice Instructor Training Course curriculum. The total number of hours for this course has been decreased from 80 to 77 and the number of hours per topic has been updated to remain current with changing trends in instruction.

12 NCAC 09F .0104, .0109 - These rules have been amended to require stricter qualification criteria for concealed Carry Handgun Instructors. The sanctions for violating Instructor rules have been amended to reflect the change in qualification criteria.

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

The objections, reasons for the objections, and the clearly identified portion of the rule to which the objection pertains, must be submitted in writing to Teresa Marrella, Department of Justice, Criminal Justice Standards Division, 114 W. Edenton Street, Raleigh, NC 27602, phone 919-716-6475, fax 919-716-6752, email tmarrella@ncdoj.com

Written comments may be submitted to: Teresa Marrella, Department of Justice, 114 W. Edenton St., Raleigh, NC 27602, phone 919-716-6475, fax 919-716-6752, email tmarrella@ncdoj.com

Comment period ends: June 14, 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 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND TRAINING

SECTION .0200 – MINIMUM STANDARDS FOR CRIMINAL JUSTICE SCHOOLS AND CRIMINAL JUSTICE TRAINING PROGRAMS OR COURSES OF INSTRUCTION

12 NCAC 09B .0204 TRAINING COURSE ENROLLMENT

- (a) Any school offering a Basic Law Enforcement Training Course shall have enrolled 10 trainees in the offering.
- (b) The school may not enroll any trainee later than the initial day of delivery of an accredited training course unless the trainee's enrollment is pursuant to an authorization of limited enrollment in a subsequent course pursuant to Rule .0405 of this Subchapter or pursuant to prescribed supplementary or remedial training required pursuant to Rule .0402 of this Subchapter.
- (c) The school may not enroll more than ~~18~~ 16 trainees in a presentation of the "Criminal Justice Instructor Training Course" as constituted under Rule .0209 of this Section.

Authority G.S. 17C-6.

12 NCAC 09B .0209 CRIMINAL JUSTICE INSTRUCTOR TRAINING

- (a) The instructor training course required for general instructor certification shall consist of a minimum of ~~80~~ 77 hours of instruction presented during a continuous period of not more than two weeks.
- (b) Each instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice instructor.
- (c) Each instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- (1) Orientation ~~and Pretest /Self Assessment~~
~~2 1/2 Hours~~ 3 Hours
- (2) Curriculum Development: ISD Model
~~1 1/2 Hours~~ 3 Hours
- (3) Civil Liability for Law Enforcement Trainers
2 Hours
- (4) Interpersonal Communication in Instruction
~~6 Hours~~ 4 Hours
- (5) Lesson Plan Preparation: Professional Resources
~~1 1/2 Hours~~ 2 Hours
- (6) Lesson Plan Preparation: Format and Objectives
6 Hours
- (7) Teaching Adults
~~6 Hours~~ 4 Hours
- (8) Principles of Instruction: Demonstration Methods
and Practical Exercise
6 Hours
- (9) Methods and Strategies of Instruction
4 Hours
- (10) The Evaluation Process
4 Hours
- (11) Principles of Instruction: Audio-Visual Aids
6 Hours
- (12) Student 10-Minute Talk and Video Critique
6 Hours
- (13) Student Performance:
First 30-Minute Presentation
~~7 1/2 Hours~~ 6 Hours
Second 30-Minute Presentation
~~7 1/2 Hours~~ 6 Hours
Final 80-Minute Presentation and Review
12 Hours
- (14) Examination ~~and Course Closing~~
~~1 1/2 Hours~~ 3 Hours

(d) The "Basic Instructor Training Manual" as published by the North Carolina Justice Academy is to be applied as the basic curriculum for delivery of basic instructor training courses. Copies of this publication may be inspected at the agency:

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

and may be purchased from the Academy at the following address:

North Carolina Justice Academy
Post Office Drawer 99
Salemberg, North Carolina 28385

Authority G.S. 17C-6.

SUBCHAPTER 09F - CONCEALED HANDGUN TRAINING

SECTION .0100 - CONCEALED HANDGUN TRAINING PROGRAM

12 NCAC 09F .0104 INSTRUCTOR QUALIFICATIONS

Instructors shall meet the following qualifications for approval to deliver the "Concealed Carry Handgun Training" course:

- (1) the instructor shall hold one of the following certifications:
 - (a) "Specific Instructor Certification-Firearms" issued by the Commission;
 - (b) Private Protective Services Firearms Trainer Certification; or
 - (c) "Firearms Instructor Certification" in Personal Protection, Basic Pistol, or Police Firearms issued by the National Rifle Association-~~Association~~
Association;
- (2) the instructor shall hold a certificate issued by the North Carolina Justice Academy showing successful completion of the course on "Laws Governing Concealed Handgun and Use of Deadly ~~Force~~." Force;"
- (3) ~~the instructor shall be eligible to receive or possess a firearm under Federal and North Carolina Law; and~~
- (4) ~~the instructor shall notify the Criminal Justice Standards Division of all court orders, domestic violence orders of protection and criminal offenses for which the instructor is charged. The notifications required under this Subparagraph must be in writing, must specify the nature of the offense, the court in which the case is being handled, the date of arrest, court order, domestic violence order of protection or criminal charge. The notification required under this Subparagraph must be received by the Criminal Justice Standards Division within 10 days of the date of the court order, domestic violence order of protection, arrest or criminal charge.~~

Authority G.S. 14-415.12.

12 NCAC 09F .0106 SANCTIONS

(a) The Commission shall suspend an approved course when the Commission finds that the course has failed to meet or maintain the required standards for approval.

(b) The Commission shall deny or suspend the approval of instructor status when the Commission finds that the instructor:

- (1) has failed to meet or maintain the required course and instruction standards approved by the Commission as set forth in 12 NCAC 09F .0102;
- (2) has failed to submit modification of courses or change in instructor status;
- (3) has submitted any non-sufficient funds check;
- (4) has falsified any successful completion of an approved course;

- (5) has distributed any certificate provided by the Commission without the named permittee undertaking the approved course from that instructor; ~~or~~
- (6) has taught any "Concealed Carry Handgun Training Program" course or approved certification while the instructor's certification was suspended by the Commission; or
- (7) is ineligible to possess or receive a firearm under Federal or North Carolina State Law.

(c) Instructors who have lost approved status subject to ~~Subparagraph 12 NCAC 09F .0106(b)(1), (2) or (3) of this Rule~~ may reapply for approval upon documentation of compliance after one year has elapsed from the date of suspension of the instructor's certification by the Commission. Instructors who have lost approved status subject to 12 NCAC 09F .0106 (b)(4) or (5) ~~shall~~ may have their certification suspended or permanently revoked by the Commission. Instructors who have violated 12 NCAC 09F .0105(8), or 12 NCAC 09F .0106(b)(6) or (7) shall be subject to a summary suspension until reviewed by the Commission.

Authority G.S. 14-415.12; 14-415.13.

TITLE 15A – DEPARTMENT OF ENVIRONMENT & NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Marine Fisheries Commission intends to amend the rules cited as 15A NCAC 03I .0120; 03J .0103, .0107; 03M .0503; 03O .0202, .0205, .0302, 0501-.0503.

Proposed Effective Date: *September 1, 2005*

Public Hearing:

Date: *May 12, 2005*

Time: *7:00 p.m.*

Location: *DENR Regional Office, 127 Cardinal Dr., Wilmington, NC*

Date: *May 17, 2005*

Time: *7:00 p.m.*

Location: *NC Aquarium, Roanoke Island, 375 Airport Rd., Manteo, NC*

Date: *May 26, 2005*

Time: *7:00 p.m.*

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

Date: *June 27, 2005*

Time: *7:00 p.m.*

Location: *Clarion State Capital Hotel, 320 Hillsborough St., Raleigh, NC*

Date: *June 9, 2005*

Time: *7:00 p.m.*

Location: *Carteret Community College, CMAST Building, Room 306, 303 College Circle, Morehead City, NC*

Reason for Proposed Action:

15A NCAC 03I .0120 - *The amendment is necessary in order to implement 03M .0503(l). 03M .0503(l) is an exemption to the flounder size limit for aquaculture operations and this Rule contains a listing of all the rules that have size limit exemptions for aquaculture operations.*

15A NCAC 03J .0103 - *Amending (a)(1-2) and (l) of this rule is necessary in order to implement a 3,000 yard maximum limit on the amount of gill net that may be used per fishing operation and minimum 5½ inch stretched mesh requirement on all large mesh flounder gill nets. The 3,000-yard limit on large mesh gill nets will prevent excessive harvest of southern flounder and the minimum mesh size will reduce harvest of undersize fish. Amending (d)(1) of this rule is necessary in order to exempt the Albemarle Sound, excluding tributaries, west of a line between Caroon Point and Powell Point from the 200-yard limit between gill nets and active pound nets during the period August 15 – December 31 and to implement a minimum distance of 500 yards between the gears during the period. The additional distance between the gears is intended to reduce user conflicts during the peak flounder fishing season.*

15A NCAC 03J .0107 - *This rule amendment is necessary in order to incorporate the use of escape panels with 5½ inch webbing in pound nets statewide. The use of 5½ -inch escape panels will reduce the take of undersize flounder.*

15A NCAC 03M .0503 - *Paragraph (k) was added to this rule through the temporary rule process, effective September 1, 2004. This amendment needs to be in permanent rule so that flounder size limits and harvest season closures could be changed quickly through proclamation as conditions and assessments warrant. Paragraph (l) needs to be added to the existing rule in order to exempt flounder aquaculture operations from size and season requirements. Flounder raised under aquaculture operation requirements do not affect wild populations, so no size limits are required.*

15A NCAC 03O .0202, .0205 - *The Oyster and Hard Clam Fishery Management Plans recommended changes to the shellfish lease fees that were approved and placed in statute by the North Carolina General Assembly (G.S. 113-201, 202(d), 202(j) and (l), and 202.1(d). The proposed rule amendments are necessary in order to comply with the amended general statutes.*

15A NCAC 03O .0302 - *This amendment is necessary in order to require 24 hour a day attendance of Recreational Commercial Gear License large mesh gill nets south of the Highway 58 bridge and require only daytime attendance north of the Highway 58 bridge. Attendance of gill nets is necessary to release undersize fish while they are still alive. The warmer, shallower waters south of Highway 58 require 24-hour attendance.*

15A NCAC 03O .0501-.0503 - *Article 16 of Chapter 113 of the General Statutes has been amended by adding a new section (113-210) that allows dock owners to cultivate oysters in containers under their docks with a permit. This amendment will require the development of a permit and training for permit applicants. The proposed rule amendments are necessary in order to meet the requirements of the amended statute.*

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 the following address: Belinda Lofton, P.O. Box 769, Morehead City, NC 28557.*

Written comments may be submitted to: *Belinda Lofton, P.O. Box 769, Morehead City, NC 28557, Phone (252)726-7021, Fax (252)726-0254, email Belinda.loftin@ncmail.net.*

Comment period ends: *June 27, 2004*

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 3 - MARINE FISHERIES

SUBCHAPTER 03I - GENERAL RULES

SECTION .0100 – GENERAL RULES

15A NCAC 03I .0120 POSSESSION OR TRANSPORTATION LIMITS

- (a) It is unlawful to possess any species of fish which is subject to size or harvest restrictions, while actively engaged in a fishing operation, unless all fish are in compliance with the restrictions for the waterbody and area being fished.
- (b) It is unlawful to import into the state species of fish native to North Carolina for sale in North Carolina that do not meet established size limits, except as provided in 15A NCAC 03K .0202 (c), ~~03K .0207 and 03K .0305.~~ 03K .0207, 03K .0305, and 03M .0503.

Authority G.S. 113-134; 113-170; 113-170.4; 113-170.5; 113-182; 143B-289.52.

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

SECTION .0100 - NET RULES, GENERAL

15A NCAC 03J .0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS

(a) It is unlawful to use a gill net ~~nets: with a mesh length less than 2½ inches.~~

- (1) With a mesh length less than 2 ½ inches.
- (2) In internal waters from April 15 through December 15, with a mesh length 5 inches or greater and less than 5 ½ inches.

(b) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in coastal waters, or any portion thereof, or impose any or all of the following restrictions on the use of gill nets or seines:

- (1) Specify area.
- (2) Specify season.
- (3) Specify gill net mesh length.
- (4) Specify means/methods.
- (5) Specify net number and length.

(c) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean, drift gill nets in the Atlantic Ocean for recreational purposes, or any gill nets in internal waters unless nets are marked by attaching to them at each end two separate yellow buoys 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. Gill nets, which are not connected together at the top line, shall be considered as individual nets, requiring two buoys at each end of each individual net. Gill nets connected together at the top line shall be considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets used for recreational purposes shall be yellow except one additional buoy, any shade of hot pink in color, constructed as specified in ~~Paragraph (c) of this Rule, Paragraph~~, shall be added at each end of each individual net. Any other marking buoys on gill nets used in commercial fishing operations shall be yellow except that one additional identification buoy of any color or any combination of colors, except any shade of hot pink, may be used at either or both ends. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include owner's last name and initials and if a vessel is used, one of the following:

- (1) Owner's N.C. motor boat registration number, or
- (2) Owner's U.S. vessel documentation name.

(d) It is unlawful to use gill nets:

- (1) Within 200 yards of any pound net set with lead and either pound or heart in use; use, except from August 15 through December 31 in Albemarle Sound, excluding tributaries, west of a line beginning at a point 36° 04.5184' N - 75° 47.9095' W on Powell Point; running southerly to a point 35° 57.2681' N - 75° 48.3999' W on Caroon Point, it is unlawful to use gill nets within 500 yards of any pound net set with lead and either pound or heart in use;

- (2) From March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.
- (e) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of the entrance to the Alligator-Pungo River Canal near Beacon "54" in Alligator River to the South Carolina line, unless such net is used in accordance with the following conditions:
- (1) No more than two gill nets per ~~boat~~ vessel may be used at any one time;
 - (2) Any net used must be attended by the fisherman from a ~~boat~~ vessel who shall at no time be more than 100 yards from either net; and
 - (3) Any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted boat navigation.
- (f) It is unlawful to use drift gill nets in violation of 15A NCAC 03J .0101(2) and Paragraph (e) of this Rule.
- (g) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation in the gill net attended areas designated in 15A NCAC 03R ~~.0112~~ .0112(a).
- (h) It is unlawful to use unattended gill nets with a mesh length less than five inches in a commercial fishing operation from May 1 through October 31 in the internal coastal and joint waters of the state designated in 15A NCAC 03R ~~.0112~~ .0112(b).
- (i) It is unlawful to use more than 3,000 yards of gill net with a mesh length 5 1/2 inches or greater per vessel in internal waters regardless of the number of individuals involved.

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

15A NCAC 03J .0107 POUND NET SETS

- (a) All initial, renewal or transfer applications for Pound Net Set Permits, and the operation of such pound net sets, shall comply with the general rules governing all permits in 15A NCAC 03O .0500. The procedures and requirements for obtaining permits are also found in 15A NCAC 03O .0500.
- (b) It is unlawful to use pound net sets in coastal fishing waters without the permittee's identification being clearly printed on a sign no less than six inches square, securely attached to the outermost stake of each end of each set. For pound net sets in the Atlantic Ocean using anchors instead of stakes, the set must shall be identified with a yellow buoy, which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than 11 inches in length. The permittee's identification shall be clearly printed on the buoy. Such identification on signs or buoys must shall include the pound net set permit number and the permittee's last name and initials.
- (c) It is unlawful to use pound net sets, or any part thereof, except for one location identification stake or identification buoy for pound nets used in the Atlantic Ocean at each end of proposed new locations, without first obtaining a Pound Net Set Permit from the Fisheries Director. The applicant must shall indicate on a base map provided by the Division the proposed set including an inset vicinity map showing the location of the proposed set with detail sufficient to permit on-site identification

and location. The applicant must shall specify the type(s) of pound net set(s) requested and possess proper valid licenses and permits necessary to fish those type(s) of net. A pound net set shall be deemed a flounder pound net set when the catch consists of 50 percent or more flounder by weight of the entire landed catch, excluding blue crabs. The type "other finfish pound net set" is for sciaenid (Atlantic croaker, red drum, weakfish, spotted seatrout, spot, for example) and other finfish, except flounder, herring, or shad, taken for human consumption. Following are the type(s) of pound net fisheries that may be specified:

- (1) Flounder pound net set;
- (2) Herring/shad pound net set;
- (3) Bait pound net set;
- (4) Shrimp pound net set;
- (5) Blue crab pound net set;
- (6) Other finfish pound net set.

(d) For proposed new locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Set Permit allowing for public comments for 20 days, and after the comment period, may hold public meetings to take comments on the proposed pound net set. If the Director does not approve or deny the application within 90 days of receipt of a complete and verified application, the application shall be deemed denied. The applicant shall be notified of such denial in writing. For new locations, transfers and renewals, the Fisheries Director may deny the permit application if the Director determines that granting the permit will be inconsistent with one or more of the following permitting criteria, as determined by the Fisheries Director:

- (1) The application must shall be in the name of an individual and shall not be granted to a corporation, partnership, organization or other entity;
- (2) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will shall not interfere with public navigation or with existing, traditional uses of the area other than navigation, and will shall not violate 15A NCAC 03J.0101 and .0102;
- (3) The proposed pound net set will shall not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers;
- (4) The proposed pound net set will shall not, by its proximate location, interfere with existing pound net sets in the area. Except in Chowan River as referenced in 15A NCAC 03J .0203, proposed new pound net set locations shall be a minimum of 1,000 yards as measured in a perpendicular direction from any point on a line following the permitted location of existing pound net sets;
- (5) The applicant has in the past complied with fisheries rules and laws and does not currently have any licenses or privileges under suspension or revocation. In addition, a history of habitual fisheries violations evidenced by

- eight or more convictions in ten years shall be grounds for denial of a pound net set permit;
- (6) The proposed pound net set is in the public interest; and
- (7) The applicant has in the past complied with all permit conditions, rules and laws related to pound nets.

Approval shall be conditional based upon the applicant's continuing compliance with specific conditions contained on the Pound Net Set Permit and the conditions set out in Subparagraphs (1) through (7) of this Paragraph. The final decision to approve or deny the Pound Net Set Permit application may be appealed by the applicant by filing a petition for a contested case hearing, in writing, within 60 days from the date of mailing notice of such final decision to the applicant, with the Office of Administrative Hearings.

(e) An application for renewal of an existing Pound Net Set Permit shall be filed not less than 30 days prior to the date of expiration of the existing permit, and shall not be processed unless filed by the permittee. The Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Set Permit, except that pound net sets approved prior to January 1, 2003 do not have to meet the 1,000 yard minimum distance requirement specified in Subparagraph (d)(4) of this Rule. The Fisheries Director may hold public meetings and may conduct such investigations necessary to determine if the permit should be renewed.

(f) A Pound Net Set Permit, whether a new or renewal permit, shall expire one year from the date of issuance. The expiration date shall be stated on the permit.

(g) Pound net sets, except herring/shad pound net sets in the Chowan River, shall be operational for a minimum period of 30 consecutive days during the permit period unless a season for the fishery for which the pound net set is permitted is ended earlier due to a quota being met. For purposes of this Rule, operational means with net attached to stakes or anchors for the lead and pound, including only a single pound in a multi-pound set, and a non-restricted opening leading into the pound such that the set is able to catch and hold fish. The permittee, including permittees of operational herring/shad pound net sets in the Chowan River, shall notify the Marine Patrol Communications Center by phone within 72 hours after the pound net set is operational. Notification shall include name of permittee, pound net set permit number, county where located, a specific location site, and how many pounds are in the set. It is unlawful to fail to notify the Marine Patrol Communications Center within 72 hours after the pound net set is operational or to make false notification when said pound net set is not operational. Failure to comply with this Paragraph shall be grounds for the Fisheries Director to revoke this and any other pound net set permits held by the permittee and for denial of any future pound net set permits.

(h) It is unlawful to transfer a pound net set permit without a completed application for transfer being submitted to the Division of Marine Fisheries not less than 45 days before the date of the transfer. Such application shall be made by the proposed new permittee in writing and shall be accompanied by a copy of the current permittee's permit and an application for a pound net set permit in the new permittee's name. The Fisheries

Director may hold a public meeting and may conduct such investigations necessary to determine if the permit should be transferred. The transferred permit shall expire on the same date as the initial permit. Upon death of the permittee, the permit may be transferred to the Administrator/Executor of the estate of the permittee if transferred within six months of the Administrator/Executor's qualification ~~under G.S. 28A~~ in accordance with G.S. 28A. The Administrator/Executor ~~must~~ shall provide a copy of the deceased permittee's death certificate, a copy of the certificate of administration and a list of eligible immediate family members as defined in G.S. 113-168 to the Morehead City Office of the Division of Marine Fisheries. Once transferred to the Administrator/Executor, the Administrator/Executor may transfer the permit(s) to eligible family members of the deceased permittee. No transfer is effective until approved and processed by the Division.

(i) Every pound net set in coastal fishing waters shall have yellow light reflective tape or yellow light reflective devices on each pound. The light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter on any outside corner of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. In addition, every pound net set shall have a marked navigational opening of at least 25 feet in width at the end of every third pound. Such opening shall be marked with yellow light reflective tape or yellow light reflective devices on each side of the opening. The yellow light reflective tape or yellow light reflective devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions. If a permittee notified of a violation under this Paragraph fails or refuses to take corrective action sufficient to remedy the violation within 10 days of receiving notice of the violation, the Fisheries Director shall revoke the permit.

(j) In Core Sound, it is unlawful to use pound net sets in the pound net sets prohibited areas designated in 15A NCAC 03R .0113 except that only those pound net set permits valid within the specified area as of March 1, 1994, may be renewed or transferred subject to the requirements of this Rule.

(k) Escape Panels:

- (1) The Fisheries Director may, by proclamation, require escape panels in pound net sets and may impose any or all of the following requirements or restrictions on the use of escape panels:
 - (A) Specify size, number, and location.
 - (B) Specify mesh length, but not more than six inches.
 - (C) Specify time or season.
 - (D) Specify areas.

(2) It is unlawful to use flounder pound net sets without four unobstructed escape panels in each pound ~~south and east of a line beginning at a point 35° 57.3950' N 76° 00.8166' W on Long Shoal Point; running easterly to a point 35° 56.7316' N 75° 59.3000' W near Marker "5" in Alligator River; running northeasterly along the Intracoastal Waterway to a point 36° 09.3033' N 75° 53.4916' W near Marker~~

"171"at the mouth of North River; running northwesterly to a point 36° 09.9093' N 75° 54.6601' W on Camden Point. pound. The escape panels ~~must~~ shall be fastened to the bottom and corner ropes on each wall on the side and back of the pound opposite the heart. The escape panels ~~must~~ shall be a minimum mesh size of five and one-half inches, hung on the diamond, and ~~must~~ shall be at least six meshes high and eight meshes long.

- (l) Pound net sets ~~are~~ shall be subject to inspection at all times.
- (m) Daily reporting may be a condition of the permit for pound net sets for fisheries under a quota.
- (n) It is unlawful to fail to remove all pound net stakes and associated gear within 30 days after expiration of the permit or notice by the Fisheries Director that an existing pound net set permit has been revoked or denied.
- (o) It is unlawful to abandon an existing pound net set without completely removing from the coastal waters all stakes and associated gear within 30 days.

Authority G.S. 113-134; 113-182; 113-182.1; 113-221; 143B-289.52.

SUBCHAPTER 03M – FINFISH

SECTION .0500 – OTHER FINFISH

15A NCAC 03M .0503 FLOUNDER

- (a) It is unlawful to possess flounder less than 14 inches total length taken from the Atlantic Ocean in a commercial fishing operation.
- (b) From October 1 through April 30, it shall be unlawful to use a trawl in the Atlantic Ocean within three miles of the ocean beach from the North Carolina/Virginia state line (~~35° 33'N~~) (36° 33.0000' N) to Cape Lookout (~~34° 36'N~~) (34° 36.0000' N) unless each trawl has a mesh length of 5 1/2 inches or larger diamond mesh (stretched) or 6 inches or larger square mesh (stretched) applied throughout the body, extension(s) and the cod end (tailbag) of the net except as provided in Paragraphs (g) and (h) of this Rule.
- (c) License to Land Flounder from the Atlantic Ocean:
 - (1) It is unlawful to land more than 100 pounds per trip of flounder taken from the Atlantic Ocean unless the owner of the vessel or in the case of Land or Sell Licenses, the responsible party, has been issued a License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the License to Land Flounder from the Atlantic Ocean.
 - (2) It is unlawful for a fish dealer to purchase or offload more than 100 pounds of flounder taken from the Atlantic Ocean by a vessel whose owner, or in the case of Land or Sell Licenses, the responsible party, has not first procured a valid North Carolina License to Land Flounder from the Atlantic Ocean and the vessel in use is the vessel specified on the

License to Land Flounder from the Atlantic Ocean.

- (3) It is unlawful for any person to land flounder from the Atlantic Ocean under a License to Land Flounder from the Atlantic Ocean unless that person is the holder of the license or the master designated on the license.
- (4) 15A NCAC 03O .0503 and It is unlawful for any individual to land flounder from the Atlantic Ocean without having ready at hand for inspection a valid License to Land Flounder from the Atlantic Ocean, except as specified in Subparagraph (c)(1) of this Rule.
- (d) All fish dealer transactions in flounder landed from the Atlantic Ocean must be conducted in accordance with the Atlantic Ocean Flounder Dealer Permits in related rules in 15A NCAC 03O .0500.
- (e) It is unlawful to transfer flounder taken from the Atlantic Ocean from one vessel to another.
- (f) Tailbag liners of any mesh size, the multiple use of two or more cod ends, or other netting material that in any way could restrict the legal size mesh shall not be used or possessed on the deck of a vessel in the Atlantic Ocean from October 1 through April 30 from the North Carolina/Virginia state line (~~36° 33'N~~) (36° 33.0000' N) to Cape Lookout (~~34° 36'N~~) (34° 36.0000' N).
- (g) Trawls with a cod end mesh size smaller than described in Paragraph (b) of this Rule may be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds from November 1 through April 30 is possessed aboard or landed from that vessel.
- (h) Flynets are exempt from the flounder trawl mesh requirements if they meet the following definition:
 - (1) The net has large mesh in the wings that measure 8 inches to 64 inches;
 - (2) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches; and
 - (3) The mesh decreases in size throughout the body of the net to as small as 2 inches or smaller towards the terminus of the net.
- (i) Commercial Season.
 - (1) The North Carolina season for landing ocean-caught flounder shall open January 1 each year. If ~~70~~ 80 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.
 - (2) The season for landing flounder taken in the Atlantic Ocean shall reopen November 1 if any of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder remains. If after

reopening, 100 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken prior to the end of the calendar year, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.

- (3) During any closed season prior to November 1, vessels may land up to 100 pounds of flounder per trip taken from the Atlantic Ocean.

(j) The Fisheries Director may, by proclamation, establish trip limits for the taking of flounder from the Atlantic Ocean to assure that the individual state quota allocated to North Carolina in the joint Mid-Atlantic Fishery Management Council/Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is not exceeded.

(k) The Fisheries Director may, by proclamation, based on variability in environmental and local stock conditions, take any or all of the following actions in the flounder fishery:

- (1) Specify size;
- (2) Specify season;
- (3) Specify area;
- (4) Specify quantity;
- (5) Specify means/methods; and
- (6) Require submission of statistical and biological data.

(l) Possession and sale of flounder by a hatchery or flounder aquaculture operation and purchase and possession of flounder from a hatchery or flounder aquaculture operation shall be exempt from season and size limit restrictions set under Paragraph (k) of this Rule. It is unlawful to possess, sell, purchase, or transport such flounder unless they are in compliance with all conditions of the Aquaculture Operations Permit.

Authority G.S. 113-134; 113-169.5; 113-182; 113-221; 143B-289.52.

SUBCHAPTER 030 – LICENSES, LEASES AND FRANCHISES

SECTION .0200 – LEASES AND FRANCHISES

15A NCAC 030 .0202 SHELLFISH BOTTOM AND WATER COLUMN LEASE APPLICATIONS

(a) Application forms are available from the Division's office headquarters ~~referenced in 15A NCAC 03H .0101 at 3441 Arendell Street, Morehead City, 28557~~ for persons desiring to apply for shellfish bottom and water column leases. Each application ~~must~~ shall be accompanied by a map or diagram prepared at the applicant's expense and ~~must~~ shall meet the information requirements contained in the application including an inset vicinity map showing the location of the proposed lease with detail sufficient to permit on-site identification and location.

(b) As a part of the application, the applicant ~~must~~ shall submit a management plan for the area to be leased on a form provided by the Division which meets the following standards:

- (1) States the methods through which the applicant will cultivate and produce shellfish consistent with the minimum ~~requirement~~ requirements set forth in 15A NCAC 030 .0201;
- (2) States the time intervals during which various phases of the cultivation and production plan will be achieved;
- (3) States the materials and techniques that will be utilized in management of the lease;
- (4) Forecasts the results expected to be achieved by the management activities; and
- (5) Describes the productivity of any other leases or franchises held by the applicant.

(c) The completed application, map or diagram, and management plan for the requested lease shall ~~not be accepted by the Division unless~~ accompanied by a the non-refundable filing fee of one hundred dollars (\$100.00) set forth in G.S. 113-202(d)(1). An incomplete application shall be returned and not considered further until re-submitted complete with all required information.

(d) Immediately after an application is deemed to have met all requirements and is accepted by the Division, the applicant ~~must~~ shall identify the area for which a lease is requested with stakes at each corner in accordance with 15A NCAC 030 .0204(a)(1)(A). The applicant shall firmly attach to each stake a sign, provided by the Division containing the name of the applicant, the date the application was filed, and the estimated acres.

Authority G.S. 113-134; 113-201; 113-202; 143B-289.52.

15A NCAC 030 .0205 LEASE RENEWAL

(a) Lease renewal applications shall be provided to lessees as follows:

- (1) For shellfish bottom leases, renewal applications shall be provided in January of the year of expiration.
- (2) For water column leases, renewal applications shall be provided at least 90 days prior to expiration dates.

(b) Lease renewal applications shall be accompanied by management plans meeting the requirements of 15A NCAC 030 .0202(b). ~~A The non-refundable filing fee of fifty dollars (\$50.00) set forth in G.S. 113-202(j)~~ shall accompany each renewal application for shellfish bottom leases.

(c) A survey for renewal leases shall be required at the applicant's expense when the Division determines that the area leased to the renewal applicant is inconsistent with the survey on file.

(d) When it is determined, after due notice to the lessee, and after opportunity for the lessee to be heard, that the lessee has not complied with the requirements of this Section or that the lease as issued is inconsistent with this Section, the Secretary may decline to renew, at the end of the current terms, any shellfish bottom or water column lease. The lessee may appeal

the Secretary's decision by initiating a contested case as outlined in 15A NCAC 03P .0102.

(e) Pursuant to G.S. 113-202(a)(6), the Secretary is not authorized to recommend approval of renewal of a shellfish lease in an area closed to shellfishing by reason of pollution. Shellfish leases partially closed due to pollution must be amended to exclude the area closed to shellfishing prior to renewal. For purposes of lease renewal determinations, an area shall be considered closed to shellfish harvest by reason of pollution when the area has been classified by the State Health Director as prohibited or has been closed for more than 50 percent of the days during the final four years prior to renewal except shellfish leases in areas which have been closed for more than 50 percent of the days during the final four years prior to renewal and continue to meet established production requirements by sale of shellfish through relay periods or other depuration methods shall not be considered closed due to pollution for renewal purposes.

(f) If the Secretary declines to renew a lease that has been determined to be inconsistent with the standards of this Section, the Secretary, with the agreement of the lessee, may issue a renewal lease for all or part of the area previously leased to the lessee that contains conditions necessary to conform the renewal lease to the minimum requirements of this Section for new leases.

Authority G.S. 113-134; 113-201; 113-202; 113-202.1; 113-202.2; 143B-289.52.

SECTION .0300 – RECREATIONAL COMMERCIAL GEAR LICENSES

15A NCAC 030 .0302 AUTHORIZED GEAR

(a) The following are the only commercial fishing gear authorized (including restrictions) for use under a valid Recreational Commercial Gear License:

- (1) One seine 30 feet or over in length but not greater than 100 feet with a mesh length less than 2 ½ inches when deployed or retrieved without the use of a vessel or any other mechanical methods. A vessel may only be used to transport the seine;
- (2) One shrimp trawl with a headrope not exceeding 26 feet in length per vessel. Mechanical methods for retrieving the trawl are not authorized for recreational purposes, including but not limited to, hand winches and block and tackle;
- (3) With or without a vessel, five eel, fish, shrimp, or crab pots in any combination, except only two pots of the five may be eel pots. Peeler pots are not authorized for recreational purposes;
- (4) One multiple hook or multiple bait trotline up to 100 feet in length;
- (5) Gill Nets:
 - (A) Not more than 100 yards of gill nets with a mesh length equal to or greater than 2 ½ inches except as

provided in (5) (C) of this Rule. Attendance ~~is~~ shall be required at all times;

- (B) Not more than 100 yards of gill nets with a mesh length equal to or greater than 5 ½ inches except as provided in (5) (C) of this Rule. Attendance ~~is~~ shall be required when used from one hour after sunrise through one hour before ~~sunset~~; sunset in internal coastal fishing waters east and north of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean east and north of 77° 04.0000' W. Attendance shall be required at all times in internal coastal fishing waters west and south of the Highway 58 Bridge at Emerald Isle and in the Atlantic Ocean west and south of 77° 04.0000' W; and
- (C) Not more than 100 yards of gill net may be used at any one time, except that when two or more Recreational Commercial Gear License holders are on board, a maximum of 200 yards may be used from a vessel;
- (D) It is unlawful to possess aboard a vessel more than 100 yards of gill nets with a mesh length less than 5 ½ inches and more than 100 yards of gill nets with a mesh length equal to or greater than 5 ½ inches identified as recreational commercial fishing equipment when only one Recreational Commercial Gear License holder is on board. It is unlawful to possess aboard a vessel more than 200 yards of gill nets with a mesh length less than 5 ½ inches and more than 200 yards of gill nets with a mesh length equal to or greater than 5 ½ inches identified as recreational commercial fishing equipment when two or more Recreational Commercial Gear License holders are on board; and
- (6) A hand-operated device generating pulsating electrical current for the taking of catfish in the area described in 15A NCAC 03J .0304.
 - (b) It is unlawful to use more than the quantity of authorized gear specified in Subparagraphs (a)(1) - (a)(6) of this Rule, regardless of the number of individuals aboard a vessel possessing a valid Recreational Commercial Gear License.
 - (c) It is unlawful for a person to violate the restrictions of or use gear other than that authorized by Paragraph (a) of this Rule.
 - (d) Unless otherwise provided, this Rule does not exempt Recreational Commercial Gear License holders from the provisions of other applicable rules of the Marine Fisheries Commission or provisions of proclamations issued by the

Fisheries Director as authorized by the Marine Fisheries Commission.

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

SECTION .0500 – PERMITS

15A NCAC 03O .0501 PROCEDURES AND REQUIREMENTS TO OBTAIN PERMITS

(a) To obtain any Marine Fisheries permit, the following information is required for proper application from the applicant, a responsible party or person holding a power of attorney:

- (1) Full name, physical address, mailing address, date of birth, and signature of the applicant on the application. If the applicant is not appearing before a license agent or the designated Division contact, the applicant's signature on the application ~~must~~ shall be notarized;
- (2) Current picture identification of applicant, responsible party and, when applicable, person holding a power of attorney; acceptable forms of picture identification are driver's license, current North Carolina Identification card issued by the North Carolina Division of Motor Vehicles, military identification card, resident alien card (green card) or passport or if applying by mail, a copy thereof;
- (3) Full names and dates of birth of designees of the applicant who shall be acting under the requested permit where that type permit requires listing of designees;
- (4) Certification that the applicant and his designees do not have four or more marine or estuarine resource convictions during the previous three years;
- (5) For permit applications from business entities, the following documentation is required:
 - (A) Business Name;
 - (B) Type of Business Entity: Corporation, partnership, or sole proprietorship;
 - (C) Name, address and phone number of responsible party and other identifying information required by this Subchapter or rules related to a specific permit;
 - (D) For a corporation, current articles of incorporation and a current list of corporate officers when applying for a permit in a corporate name;
 - (E) For a partnership, if the partnership is established by a written partnership agreement, a current copy of such agreement shall be provided when applying for a permit;
 - (F) For business entities, other than corporations, copies of current assumed name statements if filed and

copies of current business privilege tax certificates, if applicable.

(6) Additional information as ~~be~~ required for specific permits.

(b) A permittee ~~must~~ shall hold a valid Standard or Retired Standard Commercial Fishing License in order to hold a:

- (1) Pound Net Permit;
- (2) Permit to Waive the Requirement to Use Turtle Excluder Devices in the Atlantic Ocean.

(c) A permittee and his designees ~~must~~ shall hold a valid Standard or Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to hold a:

- (1) Permit to Transplant (Prohibited) Polluted Shellfish;
- (2) Permit to Transplant Oysters from Seed Management Areas;
- (3) Permit to Use Mechanical Methods for Oysters or Clams on Shellfish Leases or Franchises;
- (4) Permit to Harvest Rangia Clams from Prohibited (Polluted) Areas;
- (5) Depuration Permit.

(d) A permittee ~~must~~ shall hold a valid:

- (1) Fish Dealer License in the proper category in order to hold Dealer Permits for Monitoring Fisheries Under a Quota/Allocation for that category; and
- (2) Standard Commercial Fishing License with a Shellfish Endorsement, Retired Standard Commercial Fishing License with a Shellfish Endorsement or a Shellfish License in order to harvest clams or oysters for depuration.

(e) Aquaculture Operations/Collection Permits:

- (1) A permittee ~~must~~ shall hold a valid Aquaculture Operation Permit issued by the Fisheries Director to hold an Aquaculture Collection Permit.
- (2) The permittee or designees ~~must~~ shall hold appropriate licenses from the Division of Marine Fisheries for the species harvested and the gear used under the Aquaculture Collection Permit.

(f) Applications submitted without complete and required information shall be considered incomplete and shall not be processed until all required information has been submitted. Incomplete applications shall be returned to the applicant with deficiency in the application so noted.

(g) A permit shall be issued only after the application has been deemed complete by the Division of Marine Fisheries and the applicant certifies to fully abide by the permit general and specific conditions established under 15A NCAC 03J .0107, 03K .0103, 03K .0104, 03K .0107, 03K .0206, 03K .0303, 03K .0401, 03O .0502, and 03O .0503 as applicable to the requested permit.

(h) The Fisheries Director, or his agent may evaluate the following in determining whether to issue, modify or renew a permit:

- (1) Potential threats to public health or marine and estuarine resources regulated by the Marine Fisheries Commission;
 - (2) Applicant's demonstration of a valid justification for the permit and a showing of responsibility as determined by the Fisheries Director;
 - (3) Applicant's history of habitual fisheries violations evidenced by eight or more violations in 10 years.
- (i) The applicant shall be notified in writing of the denial or modification of any permit request and the reasons therefor. The applicant may submit further information, or reasons why the permit should not be denied or modified.
- (j) Permits ~~are~~ shall be valid from the date of issuance through the expiration date printed on the permit. Unless otherwise established by rule, the Fisheries Director may establish the issuance timeframe for specific types and categories of permits based on season, calendar year, or other period based upon the nature of the activity permitted, the duration of the activity, compliance with federal or state fishery management plans or implementing rules, conflicts with other fisheries or gear usage, or seasons for the species involved. The expiration date shall be specified on the permit.
- (k) To renew a permit, the permittee shall file a certification that the information in the original application is still currently correct, or a statement of all changes in the original application and any additional information required by the Division of Marine Fisheries.
- (l) For initial or renewal permits, processing time for permits may be up to 30 days unless otherwise specified in ~~15A NCAC 03-~~ Title 15A of the North Carolina Administrative Code.
- (m) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries within 30 days of a change of name or address.
- (n) It is unlawful for a permit holder to fail to notify the Division of Marine Fisheries of a change of designee prior to use of the permit by that designee.
- (o) Permit applications shall be available at all Division Offices.
- (p) Any permit which is valid at time of adoption of this Rule shall be valid until the expiration date stated on the permit.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.

15A NCAC 03O .0502 PERMIT CONDITIONS;

GENERAL

The following conditions apply to all permits issued by the ~~Division of Marine Fisheries;~~ Fisheries Director:

- (1) it is unlawful to operate under the permit except in areas, at times, and under conditions specified on the permit;
- (2) it is unlawful to operate under a permit without having the permit or copy thereof in possession of the permittee or their designees at all times of operation and the permit or copy thereof ~~must~~ shall be ready at hand for inspection, except for Pound Net Permits;

- (3) it is unlawful to operate under a permit without having a current picture identification in possession and ready at hand for inspection;
- (4) it is unlawful to refuse to allow inspection and sampling of a permitted activity by an agent of the Division;
- (5) it is unlawful to fail to provide complete and accurate information requested by the Division in connection with the permitted activity;
- (6) it is unlawful to hold a permit issued by the ~~Division of Marine Fisheries~~ Director when not eligible to hold any license required as a condition for that permit as stated in 15A NCAC 03O .0501;
- (7) it is unlawful to fail to provide reports within the timeframe required by the specific permit conditions;
- (8) it is unlawful to fail to keep such records and accounts as ~~may be~~ required by the Division for determination of conservation policy, equitable and efficient administration and enforcement, or promotion of commercial or recreational fisheries;
- (9) it is unlawful to assign or transfer permits issued by the ~~Division,~~ Fisheries Director, except for Pound Net Permits as authorized by ~~15A NCAC 03J .0107 (d);~~ 15A NCAC 03J .0107(h);
- (10) the Fisheries Director, or his agent, may, by conditions of the permit, specify any or all of the following for the permitted purposes:
 - (a) species;
 - (b) quantity or size;
 - (c) time period;
 - (d) location;
 - (e) means and methods;
 - (f) disposition of resources;
 - (g) marking requirements; or
 - (h) harvest conditions.
- (11) unless specifically stated as a condition on the permit, all statutes, rules and proclamations shall apply to the permittee and their designees.
- (12) as a condition of accepting the permit from the ~~Division of Marine Fisheries,~~ Fisheries Director, the permittee agrees to abide by all conditions of the permit and agrees that if specific conditions of the permit, as identified on the permit, are violated or if false information was provided in the application for initial issuance, renewal or transfer, the permit may be suspended or revoked by the Fisheries Director.

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

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~~ shall be submitted on the following Monday. If the dealer is unable to fax or electronic mail the required information, the permittee ~~may~~ shall call in the previous day's landings to the dealer contact designated on the permit but ~~must~~ shall 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 fishing waters of the Central/Southern Management Area as designated in 15A NCAC 03R .0201.
 - (B) No permittee ~~may~~ shall 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~~ shall 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 .0201.
- (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~~ shall 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~~ shall be made within 24 hours of the capture to the Marine Patrol Communications Center by phone. All turtles taken incidental to trawling ~~must~~ shall 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~~ set forth 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 fishing 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~~ shall 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.

(h) Under Dock Oyster Culture Permit:

- (1) It is unlawful to cultivate oysters in containers under docks for personal consumption without first obtaining an Under Dock Oyster Culture Permit.
- (2) An Under Dock Oyster Culture Permit shall only be issued in accordance with provisions set forth in G.S. 113-210(c).
- (3) The applicant shall provide certification of completion of mandated training as required by G.S. 113-210(j).
- (4) Action by an Under Dock Oyster Culture Permit holder to encroach on or usurp the legal rights of the public to access public trust resources in coastal fishing waters shall result in permit revocation.

Authority G.S. 113-134; 113-169.1; 113-169.3; 113-182; 113-210; 143B-289.52.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends to amend rule cited as 15A NCAC 10D .0102.

Proposed Effective Date: September 1, 2005

Public Hearing:

Date: May 2, 2005

Time: 11:00 a.m.

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

Reason for Proposed Action: Establish deer season in archery zone

Procedure by which a person can object to the agency on a proposed rule: Notification of rulemaking coordinator (listed below) by email or by letter prior to close of the comment period.

Written comments may be submitted to: David Cobb, 1701 Mail Service Center, Raleigh, NC 27699-1701, email david.cobb@ncwildlife.org.

Comment period ends: June 14, 2005

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10D - WILDLIFE RESOURCES COMMISSION

SECTION .0100 - GENERAL

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

(a) Trespass. Entry on game lands for purposes other than hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or other materials, without the written authorization of the landowner. The Wildlife Resources Commission may designate areas on game lands as either an Archery Zone, Safety Zone; Restricted Firearms Zone, or Restricted Zone.

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting and falconry only. On these areas, deer of either sex may be taken on all open days of any applicable deer season.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted

safety zone on any game land. Falconry is exempt from this provision.

- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall be authorized only when such entry will not compromise the primary purpose for establishing the Restricted Zone and the person or persons requesting entry can demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.
- (5) Establishment of Archery, Restricted Firearms, and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any game land except in receptacles provided for disposal of such refuse at designated camping and target-shooting areas. No garbage dumps or sanitary landfills shall be established on any game land by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, thereon unless said device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person

shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. Furthermore, only shotguns with any size shot may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License: Hunting and Trapping

(1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.

(2) Exceptions

- (A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
- (B) The resident and nonresident sportsman's licenses include game lands use privileges.
- (C) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.
- (D) On the game lands described in Rule .0103(e)(2) of this Section the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of one hundred dollars (\$100.00) for each scheduled day of the trial. The total facility use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for

scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts.

A field trial shall be authorized when such field trial does not conflict with other planned activities on the Game Land or field trial facilities and the applying organization can demonstrate their experience and expertise in conducting genuine field trial activities. Entry to physical facilities, other than by field trial organizations under permit, shall be granted when they do not conflict with other planned activities previously approved by the Commission and they do not conflict with the primary goals of the agency.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302 and .0303, trapping of furbearing animals is permitted on game lands during the applicable open seasons, except that trapping is prohibited:

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;
- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;

- (5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (6) on the Hunting Creek Swamp Waterfowl Refuge;
- (7) on the John's River Waterfowl Refuge in Burke County;
- (8) on the Dupont State Forest Game Lands.

On those areas of state-owned land known collectively as the Roanoke River Wetlands controlled trapping is allowed under a permit system.

(g) Use of Weapons. In addition to zone restrictions described in Paragraph (a) no person shall discharge a weapon ~~from a vehicle, or~~ within 150 yards of any Game Lands building or designated Game Lands camping area, except where posted otherwise, or within 150 yards of any residence located on or adjacent to game ~~lands, lands,~~ except no person shall discharge a firearm within 150 yards of any residence located on or adjacent to Butner-Falls of Neuse and Jordan Game Lands.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on any game land except on those roads constructed, maintained and opened for vehicular travel and those trails posted for vehicular travel, unless such person:

- (1) is a participant in scheduled bird dog field trials held on the Sandhills Game Land; or
- (2) holds a Disabled Access Program Permit as described in Paragraph (n) of this Rule and is abiding by the rules described in that paragraph.

(i) Camping. No person shall camp on any game land except on an area designated by the landowner for camping. Camping and associated equipment in designated Hunter Camping Areas at Butner-Falls of the Neuse, Caswell, and Sandhills Game Lands is limited to Sept. 1- Feb. 29 and Apr. 7 - May 14.

(j) Swimming. Swimming is prohibited in the lakes located on the Sandhills Game Land.

(k) Disabled Sportsman Program. In order to qualify for special hunts for disabled sportsmen listed in 15A NCAC 10D .0103 an individual shall have in their possession a Disabled Sportsman permit issued by the Commission. In order to qualify for the permit, the applicant shall provide medical certification of one or more of the following disabilities:

- (1) amputation of one or more limbs;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or
- (5) legal deafness, meaning the inability to hear or understand oral communications with or without assistance of amplification devices.

Participants in the program, except those qualifying by deafness, may operate vehicles on ungated or open-gated roads normally closed to vehicular traffic on Game Lands owned by the Wildlife Resources Commission. Each program participant may be accompanied by one able-bodied companion provided such

companion has in his possession the companion permit issued with the Disabled Sportsman permit.

(l) Release of Animals and Fish. It is unlawful to release pen-raised animals or birds, wild animals or birds, or hatchery-raised fish on game lands without prior written authorization. Also, it is unlawful to move wild fish from one stream to another on game lands without prior written authorization. Written authorization shall be given when release of such animals is determined by a North Carolina Wildlife Resources Commission biologist not to be harmful to native wildlife in the area and such releases are in the public interest or advance the programs and goals of the Wildlife Resources Commission.

(m) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Game Lands except for designated areas on National Forests. People who have obtained a Disabled Access Program permit are exempt from this rule but must comply with the terms of their permit.

(n) Disabled Access Program. Permits issued under this program shall be based upon medical evidence submitted by the person verifying that a handicap exists that limits physical mobility to the extent that normal utilization of the game lands is not possible without vehicular assistance. Persons meeting this requirement may operate electric wheel chairs, all terrain vehicles, and other passenger vehicles on ungated or open-gated roads otherwise closed to vehicular traffic on game lands owned by the Wildlife Resources Commission and on game lands whose owners have agreed to such use. Those game lands where this special rule applies shall be designated in the game land rules and map book. This special access rule for disabled sportsmen does not permit vehicular access on fields, openings, roads, paths, or trails planted to wildlife food or cover. One able-bodied companion, who is identified by a special card issued to each qualified disabled person, may accompany a disabled person to provide assistance, provided the companion is at all times in visual or verbal contact with the disabled person. The companion may participate in all lawful activities while assisting a disabled person, provided license requirements are met. Any vehicle used by a qualified disabled person for access to game lands under this provision shall prominently display the vehicular access permit issued by the Wildlife Resources Commission in the passenger area of the vehicle. It shall be unlawful for anyone other than those holding a Disabled Access Permit to hunt, during waterfowl season, within 100 yards of a waterfowl blind designated by the Wildlife Resources Commission as a Disabled Sportsman's hunting blind.

(o) Public nudity. Public nudity, including nude sunbathing, is prohibited on any Game Land, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

(p) Definitions: For the purpose of this Subchapter "Permanent Hunting Blind" shall be defined as any structure that is used for hunter concealment, constructed from man made or natural materials, and that is not disassembled and removed at the end of each day's hunt.

Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2;

113-291.5; 113-305; 113-306.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Wildlife Resources Commission intends amend the rules cited as 15A NCAC 10H .0301-.0302.

Proposed Effective Date: September 1, 2005

Public Hearing:

Date: May 3, 2005

Time: 1:00 p.m.

Location: Room 332, 3rd Floor Archdale Building, 512 N. Salisbury Street, Raleigh, NC

Reason for Proposed Action:

15A NCAC 10H .0301 - Amend rules for holding cervids in captivity and prohibit release of any member of the family Suidae (hogs).

15A NCAC 10H .0302 - Amend rules for holding cervids in captivity.

Procedure by which a person can object to the agency on a proposed rule: Notification of rulemaking coordinator (listed below) by email or by letter prior to close of the comment period.

Written comments may be submitted to: David Cobb, 1701 Mail Service Center, Raleigh, NC 27699-1701, email david.cobb@ncwildlife.org.

Comment period ends: June 14, 2005

Procedure for Subjecting a Proposed Rule to Legislative

Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact

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

CHAPTER 10 - WILDLIFE RESOURCES AND WATER SAFETY

SUBCHAPTER 10H - REGULATED ACTIVITIES

**SECTION .0300 - HOLDING WILDLIFE
IN CAPTIVITY**

15A NCAC 10H .0301 GENERAL REQUIREMENTS

(a) Captivity Permit or License Required

- (1) Requirement. The possession of any species of wild animal that is or once was native to this State or any species of wild bird, native or migratory, that naturally occurs or historically occurred in this State or any member of the family Cervidae is unlawful unless the institution or individual in possession obtains from the North Carolina Wildlife Resources Commission (Commission) a captivity permit or a captivity license as provided by this Rule.
- (2) Injured, Crippled or Orphaned Wildlife. When an individual has taken possession of an injured, crippled or orphaned wild animal or wild bird, that individual shall contact the ~~Wildlife Resources~~ Wildlife Resources Commission within 24 hours of taking possession in order to apply for a captivity permit, provided, however, that under no circumstances shall an individual take possession of an injured, crippled or orphaned wild turkey, black bear, deer, elk or any other member of the family Cervidae.

(b) Captivity Permit. A captivity permit shall be requested by mail, phone, facsimile or electronic transmission or in person. A captivity permit shall authorize possession of the animal or bird only for such period of time as may be required for the rehabilitation and release of the animal or bird to the wild; or to obtain a captivity license as provided by Paragraph (c) of this Rule, if such a license is authorized; or to make a proper disposition of the animal or bird if the application for such license is denied, or when an existing captivity license is not renewed or is terminated. Captivity permits shall not be issued for wild turkey, black bear, deer, elk or any other member of the family Cervidae.

(c) Captivity License.

- (1) The purpose of captivity license is to provide humane treatment for certain wild animals or wild birds that are unfit for release. For purposes of this ~~Rule~~ Rule, wild animals are considered "unfit" if they are incapacitated by injury or otherwise; if they are a non-native species that poses a risk to the habitat or to other species in that habitat; or if they have been rendered tame by proximity to humans to the extent that they cannot feed or care for themselves without human assistance. Persons interested in obtaining a captivity license shall contact the ~~Wildlife Resources~~ Wildlife Resources Commission for an application.
- (2) Denial of captivity license. Circumstances or purposes for which a captivity license shall not be issued include but are not limited to the following:

- (A) For the purpose of holding a wild animal or wild bird that was acquired unlawfully.
 - (B) For the purpose of holding the wild animal or wild bird as a pet. For purposes of this Rule, the term "pet" means an animal kept for amusement or companionship. The term shall not be construed to include cervids held in captivity for breeding for sale to another licensed operator.
 - (C) For the purpose of holding wild animals or wild birds for hunting in North Carolina.
 - (D) For the purpose of holding wild turkey or black bear.
 - (E) For the purpose of holding deer, elk or any other member of the family Cervidae on a facility licensed after May 17, 2002, until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test to detect Chronic Wasting Disease ~~disease~~ along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm with which the tested cervid has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are recommended for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.
- (3) Required Facilities. No captivity license shall be issued until the applicant has constructed or acquired a facility for keeping the animal or bird in captivity that complies with the standards set forth in Rule .0302 of this Section and the adequacy of such facility has been verified on inspection by a representative of the Commission.
- (4) Term of License
- (A) Dependent Wildlife. If the wild animal or wild bird has been permanently rendered incapable of subsisting in the wild, the license authorizing its retention in captivity shall be an annual license terminating on December 31 of the year for which issued.
 - (B) Rehabilitable Wildlife. When the wild animal or wild bird is temporarily incapacitated, and may be rehabilitated for release to the wild, any captivity license that is issued

- shall be for a period less than one year as rehabilitation may require.
- (C) Concurrent Federal Permit. No State captivity license for an endangered or threatened species or a migratory bird, regardless of the term specified, shall operate to authorize retention thereof for a longer period than is allowed by any concurrent federal permit that may be required for retention of the bird or animal.
- (5) Holders of Captivity License for cervids.
- (A) Inspection of records. The licensee shall make all records pertaining to tags, licenses or permits issued by the ~~Wildlife Resources~~ Commission available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of CWD is suspected or confirmed within five miles of the facility or within the facility itself.
- (B) Inspection. The licensee shall make all enclosures at each licensed facility and the record-book(s) documenting required monitoring of the outer fence of the enclosure(s) available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of CWD is suspected or confirmed within five miles of the facility or within the facility itself.
- (C) Fence Monitoring Requirement. The fence surrounding the enclosure shall be inspected by the licensee or licensee's agent once a week during normal weather conditions to verify its stability and to detect the existence of any conditions or activities that threaten its stability. In the event of severe weather or any other condition that presents potential for damage to the fence, inspection shall occur every three hours until cessation of the threatening condition, except that no inspection shall be required under circumstances that threaten the safety of the person conducting the inspection.
- (D) A record-book shall be maintained to record the time and date of the inspection, the name of the person who performed the inspection, and the condition of the fence at time of inspection. The person who performs the inspection shall enter the date and time of detection and the location of any damage threatening the stability
- of the fence. If damage has caused the fence to be breachable, the licensee shall enter a description of measures taken to prevent ingress or egress by cervids. Each record-book entry shall bear the signature or initials of the licensee attesting to the veracity of the entry. The record-book shall be made available to inspection by a representative of the Commission upon request during normal business operating hours. The licensee or designee shall immediately upon discovery report any escape from the facility to the Commission. It shall be the sole responsibility of the licensee to return the escapee to the facility or to request a wildlife take permit if live capture is not possible. Upon inspection the cervid shall be either returned to the pen, transported and submitted to a North Carolina Department of Agriculture diagnostic lab for CWD evaluation, or disposed of according to the directives of the Commission.
- (E) Maintenance. Any opening or passage through the enclosure fence that results from damage shall, within one hour of detection, be sealed or otherwise secured to prevent a cervid from escape. Any damage to the enclosure fence that threatens its stability shall be repaired within one week of detection.
- (F) Chronic Wasting Disease (CWD)
- (i) Detection. Each licensee shall immediately notify the Commission if any cervid within the facility exhibits clinical symptoms of CWD or if a quarantine is placed on the facility by the State Veterinarian. All captive cervids that exhibit symptoms of CWD shall be tested for CWD.
- (ii) Cervid death. The carcass of any captive cervid that was six months or older at time of death shall be transported and submitted by the licensee to a North Carolina Department of Agriculture diagnostic lab for CWD evaluation within 48 hours of the cervid's death, or by the end of the next business

day, whichever is later. Ear tags distributed by the Commission and subsequently affixed to the cervids as required by this Rule, may not be removed from the cervid's head prior to submitting the head for CWD evaluation.

(iii) The Commission may require testing or forfeiture of cervids from a facility holding cervids in this state should the following circumstances or conditions occur:

(I) The facility has transferred a cervid that is received by a facility in which CWD is confirmed within five years of the cervid's transport date.

(II) The facility has received a cervid that originated from a facility in which CWD has been confirmed within five years of the cervid's transport date.

~~(B)~~(G) Tagging Required. Effective upon receipt of tags from the Commission, each licensee shall implement the tagging requirement using only the tags provided by the Commission as follows:

(i) All cervids ~~newborn~~ born within a facility, ~~with the exception of Muntjac and Axis deer,~~ facility shall be tagged by March 1 ~~October 1~~ following the birthing season each year. ~~Newborn Muntjac and Axis deer shall be tagged within four months of birth.~~

(ii) All cervids transferred to a facility shall be tagged within five days of the cervid's arrival at the licensee's facility. However, no cervids shall be transported from one facility to another until restrictions on importation (10B .0101) and transportation

(Paragraph (f) of this Rule) no longer apply.

(iii) All cervids in the possession of a licensee as of October 8, 2002 shall be tagged within six months of the licensee's receipt of the tags.

~~(C)~~(H) Application for Tags.

(i) Application for tags for newborn cervid. Application for tags for cervids born ~~at the~~ within a facility site shall be made by the licensee by December 1 ~~August 1~~ following the birthing season of each year, ~~except that application for tags for Muntjac and Axis newborns shall be made within six weeks of birth.~~ The licensee shall provide the following information, along with a statement and licensee's signature verifying that the information is accurate:

(I) ~~Applicant~~Owner name, mailing address, and telephone ~~phone~~ number;

(II) Facility name and site address;

(III) ~~QBSP [Quad Block Square Point] facility number listed on licensee's captivity license;~~Captivity license number;

(IV) ~~Species;~~Species of each cervid; and

(V) ~~Sex; and Birth year of each cervid.~~

~~(VI) Date of cervid birth.~~

(ii) Application for tags for cervids that were not born at the facility site shall be made by written request for the appropriate number of tags along with the licensee's application for transportation of the cervid, along with a statement and licensee's signature verifying that the information is accurate. These tag applications shall not be processed unless

accompanied by a completed application for transportation. However, no transportation permits shall be issued nor shall cervids be transported from one facility to another until restrictions on importation (10B .0101) and transportation (Paragraph (f) of this Rule) no longer apply.

~~(D)~~(I) Placement of Tags.

- (i) A single button ear tag provided by the Commission shall be permanently affixed by the licensee onto either the right or left ear of each cervid, provided that the ear chosen to bear the button tag shall not also bear a bangle tag, so that each ear of the cervid bears only one tag.
- (ii) A single bangle ear tag provided by the Commission shall be permanently affixed by the licensee onto the right or left ear of each ~~cervid~~, cervid except Muntjac deer, provided that the ear bearing the bangle tag does not also bear the button tag, so that each ear of the cervid bears only one tag. Muntjac deer are not required to be tagged with the bangle tag.
- (iii) Once a tag is affixed in the manner required by this Rule, it shall not be removed.

~~(E)~~(J) Reporting Tags Requirement. For all cervids not in the possession of a licensee as of October 8, 2002, the licensee shall submit a Cervidae Tagging Report within 30 days receipt of the tags. With regard to all cervids in the possession of a licensee as of October 8, 2002, the licensee shall submit a Cervidae Tagging report to the ~~Wildlife Resources~~ Commission within seven months of the licensee's receipt of the tags. A Cervidae Tagging Report shall provide the following information and be accompanied by a statement and licensee's signature verifying that the information is accurate.

- (i) ~~Licensee~~Owner's name, ~~mailing address~~address, and telephone number;
- (ii) Facility name and site address, including the County in which the site is located;
- (iii) ~~QBSP [Quad Block Square Point] facility number listed on licensee's captivity license;~~Captivity license number;
- (iv) ~~Button tag number;~~Species and sex of each cervid;
- (v) ~~Bangle tag number;~~Tag number(s) for each cervid; and
- (vi) ~~Species;~~Birth year of each cervid.
- ~~(vii) Sex; and~~
- ~~(viii) Birth year of cervid.~~

~~(F)~~(K) Replacement of Tags. The ~~Wildlife Resources~~ Commission shall replace tags that are lost or unusable and shall extend the time within which a licensee shall tag cervids consistent with time required to issue a replacement.

- (i) Lost Tags. The loss of a tag shall be reported to the ~~Wildlife Resources~~ Commission by the licensee and application shall be made for a replacement upon discovery of the loss. Application for a replacement shall include the information required by Subparagraph (c)(5)(C) of this Rule along with a statement and applicant's signature verifying that the information is accurate. Lost tags shall be replaced on the animal by the licensee within 30 days of receipt of the replacement tag.
- (ii) Unusable Tags. Tags that cannot be properly affixed to the ear of a cervid or that cannot be read because of malformation or damage to the tags or obscurement of the tag numbers shall immediately be returned to the ~~Wildlife Resources~~ Commission along with an application for a replacement tag with a statement and

applicant's signature verifying that the information in the application is accurate.

(6) Renewal of captivity license for cervids. Existing captivity licenses for the possession of cervids at existing facilities shall be renewed as long as the applicant for renewal continues to meet the requirements of this Section for the license, provided however, no renewal of an existing license shall permit the expansion of pen size or number of pens on the licensed facility to increase the holding capacity of that facility. No renewals shall be issued for a license that has been allowed to lapse due to the negligence of ~~by~~ the former licensee.

(7) Provision for licensing the possession of cervids in an existing facility. A captivity license shall only be issued to one individual who is 18 years of age or older. If the licensee of an existing facility voluntarily surrenders his or her captivity ~~license~~ license, becomes incapacitated or mentally incompetent, or dies, a person who has obtained lawful possession of the facility from the previous licensee or that licensee's estate, may apply for and may receive a captivity license to operate the existing facility. Any license issued under this provision shall be subject to the same terms and conditions imposed on the original licensee at the time of his or her surrender or death and shall be valid only for the purpose of holding the cervids of the existing facility within that existing facility. In addition, any actions pending from complaint, investigation or other cause shall be continued notwithstanding the termination of the original license.

(d) Nontransferable. No license or permit or tag issued pursuant to this Rule shall be transferable, either as to the holder or the site of a holding facility.

(e) ~~(Sale, Sale,~~ Transfer or Release of Captive Wildlife.

(1) It is unlawful for any person to transfer or receive any wild animal or wild bird that is being held under a captivity permit issued under Paragraph (b) of this Rule, except that any such animal or bird may be surrendered to an agent of the ~~Wildlife Resources~~ Commission.

(2) It is unlawful for any person holding a captivity license issued under Paragraph (c) of this Rule to sell or transfer the animal or bird held under such license, except that such animal or bird may be surrendered to an agent of the Commission, and any such licensee may sell or transfer the animal or bird (except members of the family Cervidae) to another person who has obtained a license to hold it in

captivity. Upon such a sale or transfer, the seller or transferor shall obtain a receipt for the animal or bird showing the name, address, and license number of the buyer or transferee, a copy of which shall be provided to the ~~Wildlife Resources~~ Commission.

(3) It is unlawful for any person to release into the wild for any purpose or allow to range ~~free any species of deer, elk or other members of the family Cervidae or any wolf, coyote, or other non-indigenous member of the family canidae~~ free:

(i) any species of deer, elk or other members of the family Cervidae, or

(ii) any wolf, coyote, or other non-indigenous member of the family Canidae, or

(iii) any member of the family Suidae.

(f) Transportation Permit.

(1) Except as otherwise provided herein, no transportation permit shall be required to move any lawfully held wild animal or wild bird within the State.

(2) No person shall transport black bear or Cervidae for any purpose without first obtaining a transportation permit from the ~~North Carolina Wildlife Resources~~ Commission.

(3) Except as provided in Subparagraph (f)(4) of this Rule, no transportation permits shall be issued for deer, elk, or other species in the family Cervidae until the U.S. Department of Agriculture (USDA) establishes a Chronic Wasting Disease (CWD) program that includes a test to detect Chronic Wasting Disease, along with requirements for monitoring cervids that shall establish a basis for determining whether a cervid and any cervid herd or farm on which the tested animal has resided has been free of CWD for five years, provided that the program, test and monitoring requirements are recommended for application to wild animals by the Southeastern Cooperative Wildlife Disease Study.

(4) Cervid Transportation. A permit to transport deer, elk, or other species in the family Cervidae may be issued by the Commission to an applicant for the purpose of transporting the animal or animals for export out of state, to a slaughterhouse for slaughter or to a veterinary medical facility for treatment provided that the animal for which the permit is issued does not exhibit clinical symptoms of Chronic Wasting Disease. No person shall transport a cervid to slaughter or export out of state without bearing a copy of the transportation permit issued by

the ~~Wildlife Resources~~ Commission authorizing that transportation. No person shall transport a cervid for veterinary treatment without having obtained approval from the Commission as provided by Subparagraph (f)(4)(C) of this Rule. Any person transporting a cervid shall present the transportation permit to any law enforcement officer or any representative of the ~~Wildlife Resources~~ Commission upon request, except that a person transporting a cervid by verbal authorization for veterinary treatment shall provide the name of the person who issued the approval to any law enforcement officer or any representative of the ~~Wildlife Resources~~ Commission upon request.

(A) Slaughter. Application for a transportation permit for purpose of slaughter shall be submitted in writing to the ~~North Carolina Wildlife Resources~~ Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:

- (i) ~~Applicant~~Owner's name, ~~mailing address,~~address and telephone number;
- (ii) Facility site address;
- (iii) ~~QBSP [Quad Block Square Point] facility number listed on applicant's captivity license;~~Captivity license number;
- (iv) Name, address, county and phone number of the slaughter house to which the cervid will be transported;
- (v) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
- (vi) Name and location of the North Carolina Department of Agriculture Diagnostic lab where the head of the cervid is to be submitted for CWD testing;
- (vii) Date of transportation;
- (viii) Species and ~~sex;~~sex of each cervid; and
- (ix) ~~Bangle and button tag numbers~~Tag number(s) for ~~the~~each cervid.

(B) Exportation. Application for a transportation permit for purpose of exportation out of state shall be submitted in writing to the ~~North~~

~~Carolina~~ ~~Wildlife Resources~~ Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:

- (i) ~~Applicant's~~ Owner's name, mailing address and telephone number;
- (ii) Facility site address;
- (iii) ~~QBSP [Quad Block Square Point] facility number listed on applicant's captivity license;~~Captivity license number;
- (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
- (v) Name, site address, county, state and phone number of the destination facility to which the cervid is exported;
- (vi) A copy of the importation permit from the state of the destination facility that names the destination facility to which the animal is to be exported;
- (vii) Date of departure;
- (viii) Species and ~~sex;~~sex of each cervid; and
- (ix) ~~Bangle and button tag numbers~~ number(s) for ~~the~~ each cervid.

(C) Veterinary treatment. No approval shall be issued for transportation of a cervid to a veterinary clinic out of the state of North Carolina, or for transportation from a facility out of the state of North Carolina to a veterinary clinic in North Carolina. An applicant from a North Carolina facility seeking to transport a cervid for veterinary treatment to a facility within North Carolina shall contact the Wildlife Telecommunications Center or the Wildlife Management Division of the ~~Wildlife Resources~~ Commission to obtain verbal authorization to transport the cervid to a specified veterinary clinic and to return the cervid to the facility. Verbal approval to transport a cervid to a veterinary clinic shall authorize transport only to the specified veterinary clinic and directly back to the facility, and shall not be construed

to permit intervening destinations. To obtain verbal authorization to transport, the applicant shall provide staff of the ~~Wildlife Resources~~ Commission the applicant's name and phone number, applicant's facility name, site address and phone number, the cervid species, sex and tag numbers, and the name, address and phone number of the veterinary facility to which the cervid shall be transported. Within five days of transporting the cervid to the veterinary facility for treatment, the licensee shall provide the following information in writing to the ~~Wildlife Resources~~ Commission, along with a statement and applicant's signature verifying that the information is correct:

- (i) ~~cervid owner's~~ Applicant's name, mailing address and telephone number;
- (ii) Facility name and site address;
- (iii) ~~QBSP facility number on captivity license;~~ Captivity license number;
- (iv) Vehicle or trailer license plate number and state of issuance of the vehicle or trailer used to transport the cervid;
- (v) Date of transportation;
- (vi) ~~Species and sex;~~ sex of each cervid;
- (vii) ~~Bangle and button tag numbers~~ number(s) for the each cervid;
- (viii) Name, address and phone number of the veterinarian and clinic that treated the cervid;
- (ix) Symptoms for which cervid received treatment; and
- (x) Diagnosis of veterinarian who treated the cervid.

(g) Slaughter at cervid facility. Application for a permit for purpose of slaughter at the cervid facility shall be submitted in writing to the Commission and shall include the following information along with a statement and applicant's signature verifying that the information is accurate:

- (i) Applicant name, mailing address, and telephone number;
- (ii) Facility site address;
- (iii) Captivity license number;
- (iv) Name and location of the North Carolina Department of Agriculture Diagnostic lab

where the head of the cervid is to be submitted for CWD testing;

- (v) Date of slaughter;
- (vi) Species and sex of each cervid; and
- (vii) Tag number(s) for each cervid.

Permits or authorization may not be sold or traded by the licensee to any individual for the hunting or collection of captive cervids. Only the licensee may kill a cervid within the cervid enclosure.

~~(g)(h)~~ No provision within this Rule other than those that permit transport for export, slaughter or veterinary treatment shall be construed to permit transportation of cervids until restrictions on transportation provided within this Rule, 15A NCAC 10B .0101 or anywhere else within these rules no longer apply.

Authority G.S. 106-549.97(b); 113-134; 113-272.5; 113-274.

15A NCAC 10H .0302 MINIMUM STANDARDS

(a) Exemptions. Publicly financed zoos, scientific and biological research facilities, and institutions of higher education may apply to the Commission for exemption ~~are exempt~~ from the minimum standards set forth in this Rule for all birds and animals except the black bear.

(b) ~~All holders of captivity licenses other than those~~ With the exception of those entities named in Paragraph (a) of this Rule who have received exemption from the Commission, all holders of captivity licenses shall comply with the following requirements:

- (1) Deer, Elk and other species of the family Cervidae
 - (A) Enclosure.
 - (i) Description. The enclosure shall be on a well-drained site containing ~~trees or brush~~ natural or manmade shelter for shade. The minimum size of the enclosure for all cervids except Muntjac shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal ~~held~~ held provided that no more than 25% shall be covered with water. At no time shall the number of cervids in the enclosure exceed the number allowed by the captivity license. The enclosure shall be surrounded by a fence of sufficient strength and design to contain the animal under any circumstances, at least ~~10~~ eight feet high, and dog-proof to a height of at least six feet. For enclosures exclusively holding Muntjac deer, the minimum pen size

~~shall be 800 square feet for the first three animals and 200 square feet for each additional animal. No exposed barbed wire, nails, wire or protruding nails or other protrusions that may cause injury to the animal shall be permitted within the enclosure. A roofed building large enough to provide shelter in both a standing and a lying position for each deer shall be provided. This building shall be closed on three sides. It shall be constructed at least 10 feet from the fence. Captive cervids shall not be contained within or allowed to enter a place of residence.~~

(ii) ~~Inspection. The licensee shall make all enclosures at each licensed facility and the record book documenting required monitoring of the outer fence of the enclosure(s) available for inspection by the Commission at any time during normal business hours, or at any time an outbreak of CWD is suspected or confirmed within five miles of the facility or within the facility itself.~~

(iii) ~~Fence Monitoring Requirement.~~

(I) ~~The fence surrounding the enclosure shall be inspected by the licensee or licensee's agent once a week during normal weather conditions to verify its stability and to detect the existence of any conditions or activities that threaten its stability. In the event of severe weather or any other condition that presents potential~~

~~for damage to the fence, inspection shall occur every three hours until cessation of the threatening condition, except that no inspection shall be required under circumstances that threaten the safety of the person conducting the inspection.~~

(II) ~~A record book shall be maintained to record the time and date of the inspection, the name of the person who performed the inspection, and the condition of the fence at time of inspection. The person who performs the inspection shall enter the date and time of detection and the location of any damage threatening the stability of the fence. If damage has caused the fence to be breachable, the licensee shall enter a description of measures taken to prevent ingress or egress by cervids. Each record book entry shall bear the signature or initials of the licensee attesting to the veracity of the entry. The record book shall be made available to inspection by a representative of the Commission upon request during normal business operating hours.~~

- (iv) ~~Maintenance. Any opening or passage through the enclosure fence resulting from damage shall be sealed or otherwise secured from ingress or egress by a cervid within one hour of detection. Any damage to the enclosure fence that threatens its stability shall be repaired within one week of detection.~~
- (B) Sanitation and Care. Licensees shall provide an ample supply of clear water and salt at all times. Food shall be placed in the enclosure as needed, but not less than three times weekly. ~~Straw and leaf litter shall be used as a floor covering in the shelter and shall be replenished every week. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. The animal(s) shall be protected against ~~fight, fright~~ or harm from other animals. Domestic livestock and dogs shall be excluded from the enclosure.~~
- (C) ~~Chronic Wasting Disease (CWD)~~
 - (i) ~~Detection. Each licensee shall immediately notify the Commission if any cervid within the facility exhibits clinical symptoms of CWD or if a quarantine is placed on the facility by the State Veterinarian. All captive cervids that exhibit symptoms of CWD shall be tested for CWD.~~
 - (ii) ~~Cervid death. The carcass of any captive cervid that was six months or older at time of death shall be transported and submitted by the licensee to a North Carolina Department of Agriculture diagnostic lab for CWD evaluation within 48 hours of the cervid's death, or by the end of the next business day, whichever is later.~~
 - (iii) ~~The Commission may require testing or forfeiture of cervids from a facility holding cervids in this state should the following circumstances or conditions occur:~~
 - (I) ~~The facility has transferred a cervid that is received by a facility in which CWD is confirmed within five years of the cervid's transport date.~~
 - (II) ~~The facility has received a cervid that originated from a facility in which CWD has been confirmed within five years of the cervid's transport date.~~
- (2) Wild Boars
 - (A) Enclosure. The enclosure shall be on a site containing trees or brush for shade. The minimum size of the enclosure shall be not less than one-half acre for the first three animals and an additional one-fourth acre for each additional animal held. The enclosure shall be surrounded by a fence at least five feet high and of sufficient strength to contain the animals. No exposed barbed wire or protruding nails shall be permitted within the enclosure. A roofed building large enough to provide shelter in both a standing or a lying position for each boar must be provided. This building shall be closed on three sides. A pool of water for wallowing or a sprinkler system shall be provided on hot days.
 - (B) Sanitation and Care. Licensees shall provide an ample supply of clear water at all times. Food shall be placed in the enclosure as needed, but in any case, not less than three times weekly. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.
- (3) Wild Birds
 - (A) Enclosure. The enclosure shall be large enough for the bird or birds to assume all natural postures. The enclosure shall be designed in such a way that the birds cannot injure themselves and are able to maintain a natural plumage. Protection from excessive sun, weather, and predators shall also be provided.
 - (B) Sanitation and Care. The cage shall be kept clean, dry, and free from

molded or damp feed. Ample food and clean water shall be available at all times.

(4) Alligators

(A) Enclosure. The enclosure shall be surrounded by a fence of sufficient strength to contain the animals and that shall prevent contact between the observer and alligator. The enclosure shall contain a pool of water large enough for the animal to completely submerge itself. If more than one animal is kept, the pool must be large enough for all animals to be able to submerge themselves at the same time. A land area with both horizontal dimensions at least as long as the animal shall also be provided. In case of more than one animal, the land area shall have both horizontal dimensions at least as long as the longest animals to occupy the land area at the same time without overlap.

(B) Sanitation and Care. The water area shall be kept clean and adequate food provided. Protection shall be provided at all times from extremes in temperature.

(5) Black Bear

(A) Educational Institutions and Zoos Operated or Established by Governmental Agencies

(i) Enclosure. A permanent, stationary metal cage, at least eight feet wide by 12 feet long by six feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor in which a drainable pool one and one-half feet deep and not less than four by five feet has been constructed. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage must contain a den at least five feet long by five feet wide

by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.

(ii) Sanitation and Care. Adequate food shall be provided daily; and clean, clear drinking water shall be available at all times. In hot weather, the floor of the cage and the food trough shall be flushed with water and the water in the pool changed daily. The den shall be flushed and cleaned at least once each week in hot weather. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. Brush, canvas, or other suitable material shall be placed over the cage to provide additional shade when necessary. The use of collars, tethers or stakes to restrain the bear is prohibited, except as a temporary safety device.

(B) Conditions Simulating Natural Habitat. Black bears held in captivity by other than educational institutions or governmental zoos shall be held without caging under conditions simulating a natural habitat. All of the following conditions must exist to simulate a natural habitat in a holding facility:

(i) The method of confinement is by chain link fence, wall, moat, or a combination of such, without the use of chains or tethers.

(ii) The area of confinement is at least one acre in extent for one or two bears and an additional one-eighth acre for each additional bear.

(iii) Bears are free, under normal conditions, to move throughout such area.

- (iv) At least one-half of the area of confinement is wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind.
 - (v) The area of confinement contains a pool not less than one and one-half feet deep and not less than four by five feet in size.
 - (vi) Provision is made for a den for each bear to which the bear may retire for rest, shelter from the elements, or respite from public observation.
 - (vii) The area of confinement presents an overall appearance of a natural habitat and affords the bears protection from harassment or annoyance.
 - (viii) Provisions are made for adequate food and water and for maintenance of sanitation.
 - (ix) The applicant shall document that the applicant owns or has a lease of the real property upon which the holding facility is located, provided that if the applicant is a lessee, the lease is for a duration of at least five years from the point of stocking the facility.
- (6) Cougar
- (A) Educational or scientific research institutions and zoos supported by public funds.
 - (i) Enclosure. A permanent, stationary metal cage, at least nine feet wide by 18 feet long by nine feet high and located in the shade or where shaded during the afternoon hours of summer, is required. The cage shall have a concrete floor. The bars of the cage shall be of iron or steel at least one-fourth inch in diameter, or heavy gauge steel chain link fencing may be used. The gate shall be equipped with a lock or safety catch, and guard rails shall be placed outside the cage so as to prevent contact between the observer and the caged animal. The cage shall contain a den at least five feet long by five feet wide by four feet high and so constructed as to be easily cleaned. A "scratch log" shall be placed inside the cage. The cage shall be equipped with a removable food trough. Running water shall be provided for flushing the floor and changing the pool.
 - (B) Cougars held in captivity by other than educational or scientific institutions or publicly supported zoos shall be held without caging under conditions simulating a natural habitat. Applicants for a captivity license to hold cougar shall apply to the ~~Wildlife Resources~~ Commission on forms provided by the Commission, and shall provide plans that describe how the applicant's facility will comply with the requirement to simulate a natural habitat. All of the following conditions must exist to simulate a natural habitat in a holding facility.
 - (i) The method of confinement is by chain link fence, Sanitation and Care. Adequate food shall be provided daily; and clean, clear drinking water shall be available at all times. In hot weather, the floor of the cage and the food trough shall be flushed with water and the water in the pool changed daily. The den shall be flushed and cleaned at least once each week in hot weather. An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained. Brush, canvas, or other suitable material shall be placed over the cage to provide additional shade when necessary. The use of collars, tethers or stakes to restrain the cougar is prohibited, except as a temporary safety device.

without the use of chains or tethers, provided that:

- (I) Nine gauge chain link fencing shall be at least 12 feet in height with a four foot fence overhang at a 45 degree angle on the inside of the pen to prevent escape from climbing and jumping.
- (II) Fence posts and at least six inches of the fence skirt shall be permanently imbedded in a six inch wide by one foot deep concrete footer to prevent escape by digging.
- (ii) The area of confinement shall be at least one acre for two cougars with an additional one-eighth acre for each additional cougar, except that smaller areas containing terrain and topographical features that offer escape cover and refuge and meeting all other specifications may be permitted following site evaluation by the ~~Wildlife Resources~~ Commission.
- (iii) Cougars shall be free under normal conditions to move throughout the area of confinement.
- (iv) At least one-half of the area of confinement shall be wooded with living trees, shrubs and other perennial vegetation capable of providing shelter from sun and wind; and a 20 foot wide strip along the inside of the fence shall be maintained free of trees, shrubs and any other obstructions which could provide a base from which escape through leaping could occur.
- (v) The area of confinement shall contain a pool not less than one and one-half feet deep and not less than four by five feet in size.

- (vi) Each cougar shall be provided a den to which the cougar may retire for rest, shelter from the elements, or respite from public observation. Each den shall be four feet wide by four feet high by four feet deep. Each den shall be enclosed entirely within at least an eight feet wide by ten feet deep by 12 feet high security cage. The security cage shall be completely within the confines of the facility, cement-floored, shall have nine gauge fencing on all sides and the top, and shall have a four foot, 45 degree fence overhang around the outside top edge to prevent cougar access to the top of the security cage.

- (vii) The area of confinement shall protect the cougar from harassment or annoyance.

- (C) Provisions shall be made for ample food and water and for maintenance of sanitation.

- (D) The applicant shall document that the applicant owns or has a lease of the real property upon which the holding facility is located, provided that if the applicant is a lessee, the lease is for a duration of at least five years from the point of stocking the facility.

(7) Other Wild Animal Enclosures.

- (A) General Enclosure Requirements.
 - (i) The enclosure shall provide protection from excessive sun, weather and free-ranging animals.
 - (ii) A den area in which the animal can escape from view and large enough for the animal to turn around and lie down shall be provided for each animal within the enclosure.
 - (iii) No tethers or chains shall be used to restrain the animal.
 - (iv) Either a tree limb, exercise device, or shelf large enough to accommodate the animal shall be provided to allow for exercise and climbing.
 - (v) Sanitation and Care. Fresh food shall be provided daily,

- (vi) and clean water shall be available at all times.
- (vi) An effective program for the control of insects, ectoparasites, disease, and odor shall be established and maintained.

- (B) Single Animal Enclosures for certain animals. The single-animal enclosure for the animals listed in this Subparagraph shall be a cage with the following minimum dimensions and horizontal areas:

Animal	Dimensions in Feet			Per Animal
	Length	Width	Height	
Bobcat, Otter	10	5	5	50
Raccoon, Fox, Woodchuck	8	4	4	32
Opossum, Skunk, Rabbit	6	3	3	18
Squirrel	4	2	2	8

- (C) Single Enclosure Requirements for animals not mentioned elsewhere in this Rule. For animals not listed above or mentioned elsewhere in this Rule, single animal enclosures shall be a cage with one horizontal dimension being at least four times the nose-rump length of the animal and the other horizontal dimension being at least twice the nose-rump length of the animal. The vertical dimensions shall be at least twice the nose-rump length of the animal. Under no circumstances shall a cage be less than four feet by two feet by two feet.
- (D) Multiple Animal Enclosures. The minimum area of horizontal space shall be determined by multiplying the required square footage for a single animal by a factor of 1.5 for one additional animal and the result by the same factor, successively, for each additional animal. The vertical dimension for multiple animal enclosures shall remain the same as for single animal enclosures.
- (E) Young animals. The young of any animal may be kept with the parent in a single-animal enclosure only until weaning. After weaning, if the animals are kept together, the requirements for multiple-animal enclosures shall apply.

Authority G.S. 19A-11; 106-549.97(b); 113-134; 113-272.5.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Examiners for Speech Pathologists and Audiologists intends to adopt the rules cited as 21 NCAC 64 .0215-.0217.

Proposed Effective Date: August 1, 2005

Public Hearing:

Date: May 20, 2005

Time: 11:00 a.m.

Location: 3100 Tower Blvd., Fifth floor, Durham, NC

Reason for Proposed Action: *Challenges have been made to clarity and specificity of existing rules.*

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

Written comments may be submitted to: *John C. Randall, 3100 Tower Blvd, Durham, NC 27707, phone (919)403-0351.*

Comment period ends: June 14, 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

SECTION .0200 - INTERPRETATIVE RULES

21 NCAC 64 .0215 STANDARD OF PRACTICE FOR AUDIOLOGICAL EVALUATIONS

(a) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the words "reasonable degree of professional competence" used in G.S. 90-301(5) to require the following actions to be performed before recommending amplification:

- (1) Obtaining a history of the patient's hearing loss;
- (2) Otoscopy of the patient's ear canals;
- (3) Recommending and documenting referral to an ENT specialized physician if there is any ear canal obstruction, reported pain or discharge, or a history of sudden hearing loss, dizziness or balance problems; and
- (4) Testing the patient's hearing with properly calibrated equipment in an environment that meets current ANSI standards.

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

21 NCAC 64 .0216 STANDARD OF PRACTICE FOR SPEECH AND LANGUAGE PATHOLOGISTS

(a) The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the words "reasonable degree of professional competence" used in G.S. 90-301(5) to

require the following actions to be performed prior to commencing treatment:

- (1) Obtaining a history of the patient's problem;
- (2) Examining the patient;
- (3) Identifying the patient's problem and its possible causes;
- (4) Establishing the goals of the treatment;
- (5) Identifying and selecting appropriate treatments;
- (6) Making a disclosure to the patient or custodian if the treatment being recommended is not supported by professional efficacy studies;
- (7) Periodically evaluating and documenting the patient's progress towards the treatment goals and recommending referral to other disciplines or recommending discharge from therapy where there has been no progress.

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

21 NCAC 64 0217 "BENEFIT FROM TREATMENT" DEFINED

The Board of Examiners for Speech and Language Pathologists and Audiologists interprets the words "benefit from treatment" used in G.S. 90-301 to mean remediation of the condition being treated.

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

Note from the Codifier: The rules published in this Section of the NC Register are temporary rules reviewed and approved by the Rules Review Commission (RRC) and have been delivered to the Codifier of Rules for entry into the North Carolina Administrative Code. A temporary rule expires on the 270th day from publication in the Register unless the agency submits the permanent rule to the Rules Review Commission by the 270th day.

This section of the Register may also include, from time to time, a listing of temporary rules that have expired. See G.S. 150B-21.1 and 26 NCAC 02C .0500 for adoption and filing requirements.

TITLE 10A – DEPARTMENT OF HEALTH & HUMAN SERVICES

Rule-making Agency: *NC Medical Care Commission*

Rule Citation: *10A NCAC 13B .3302*

Effective Date: *April 1, 2005*

Date Approved by the Rules Review Commission: *March 17, 2005*

Reason for Action: The referenced hospital licensure rule (10A NCAC 13B .3302) requires informed consent prior to participation in any research study before the patient can participate. The hospital rule was made effective Jan 1, 1996. Subsequent to the rule being made effective, the U.S. Department of Health and Human Services and the U.S. Food and Drug Administration put in place new regulations which allowed exceptions to informed consent requirements when conducting certain types of research, including emergency research. Exceptions to the informed consent requirements were not considered when this rule was developed and adopted. In order to allow for exceptions to the informed consent requirements and to allow certain types of research including emergency research to proceed, which may yield results that would provide guidance on how to more effectively treat patients in the future, the hospital licensure rule must be amended to allow for exceptions in certain circumstances, which are explained in the proposed amendment language.

CHAPTER 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13B – LICENSING OF HOSPITALS

SECTION .3300 - PATIENT'S BILL OF RIGHTS

10A NCAC 13B .3302 MINIMUM PROVISIONS OF PATIENT'S BILL OF RIGHTS

- (a) A patient has the right to respectful care given by competent personnel.
- (b) A patient has the right, upon request, to be given the name of his attending physician, the names of all other physicians directly participating in his care, and the names and functions of other health care persons having direct contact with the patient.
- (c) A patient has the right to every consideration of his privacy concerning his own medical care program. Case discussion, consultation, examination, and treatment are considered confidential and should be conducted discreetly.

(d) A patient has the right to have all records pertaining to his medical care treated as confidential except as otherwise provided by law or third party contractual arrangements.

(e) A patient has the right to know what facility rules and regulations apply to his conduct as a patient.

(f) The patient has the right to expect emergency procedures to be implemented without unnecessary delay.

(g) The patient has the right to good quality care and high professional standards that are continually maintained and reviewed.

(h) The patient has the right to full information in laymen's terms, concerning his diagnosis, treatment and prognosis, including information about alternative treatments and possible complications. When it is not possible or medically advisable to give such information to the patient, the information shall be given on his behalf to the patient's designee.

(i) Except for emergencies, the physician must obtain the necessary informed consent prior to the start of any procedure or treatment, or both.

(j) A patient has the right to be advised when a physician is considering the patient as a part of a medical care research program or donor program. Informed consent must be obtained prior to actual participation in such program and the patient or legally responsible party, may, at any time, refuse to continue in any such program to which he has previously given informed consent. ~~The requirement for informed consent does not apply when the following criteria are met:~~

- ~~(1) the purpose of the research is to collect scientific data;~~
- ~~(2) obtaining informed consent is not feasible because:

 - ~~(A) The patient will not be able to give their informed consent as a result of their medical condition;~~
 - ~~(B) The intervention under investigation must be administered before consent from the patients' legally (authorized representatives is feasible; and~~
 - ~~(C) There is no reasonable way to identify prospectively the individuals likely to become eligible for participation in the clinical investigation; and~~~~
- ~~(3) the research program has been approved by the U.S. Food and Drug Administration for an exception to the federal informed consent requirements.~~
- (1) An Institutional Review Board (IRB) may waive or alter the informed consent requirement if it reviews and approves a research study in accord with federal

regulations for the protection of human research subjects including U.S. Department of Health and Human Services (HHS) regulations under 45 CFR Part 46 and U.S. Food and Drug Administration (FDA) regulations under 21 CFR Parts 50 and 56.

(2) For any research study proposed for conduct under an FDA "Exception from Informed Consent Requirements for Emergency Research" or an HHS "Emergency Research Consent Waiver" in which informed consent is waived but community consultation and public disclosure about the research are required, any facility proposing to be engaged in the research study also must verify that the proposed research study has been registered with the North Carolina Medical Care Commission.

(3) When the IRB reviewing the research study has authorized the start of the community consultation process required by the federal regulations for emergency research, but before the beginning of that process, notice of the proposed research study by the facility shall be provided to the North Carolina Medical Care Commission. The notice shall include:

- (A) the title of the research study;
- (B) a description of the research study, including a description of the population to be enrolled;
- (C) a description of the planned community consultation process, including currently proposed meeting dates and times;
- (D) an explanation of the way that people choosing not to participate in the research study may opt out; and
- (E) contact information including mailing address and phone number for the IRB and the principle investigator.

(4) The Medical Care Commission may publish all or part of the above information in the North Carolina Register, and may require the institution proposing to conduct the research study to attend a public meeting of the Commission to present and discuss the study or the community consultation process proposed.

(k) A patient has the right to refuse any drugs, treatment or procedure offered by the facility, to the extent permitted by law, and a physician shall inform the patient of his right to refuse any

drugs, treatment or procedures and of the medical consequences of the patient's refusal of any drugs, treatment or procedure.

(l) A patient has the right to assistance in obtaining consultation with another physician at the patient's request and expense.

(m) A patient has the right to medical and nursing services without discrimination based upon race, color, religion, sex, sexual preference, national origin or source of payment.

(n) A patient who does not speak English shall have access, when possible, to an interpreter.

(o) The facility shall provide a patient, or patient designee, upon request, access to all information contained in the patient's medical records. A patient's access to medical records may be restricted by the patient's attending physician. If the physician restricts the patient's access to information in the patient's medical record, the physician shall record the reasons on the patient's medical record. Access shall be restricted only for sound medical reason. A patient's designee may have access to the information in the patient's medical records even if the attending physician restricts the patient's access to those records.

(p) A patient has the right not to be awakened by hospital staff unless it is medically necessary.

(q) The patient has the right to be free from needless duplication of medical and nursing procedures.

(r) The patient has the right to medical and nursing treatment that avoids unnecessary physical and mental discomfort.

(s) When medically permissible, a patient may be transferred to another facility only after he or his next of kin or other legally responsible representative has received complete information and an explanation concerning the needs for and alternatives to such a transfer. The facility to which the patient is to be transferred must first have accepted the patient for transfer.

(t) The patient has the right to examine and receive a detailed explanation of his bill.

(u) The patient has a right to full information and counseling on the availability of known financial resources for his health care.

(v) A patient has the right to expect that the facility will provide a mechanism whereby he is informed upon discharge of his continuing health care requirements following discharge and the means for meeting them.

(w) A patient cannot be denied the right of access to an individual or agency who is authorized to act on his behalf to assert or protect the rights set out in this Section.

(x) A patient has the right to be informed of his rights at the earliest possible time in the course of his hospitalization.

*History Note: Authority G.S. 131E-75; 131E-79; 131E-117; 143B-165;
RRC Objection due to ambiguity Eff. July 13, 1995;
Eff. January 1, 1996;
Temporary Amendment Eff. April 1, 2005.*

This Section contains information for the 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

April 21, 2005
June 16, 2005
August 18, 2005
October 20, 2005
May 19, 2005
July 21, 2005
September 15, 2005
November 17, 2005
December 15, 2005

AGENDA

RULES REVIEW COMMISSION

April 21, 2005, 10:00 A.M.

- (I). Call to Order and Opening Remarks
- (II). Review of minutes of last meeting
- (III). Follow Up Matters
 - (A) Medical Care Commission – 10A NCAC 13B .4511 (Bryan)
 - (B) Medical Care Commission – 10A NCAC 13F .1104 (Bryan)
 - (C) Medical Care Commission – 10A NCAC 13G .0303; .0309; .0601; .1103 (Bryan)
 - (D) Commission for Health Services – 15A NCAC 18A .2609 (DeLuca)
 - (E) Secretary of State – 18 NCAC 06 .1313 (DeLuca)
 - (F) Board of Cosmetic Art Examiners – 21 NCAC 14A .0101 (DeLuca)
 - (G) Board of Nursing – 21 NCAC 36 .0702 (DeLuca)
 - (H) Board of Podiatry Examiners – 21 NCAC 52 .0205 (DeLuca)
- (IV). Review of Rules (Log Report #220)
- (V). Review of Temporary Rules (if any)
- (VI). Commission Business

Next meeting: May 19, 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. Fat Dragon, Inc. T/A Akumi	04 ABC 0868	Lassiter	02/10/05	
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	
Alcoholic Beverage Control v. Faal Group International, LLC T/A Crown Central	04 ABC 1308	Elkins	03/24/05	
Sports Dimensions, INC d/b/a Club Deep Oros v. ABC Commission	04 ABC 2225	Gray	03/22/05	
<u>VICTIMS COMPENSATION</u>				
Lonnie Jones v. Dept. Crime Control & Public Safety, Victims Comp.	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	
Christopher C. Searcy v. Crime Victims Compensation Commission	04 CPS 1305	Gray	01/21/05	
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	
Scott Harshfield v. Crime Victims Compensation Commission	04 CPS 1559	Gray	03/14/05	
Belinda D. Clegg v. Crime Victims Compensation Commission	04 CPS 1637	Mann	02/07/05	
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	04 CPS 2135	Chess	01/05/05	

CONTESTED CASE DECISIONS

Services Division

Daniel A. Young, Sr v. Crime Victims Compensation Commission	05 CPS 0023	Wade	02/21/05
Christine Watts v. OAH	05 CPS 0128	Chess	03/17/05

DEPARTMENT OF AGRICULTURE

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
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DEPARTMENT OF ADMINISTRATION

Larry Yancey v. GACPD, DOA	04 DOA 0896	Morrison	07/28/04
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HEALTH AND HUMAN SERVICES

Bejeer Smiles Child Care Learning Center, Inc. v. DHHS, Div of Child Development	98 DHR 0235	Gray	09/16/04
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Margaret Bollo v. DHHS, Broughton Hospital	03 DHR 0444	Gray	07/21/04
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Walter Ray Nelson, Jr., Karen Marie Nelson v. DHHS	03 DHR 0884	Lassiter	05/18/04
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Winter McCotter v. DHHS, Div. of Facility Services, Healthcare Personnel Registry Section	03 DHR 0905	Gray	10/20/04
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Blaine Ryan Walsh-Child, Bonnie L. Walsh-Mother v. DHHS, Div. of Med. Assistance	03 DHR 1113	Gray	10/15/04
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Olufemi Augustine Ohome v. DHHS, Div. of Facility Services	03 DHR 1062	Lassiter	05/24/04
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Karen A. Anders v. DHHS, Div of Facility Services	03 DHR 1217	Gray	09/20/04
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Charles Crawford Cox v. DHHS	03 DHR 1546	Lassiter	07/07/04
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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
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Tomeeka K. Blount v. DHHS, Caswell Center	03 DHR 1728	Elkins	10/15/04
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Lativia L. Gibbs v. DHHS, Div. of Child Development	03 DHR 1746	Smith	07/23/04
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Rebecca Stephens Short v. DHHS, Div of Facility Services	03 DHR 1806	Conner	06/11/04
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Jacqueline Haltiwanger v. DHHS, Div of Facility Services	03 DHR 1818	Conner	09/24/04
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Loretta Kaye Dulakis v. DHHS, Div. of Facility Services	03 DHR 1848	Wade	08/20/04
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Willie S. Neely v. DHHS, Division of Facility Services	03 DHR 2151	Gray	02/17/05
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Pamela Narron (Legal Guardian for) Benjamin Chad Pierce v. DHHS, Div of Mental Health – DD-SA	03 DHR 2377	Conner	07/19/04
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Tony Worley v. DHHS, Div of Facility Services	03 DHR 2427	Mann	12/07/04
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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
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Louvenia Jones, Sheryl Willie – General Power of Attorney v. DHHS, Div of Child Development	03 DHR 2445	Gray	06/15/04
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Antonia Marie Collins v. DHHS, Div of Facility Services	03 DHR 2450	Mann	09/15/04
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John Michael Thompson v. DHHS, DFS	04 DHR 0046	Lassiter	07/27/04
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Donna R. Gardner v. Health Care Personnel Registry, DHHS, Div of Facility Services	04 DHR 0048	Gray	09/17/04
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Johnny Rouse v. DHHS, Div of Facility Services	04 DHR 0107	Wade	10/07/04
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Alisa Hodges Yarborough v. DHHS, DFS	04 DHR 0176	Elkins	07/19/04
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Brenda Rena Hairston v. DHHS	04 DHR 0183	Wade	02/04/05
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Chinedu Eucharia Akamelu v. DHHS, Division of Facility Services	04 DHR 0185	Elkins	11/23/04
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LaDunna K. Brewington v. DHHS, Div of Medical Assistance	04 DHR 0192	Mann	06/09/04
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Martha Williams, Kidtz Town v Div of Child Development	04 DHR 0200	Elkins	06/11/04
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Mary P. Daniels v. DHHS	04 DHR 0232	Gray	08/09/04
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Evelyn Deloris Johnson v. DHHS	04 DHR 0261	Elkins	02/10/05
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Terry T. Nixon v. DHHS, Division of Facility Services	04 DHR 0287	Lassiter	01/05/05
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Paulette Simato v. DHHS, Div of Facility Services	04 DHR 0302	Conner	09/22/04
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Eula P. Street v. DHHS, DFS	04 DHR 0332	Elkins	07/14/04
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Donnell Williams v. Harnet County DSS	04 DHR 0334	Conner	06/28/04
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Terry William Waddell v. Medicaid/NC Health Choice	04 DHR 0335	Mann	06/04/04
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Peter Young v. DHHS	04 DHR 0372	Conner	10/08/04
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Paula Una Simon v. DHHS	04 DHR 0386	Chess	09/10/04
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Nathan E. Lang vs DHHS	04 DHR 0439	Conner	06/23/04
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Johnny Street v. DHHS	04 DHR 0441	Wade	10/19/04
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Phyllis S. Weaver v. DHHS	04 DHR 0457	Conner	07/19/04
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Beverly Manago v. DHHS, Division of Facility Services	04 DHR 0473	Chess	11/30/04
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Bervin D. Pearson Sr. v. DHHS, Broughton Hospital	04 DHR 0476	Morrison	09/09/04
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Ralm, Inc v. DHHS, DFS, Mental Health Licensure	04 DHR 0482	Lassiter	02/15/05
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Tracy M. Anderson v. DHHS, Div. of Facility Services	04 DHR 0501	Conner	09/14/04
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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
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Ray J. Bobbitt v. Nash County Dept. of Social Services	04 DHR 0529	Elkins	07/13/04
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Ralm, Inc v. DHHS, DFS, Mental Health Licensure and Certification	04 DHR 0540	Lassiter	02/17/05
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Connie Watt Redice v. DHHS	04 DHR 0546	Lassiter	06/29/04
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Edrica Mekoyo v. DHHS, Div. of Facility Services	04 DHR 0560	Gray	09/17/04
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Shirly Thaggard v. DHHS, Div. of Facility Services	04 DHR 0588	Morrison	11/05/04
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Maggie E. Clinding v. DHHS, Div. of Facility Services	04 DHR 0590	Conner	11/08/04
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Judith Marie Carson v. DHHS, Broughton Hospital	04 DHR 0594	Gray	10/08/04
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CONTESTED CASE DECISIONS

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
The Braxton Home, Alfred F. Braxton v. DHHS, Division of Facility Services	04 DHR 0633	Wade	02/01/05
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
Christy Robinson v. DHHS	04 DHR 0704	Elkins	02/14/05
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
Ralph Robinson, Jr., Neuse Center for MH/DD/SAS	04 DHR 0897	Gray	01/31/05
Lisa Robinson v. Neuse Center for MH/DD/SAS	04 DHR 0898	Gray	01/31/05
Triad Imaging, Inc v. DHHS, DFS, CON Section and Diagnostic Radiology & Imaging, LLC	04 DHR 0908	Gray	02/17/05
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
James Phillip Chavis, Jr., DHHS, Div. of Medical Assistance	04 DHR 1071	Wade	02/04/05
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
Phyllis Bryant Duren v. DHHS, DFS	04 DHR 1135	Conner	03/04/05
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
Sandy Reichard v. Satana T. Deberry, DHHS	04 DHR 1162	Wade	02/17/05
Michael J. Shelton, Pinnacle Homes #2 v. DHHS, Div. of Medical Assistance	04 DHR 1166	Gray	09/03/04
Charleese K. Garrison, as Mother of Jasmine C. Garrison v. DHHS, Div of Medical Assistance	04 DHR 1168	Gray	02/15/05
Wade Assisted Living, Inc., T/A Laurie Edwards	04 DHR 1174	Wade	11/08/04
Janet K. Faison v. DHHS, Div. of Facility Services	04 DHR 1181	Wade	02/01/05
Cynthia R. Hill, DHHS, Division of Facility Services	04 DHR 1183	Wade	02/01/05
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
Renee Farrow v. OAH	04 DHR 1307	Gray	03/14/05
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
Ghazaelleh 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
Bio-Medical Applications of NC, Inc., DHHS, Div. of Facility Services, Div. of Medical Facilities Planning Section, Total Renal Care of NC, LLC and Renal Systems Management, LLC and Garner Dialysis Center, Inc	04 DHR 1384	Elkins	02/04/05
Craven Regional Medical Authority d/b/a Craven Regional Medical Center v. Robert Earl King Jr. v. DHHS	04 DHR 1428	Chess	01/21/05
DHHS, DFS, CON and Coastal Carolina Health Care, PA d/b/a Coastal	04 DHR 1430	Lassiter	03/07/05
Kim Haley, Cap/C, DHHS Carolina Imaging	04 DHR 1443	Gray	01/21/05
Red Sea Grocery, Weldegebriel Ucheab v. DHHS	04 DHR 1453	Elkins	01/04/05
Dorothy Ragland v. DHHS, DFS	04 DHR 1468	Gray	02/09/05
Ivory Robinson v. DHHS, DFS	04 DHR 1469	Elkins	03/16/05
Charlenia Ferguson v. Child Care Division	04 DHR 1489	Mann	01/07/05
Tammy S. Edge v. NC Tax Administrator, Dept. of Revenue	04 DHR 1565	Lassiter	01/26/05
Jannaj J. Peters v. NC Nurse Aide I Program	04 DHR 1566	Gray	02/15/05
Kathleen Barker v. DHHS	04 DHR 1584	Gray	01/04/05
Anita Whitehurst v. MRNC	04 DHR 1620	Chess	12/08/04
Joyce Miller Moore v. DHHS	04 DHR 1621	Lassiter	01/26/05

CONTESTED CASE DECISIONS

Ivola Banks, Executrix of the Estate of Laura B. Mercer v. DHHS, Div of Medical Assistance	04 DHR 1800	Gray	03/03/05
Olivera Leross Langston v. Cherry Hospital	04 DHR 1802	Chess	12/09/04
Rebecca Hamilton, Beck's Play & Learn v. DHHS, Div. of Child Dev.	04 DHR 1866	Lassiter	02/18/05
Angela Maria Dozier v. Franklin County Dept. of Social Services	04 DHR 2050	Chess	02/16/05
Michael J. Graves v. DHHS	04 DHR 2098	Chess	03/17/05
Morgan M. Lambert v. DHHS, Div of Facility Services	04 DHR 2099	Morrison	02/17/05
Richard D. Bullock v. DHHS, Div of Medical Assistance	04 DHR 2148	Elkins	02/10/05
Lawrence Wilson Brathwaite v. OAH	04 DHR 2188	Elkins	03/17/05
Geanetta A. Thompson v. DHHS	04 DHR 2297	DeLuca	03/11/05
Wendy Dawn Cooke, Dept. of Health and HR/State Board of CNAs	04 DHR 2301	Elkins	02/10/05
Laverne Luck v. Health Care Personnel Registry	04 DHR 2310	Lassiter	02/11/05
Kevin L. Peppers, PB Interventions, Inc v. DHHS, DFS	04 DHR 2311	Lassiter	02/24/05
Donnell B. Buckner, PB Interventions, Inc v. DHHS, DFS	04 DHR 2312	Lassiter	02/24/05
Rena Lawson v. DHHS, NA Register	04 DHR 2330	Elkins	02/16/05

Stephanie Tincher v. DHHS, DFS	05 DHR 0080	Gray	03/11/05
Louise Dowd v. NC Nurse Aid I and Health Care Personnel Registry	05 DHR 0090	Elkins	02/23/05
Tosha Laquan Jackson v. DHHS, DFS	05 DHR 0111	Gray	03/11/05
Restoration Church of God in Christ Internationa, D/B/A Joys of the Heart Child Care Center v. Bladen County Dept. of Social Services	05 DHR 0125	Elkins	03/29/05
Belinda A. Genwright & Jason W. Genwright v. Harnett County Dept. of Social Services	05 DHR 0177	Chess	03/09/05
Restoration Church of God in Christ International, D/B/A Joys of the Heart Child Care Center v. Bladen County Dept. of Social Services as local Purchasing agent and the DHHS, Div. of Child Development	05 DHR 0182	Elkins	03/30/05

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. Sheriff's 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 Wesley 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. Sheriff's 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. Sheriff's Education & Training Standards Comm	04 DOJ 0730	Mann	10/08/04
Joel Patrick Holt v. Sheriff's Education & Training Standards Comm	04 DOJ 0731	Wade	01/10/05
George Eugene White v. Sheriff's Education & Training Standards Comm	04 DOJ 0732	Wade	10/04/04
Jerry Adrian Crawley v. Sheriff's Education & Training Standards Comm	04 DOJ 0828	Gray	09/16/04
Maureen Cleary Williams v. Sheriff's Education & Training Standards Comm	04 DOJ 0829	Mann	07/28/04
Tommy Dwight Hunt v. Sheriff's Educ & Training Stds. Comm	04 DOJ 0830	Elkins	08/24/04
Michael Lee Millner v. Sheriff's Educ & Training Stds. Comm	04 DOJ 0831	Gray	12/16/04
Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency	04 DOJ 0889 ⁴	Gray	03/07/05
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
Randall Douglas Hughes v. Criminal Justice Education & Training Standards Comm	04 DOJ 1078	Elkins	09/30/04
Melanie Bounds Allen v. Sheriff's Education and Training Standards Comm	04 DOJ 1154	Mann	02/18/05
Ernest Alvin Gaddy v. Sheriff's Education and Training Standards Comm	04 DOJ 1153	Wade	12/02/04
Kenneth R. Moore v. Dept of Justice, Company Police Program Comm	04 DOJ 1180	Gray	09/29/04
Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency	04 DOJ 1203 ⁴	Gray	03/07/05
Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency	04 DOJ 1204 ⁴	Gray	03/07/05
Mel Downing, Triton Special Police Department, Inc, and Kenneth Heckstall v. Company Police Agency	04 DOJ 1205 ⁴	Gray	03/07/05
Robert Wrenn Spencer, Jr., v. Sheriff's Educ & Training Standards Comm	04 DOJ 1209	Mann	11/09/04
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Robert Alan Kilpatrick v. Criminal Justice Educ. & Training Stds Comm	04 DOJ 1215 ²	Wade	01/10/05	
Gordon Shane Smith v. Criminal Justice Education & Training Standards Comm	04 DOJ 1241	Gray	09/29/04	
Lance Harviell Patterson v. Private Protective Services Board	04 DOJ 1242	Morrison	10/29/04	
Marcus Fuller v. Private Protective Services Board	04 DOJ 1244	Morrison	11/12/04	
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Alarm Licensing Board v. Brian Douglas Davis	04 DOJ 1296	Morrison	12/24/04	
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Anthony Antwon Rouse v. Criminal Justice Educ. & Training Stds Comm	04 DOJ 1540	Morrison	03/15/05	
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John Wesley Campbell v. Criminal Justice Educ. & Training Stds Comm	04 DOJ 1581	Morrison	03/15/05	
Mark James Tucker v. Alarm Systems Licensing Board	04 DOJ 1594	Mann	11/09/04	
Gerlie Poston, Jr., v. Sheriffs' Educ & Training Standards Comm	04 DOJ 1631	Elkins	03/24/05	
Jerome F. Russo, II v. Alarm Systems Licensing Board	04 DOJ 1980	Gray	01/14/05	
Corporate Carolina Special Police Dept., Jeremiah Gaither v. DOJ, Co. Police Program Commission	04 DOJ 2015	Wade	01/06/05	
Nicholas Allen Epley v. Private Protective Services Board	04 DOJ 2017	Gray	01/14/05	
Thomas Russell Heflin, Jr v. Criminal Justice Educ. & Training Stds. Comm	04 DOJ 2159	Conner	02/28/05	
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<u>DEPARTMENT OF TRANSPORTATION</u>				
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Virginia Edwards Estate, Gerald Dee Edwards v. In the General Court of Justice Superior Court Division	04 DOT 1326	Morrison	12/17/04	
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Claudia L. Rapier, Gregory S. Rapier v. DOT, Retirement Systems Division	03 DST 2375	Wade	10/14/04	
Mary Pender v. DOT, Retirement Systems Division	04 DST 0027	Conner	07/23/04	
Helen F. Harris v. NC Retirement System	04 DST 1229	Mann	01/19/05	
Estate of Charles Michael Epley, by Joshua G Epley, Administrator v. The Board of Trustees of the Teachers' & State Employees Retirement System	04 DST 1396	Wade	02/17/05	19:19 NCR 1609
<u>DEPARTMENT OF PUBLIC INSTRUCTION</u>				
Alice Bins Rainey, Michele R Rotosky and Madeline Davis Tucker	02 EDC 2310	Lassiter	06/01/04	19:01 NCR 153
Emily H. Thompson v. Dept. of Public Instruction	03 EDC 1958	Chess	09/15/04	
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J.L. Marsh Smith Farms, Inc v. DENR, Div of Air Quality	00 EHR 2116	Gray	06/04/04	
Raymond Wallace, The Golden Mirror vs. Div of Radiation Protection	01 EHR 1558	Mann	06/17/04	
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Alliance for Legal Action, Inc, Piedmont Quality of Life Coalition (an unincorporated association), Alberta Anderson, Cameron Anderson, Jean Black, Richard Black, Walter S. Druce, Ron Goga, Gil Happel, Carol Hoppe, Michael Hoppe, Patricia Nussbaum, Christine Peeler, Laura Pollak, Randall Schultz, Roch Smith, Jr., and Vassilia Smith v. Div of Water Quality of DENR And Piedmont Triad Airport Authority	03 EHR 1664	Gray	09/08/04	
Herbert B. Simmons, Sr., v. DENR	03 EHR 1773	Gray	10/21/04	
Wayne Sharpe v. DENR, Environmental Management Commission	03 EHR 1776	Lassiter	02/17/05	
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Winston N. Cahoon v. DENR	03 EHR 2305	Lassiter	07/01/04	
Jimmy Mathis, Mathis Pump & Well v. DENR	03 EHR 2336	Wade	05/25/04	
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James D & Jane Lathan Ray; James D. & Brenda W Moser, Jr.; John G. & Sheila A Conner v. DENR, Div. of Coastal Resources and R. Carter Pate	04 EHR 0073 ¹	Wade	08/13/04	
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Joseph Glenn Henson v. DENR, Div. of Air Quality	04 EHR 0566	Conner	10/04/04
Raymond Earl Dail, Sr., and wife, Linda M. Dail, v. DENR, Pamlico County Health Dept.	04 EHR 0508	Wade	12/02/04
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Wellington by the Sea Homeowner's Association v. DENR, Div of Coastal Management	04 EHR 0674	Wade	12/02/04
Doug's Auto Service v. DENR, Division of Air Quality	04 EHR 0775	Wade	01/06/05
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Joe Sugg v. DENR, Div. of Waste Management	04 EHR 1311	Gray	02/25/05
Brandywine Real Estate Management, Services Corporation & Northridge Partners v. DENR, Div. of Waste Management	04 EHR 1439	Gray	02/15/05
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Joy Murray v. DENR, Division of Waste Management	04 EHR 1478	Gray	11/24/04
R.T. Melvin v. DENR, Div of Air Quality	04 EHR 1770	Mann	02/07/05
D&M Emeralds, Inc v. DENR	04 EHR 2217	Gray	02/24/05
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Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0891	Morrison	07/27/04
Larry Yancey v. State Bar Grievance Com., Dept of Justice	04 MIS 0892	Morrison	07/27/04
Larry Yancey v. Durham Housing Authority, City of Durham, State of NC	04 MIS 0893	Morrison	07/27/04
Larry Yancey v. Independent Living Rehab Prog, Div of VRS State of NC	04 MIS 0894	Morrison	07/27/04
Larry Yancey v. Durham Dept. of Social Services, State of NC	04 MIS 0895	Morrison	07/27/04
Darrick Lamonte King v. Administrative Office of the Courts	04 MIS 1289	Mann	12/07/04
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Rhonda L. Mehrley v. Duplin-Sampson-Lenoir Area MH/DD/SAS	03 OSP 0108 ³	Gray	01/04/05
James E. Sharpe v. DOT, Div. 14 (Graham County)	03 OSP 0395	Chess	12/02/04
Pearl A. Wilkins v. NCSU	03 OSP 0400	Gray	07/26/04
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James A. Ray v. Sherry Stevens and Facility Services Management., UNC Greensboro	03 OSP 2452	Elkins	06/01/04
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Miracle L. Smith v. NC State Highway Patrol	04 OSP 0039	Gray	07/14/04
Samuel Williams v. DOC, Div of Alcoholism, Chemical Dependency Programs	04 OSP 0194	Mann	06/09/04
Jerry William Wiley v. Div of Public Health and DHHS	04 OSP 0210	Elkins	06/23/04
Arnold Foy v. DOC, Division of Community Corrections	04 OSP 0262	Elkins	01/10/05
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Barbara Hoffner v. DOC, Div of Prisons, Central Prison	04 OSP 0415	Chess	06/17/04
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Phyllis Holt v. UNC Chapel Hill	04 OSP 0486	Chess	06/01/04
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David Earl Beasley v. NCSU	04 OSP 0513	Gray	08/27/04
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Barbara H. Crisp v. Toe River Health District	04 OSP 0565	Conner	11/19/04
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Patricia O'Neal v. Polk Youth Institution	04 OSP 1284	Mann	11/22/04
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