

NORTH CAROLINA

REGISTER



Volume 20, Issue 11
Pages 861 - 980

December 1, 2005

This issue contains documents officially filed through November 7, 2005.

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

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

IN THIS ISSUE

- I. IN ADDITION**
Brownfields Property
Alcan Packaging Food & Tobacco, Inc..... 861
- II. PROPOSED RULES**
Community Colleges 873 - 875
Environment and Natural Resources
Environmental Management 862 - 869
Occupational Licensing Boards
Psychology Board 869 - 873
- III. APPROVED RULES** 876 - 948
Community Colleges
Department of Environment and Natural Resources
Health Services, Commission for
Marine Fisheries Commission
Wildlife Resources Commission
Health and Human Services
Child Care Commission
Facility Services
Health Services, Commission for
Medical Care Commission
MM/DD/SAS
Insurance
Justice
Criminal Justice Education and Training Standards Commission
Licensing Boards
Cosmetic Art Examiners
Landscape Architects, Board of
Medical Board
Nursing, Board of
Pharmacy, Board of
Real Estate Commission
- IV. RULES REVIEW COMMISSION**..... 949 - 965
- V. CONTESTED CASE DECISIONS**
Index to ALJ Decisions..... 966 - 971
Text of Selected Decisions
03 EDC 0029 972 – 980

For the **CUMULATIVE INDEX** to the NC Register go to:
<http://reports.oah.state.nc.us/cumulativeIndex.pl>

NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

| NCAC TITLES | | TITLE 21 LICENSING BOARDS | TITLE 24 INDEPENDENT AGENCIES |
|--------------------|---|---|---|
| 1 | ADMINISTRATION | 1 Acupuncture | 1 Housing Finance |
| 2 | AGRICULTURE & CONSUMER SERVICES | 2 Architecture | 2 Agricultural Finance Authority |
| 3 | AUDITOR | 3 Athletic Trainer Examiners | 3 Safety & Health Review Board |
| 4 | COMMERCE | 4 Auctioneers | 4 Reserved |
| 5 | CORRECTION | 6 Barber Examiners | 5 State Health Plan Purchasing Alliance Board |
| 6 | COUNCIL OF STATE | 8 Certified Public Accountant Examiners | |
| 7 | CULTURAL RESOURCES | 10 Chiropractic Examiners | |
| 8 | ELECTIONS | 11 Employee Assistance Professionals | |
| 9 | GOVERNOR | 12 General Contractors | |
| 10A | HEALTH AND HUMAN SERVICES | 14 Cosmetic Art Examiners | |
| 11 | INSURANCE | 16 Dental Examiners | |
| 12 | JUSTICE | 17 Dietetics/Nutrition | |
| 13 | LABOR | 18 Electrical Contractors | |
| 14A | CRIME CONTROL & PUBLIC SAFETY | 19 Electrolysis | |
| 15A | ENVIRONMENT & NATURAL RESOURCES | 20 Foresters | |
| 16 | PUBLIC EDUCATION | 21 Geologists | |
| 17 | REVENUE | 22 Hearing Aid Dealers and Fitters | |
| 18 | SECRETARY OF STATE | 25 Interpreter/Transliterator | |
| 19A | TRANSPORTATION | 26 Landscape Architects | |
| 20 | TREASURER | 28 Landscape Contractors | |
| 21* | OCCUPATIONAL LICENSING BOARDS | 29 Locksmith Licensing | |
| 22 | ADMINISTRATIVE PROCEDURES (REPEALED) | 30 Massage & Bodywork Therapy | |
| 23 | COMMUNITY COLLEGES | 31 Marital and Family Therapy | |
| 24* | INDEPENDENT AGENCIES | 32 Medical Examiners | |
| 25 | STATE PERSONNEL | 33 Midwifery Joint Committee | |
| 26 | ADMINISTRATIVE HEARINGS | 34 Funeral Service | |
| 27 | NC STATE BAR | 36 Nursing | |
| 28 | JUVENILE JUSTICE AND DELINQUENCY PREVENTION | 37 Nursing Home Administrators | |
| | | 38 Occupational Therapists | |
| | | 40 Opticians | |
| | | 42 Optometry | |
| | | 44 Osteopathic Examination (Repealed) | |
| | | 45 Pastoral Counselors, Fee-Based Practicing | |
| | | 46 Pharmacy | |
| | | 48 Physical Therapy Examiners | |
| | | 50 Plumbing, Heating & Fire Sprinkler Contractors | |
| | | 52 Podiatry Examiners | |
| | | 53 Professional Counselors | |
| | | 54 Psychology | |
| | | 56 Professional Engineers & Land Surveyors | |
| | | 57 Real Estate Appraisal | |
| | | 58 Real Estate Commission | |
| | | 60 Refrigeration Examiners | |
| | | 61 Respiratory Care | |
| | | 62 Sanitarian Examiners | |
| | | 63 Social Work Certification | |
| | | 64 Speech & Language Pathologists & Audiologists | |
| | | 65 Therapeutic Recreation Certification | |
| | | 66 Veterinary Medical | |
| | | 68 Substance Abuse Professionals | |
| | | 69 Soil Scientists | |

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

NORTH CAROLINA REGISTER
 Publication Schedule for January 2006 – December 2006

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

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

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

Alcan Packaging Food & Tobacco, Inc

Pursuant to N.C.G.S. § 130A-310.34, Alcan Packaging Food & Tobacco, Inc. has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Charlotte, Mecklenburg County, North Carolina. The Property, sometimes referred to as the former Venture Packaging Site, consists of 8.7 acres and is located at 1600 Westinghouse Boulevard. Environmental contamination exists on the Property in the groundwater and soil. Alcan Packaging Food & Tobacco, Inc. has committed itself to allow no redevelopment of the Brownfields Property other than for industrial use. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Alcan Packaging Food & Tobacco, Inc., 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 Public Library of Charlotte & Mecklenburg County, 310 N. Tryon St., Charlotte, NC 28202 by contacting Rita Rouse at that address or at (704) 336-2725; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411, 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. Thus, if Alcan Packaging Food & Tobacco, Inc., as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on December 1, 2005. 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

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

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

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environmental Management Commission intends to adopt the rules cited as 15A NCAC 02D .2401-.2413.

Proposed Effective Date: April 1, 2006

Public Hearing:

Date: January 5, 2006

Time: 7:00 p.m.

Location: Charlotte-Mecklenburg Government Center, Room 267, 600 East 4th Street, Charlotte, NC 28202

Date: January 11, 2006

Time: 7:00 p.m.

Location: Air Quality Training Room, Parker Lincoln Building, Raleigh, NC 27604

Reason for Proposed Action: To adopt state implementation plan requirements to address interstate transport of ozone and particulate matter precursors in order to satisfy requirements of the Federal Clean Air Interstate Rule.

Procedure by which a person can object to the agency on a proposed rule: If you have any objections to the proposed rules, please mail a letter including your specific reasons to: Mr. Thomas C. Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641.

Comments may be submitted to: Mr. Thomas Allen, Division of Air Quality, 1641 Mail Service Center, Raleigh, NC 27699-1641, phone (919)733-1489, fax (919)715-7476, email thom.allen@ncmail.net.

Comment period ends: January 30, 2006

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: A copy of the fiscal note can be obtained from the agency.

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

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2D - AIR POLLUTION CONTROL REQUIREMENTS

SECTION .2400 – CLEAN AIR INTERSTATE RULES

15A NCAC 02D .2401 PURPOSE AND APPLICABILITY

(a) Purpose. The purpose of this Section is to implement the federal Clean Air Interstate Rule and thereby reduce the interstate transportation of fine particulate matter and ozone.

(b) Applicability. This Section applies to:

- (1) any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the start-up of a unit's combustion chamber, a generator with nameplate capacity of more than 25 MWe producing electricity for sale;
- (2) for a unit that qualifies as a cogeneration unit during the 12-month period starting on the date that the unit first produces electricity and continues to qualify as a cogeneration unit, a cogeneration unit serving at any time a generator with nameplate capacity of more than 25 MWe and supplying in any calendar year more than one-third of the unit's potential electric output capacity or 219,000 MWh, whichever is greater, to any utility power distribution system for sale. If a unit that qualifies as a cogeneration unit during the 12-month period starting on the date the unit first produces electricity but subsequently no longer qualifies as a cogeneration unit, the unit shall be subject to Subparagraph (1) of this Paragraph starting on the day on which the unit first no longer qualifies as a cogeneration unit; or
- (3) any source identified in Rules .2403, or .2405 of this Section.

PROPOSED RULES

(c) Retired unit exemption. Any unit that is permanently retired and is not a opt-in unit under Rule .2411 of this Section shall be exempted from the annual trading program for:

- (1) nitrogen oxides if it complies with the provisions of 40 CFR 96.105,
- (2) sulfur dioxide if it complies with the provisions of 96.205, or
- (3) ozone season nitrogen oxide if it complies with the provisions of 40 CFR 96.305.

(d) Effect on other authorities. No provision of this Section, any application submitted or any permit issued pursuant to Rule .2406 of this Section, or any exemption under 40 CFR 96.105, 96.205, or 96.305 shall be construed as exempting any source or facility covered under this Section or the owner or operator or designated representative of any source or facility covered under this Section from complying with any other requirements of this Subchapter or Subchapter 15A NCAC 02Q. The Environmental Management Commission may specify through rulemaking a specific emission limit lower than that established under this

Rule for a specific source if compliance with the lower emission limit is required to attain or maintain the ambient air quality standard for ozone or fine particulate (PM2.5) or any other ambient air quality standard in Section 15A NCAC 2D .0400.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10).

15A NCAC 02D .2402 DEFINITIONS

(a) For the purpose of this Section, the definitions in 40 CFR 96.102, 96.202 and 96.302 shall apply.

(b) For the purpose of this Section, the abbreviations and acronyms listed in 40 CFR 96.103, 96.203, 96.302 shall apply.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10).

15A NCAC 02D .2403 NITROGEN OXIDE EMISSIONS

(a) Allocations. The annual allocation of nitrogen oxide allowances are:

| <u>FACILITY</u> | <u>ALLOCATION FOR 2009-2014 (TONS)</u> | <u>ALLOCATIONS FOR 2015 AND LATER (TONS)</u> |
|---|--|--|
| <u>Butler-Warner Generation Plant</u> | <u>81</u> | <u>67</u> |
| <u>Duke Energy, Belews Creek</u> | <u>11407</u> | <u>9506</u> |
| <u>Duke Energy, Buck</u> | <u>1426</u> | <u>1188</u> |
| <u>Duke Energy, Cliffside</u> | <u>3087</u> | <u>2572</u> |
| <u>Duke Energy, Dan River</u> | <u>833</u> | <u>694</u> |
| <u>Duke Energy, G.G. Allen</u> | <u>4566</u> | <u>3805</u> |
| <u>Duke Energy, Lincoln</u> | <u>242</u> | <u>202</u> |
| <u>Duke Energy, Marshall</u> | <u>10175</u> | <u>8480</u> |
| <u>Duke Energy, Riverbend</u> | <u>1799</u> | <u>1499</u> |
| <u>Dwane Colier Battle Cogeneration Facility</u> | <u>850</u> | <u>708</u> |
| <u>Dynergy-Rockingham Power</u> | <u>204</u> | <u>170</u> |
| <u>Elizabethtown Power</u> | <u>91</u> | <u>76</u> |
| <u>Lumberton Power</u> | <u>127</u> | <u>106</u> |
| <u>NC Electric Membership Corps., Anson</u> | <u>7</u> | <u>6</u> |
| <u>NC Electric Membership Corps., Person</u> | <u>7</u> | <u>6</u> |
| <u>NC Electric Membership Corps., Richmond</u> | <u>7</u> | <u>6</u> |
| <u>NC Electric Membership Corps., Wake</u> | <u>7</u> | <u>6</u> |
| <u>Primary Energy, Roxboro</u> | <u>422</u> | <u>352</u> |
| <u>Primary Energy, Southport</u> | <u>173</u> | <u>144</u> |
| <u>Progress Energy, Asheville</u> | <u>2214</u> | <u>1845</u> |
| <u>Progress Energy, Blewett</u> | <u>8</u> | <u>7</u> |
| <u>Progress Energy, Cape Fear</u> | <u>1310</u> | <u>1091</u> |
| <u>Progress Energy, H.F. Lee</u> | <u>1870</u> | <u>1558</u> |
| <u>Progress Energy, L.V. Sutton</u> | <u>2259</u> | <u>1883</u> |
| <u>Progress Energy, Lee Wayne Co. Plant</u> | <u>99</u> | <u>82</u> |
| <u>Progress Energy, Mark's Creek Richmond Co.</u> | <u>394</u> | <u>328</u> |
| <u>Progress Energy, Mayo</u> | <u>4215</u> | <u>3512</u> |
| <u>Progress Energy, Roxboro</u> | <u>12188</u> | <u>10156</u> |
| <u>Progress Energy, Weatherspoon</u> | <u>709</u> | <u>591</u> |

PROPOSED RULES

| <u>FACILITY</u> | <u>ALLOCATION FOR 2009-2014 (TONS)</u> | <u>ALLOCATIONS FOR 2015 AND LATER (TONS)</u> |
|---|--|--|
| <u>Progress Energy, Woodleaf Rowan Co. Plant</u> | <u>27</u> | <u>22</u> |
| <u>Rosemary Power Station, Halifax</u> | <u>44</u> | <u>37</u> |
| <u>Westmoreland LG&E Partners Roanoke Valley I</u> | <u>1013</u> | <u>845</u> |
| <u>Westmoreland LG&E Partners Roanoke Valley II</u> | <u>322</u> | <u>269</u> |

(b) Compliance. The emissions of nitrogen oxides of a source listed in the table in Paragraph (a) of this Rule shall not exceed the number of allowances that it has in its compliance account established under Rule .2408 of this Section.

(c) Emission measurement requirements. The emissions measurements recorded and reported according to 40 CFR Part 96 Subpart HH shall be used to determine compliance by each source identified in this Rule with its emissions limitation according to 40 CFR 96.106(c).

(d) Excess emission requirements. The provisions of 40 CFR 96.106(d) shall be used for excess emissions.

(e) Liability. The owner or operator of any source covered under this Section shall be subject to the provisions of 40 CFR 96.106(f).

(f) Modification and reconstruction, replacement, retirement, or change of ownership. The modification or reconstruction of a source at a facility covered under this Rule shall not make that source a "new" source. The source that is modified or reconstructed shall not change the emission allocation under Paragraph (a) of this Rule. If one or more sources at a facility covered under this Rule is replaced, the new source shall not receive an allocation under Rule .2412 of this Section, nor shall it change the allocation of the facility. If the owner of a facility changes, the emission allocations under this Rule and revised emission allocations made under Rule .2413 of this Section shall remain with the facility. If a source is retired, the owner or operator of the source shall follow the procedures in 40 CFR 96.105. The allocations of a retired source shall remain with the owner or operator of the retired source until a reallocation occurs under Rule .2413 of this Section when the allocation shall be removed and given to other sources if the retired source is still retired using the procedure in Rule .2413 of this Section.

Authority G.S. 143-215.3(a); 143-215.65; 143-215.66; 143-215.107(a)(5),(10).

15A NCAC 02D .2404 SULFUR DIOXIDE

(a) Applicability. This Rule applies only to facilities that meet the description in Rule .2401(a)(1) or (2) of this Section. As of January 1, 2001, these facilities included:

- (1) Butler-Warner Generation Plant
- (2) Cogentrix-Elizabethtown Power
- (3) Cogentrix-Lumberton Power
- (4) Duke Energy, Belews Creek
- (5) Duke Energy, Buck
- (6) Duke Energy, Cliffside
- (7) Duke Energy, Dan River

- (8) Duke Energy, G.G. Allen
- (9) Duke Energy, Lincoln
- (10) Duke Energy, Marshall
- (11) Duke Energy, Riverbend
- (12) Dwayne Colier Battle Cogeneration Facility
- (13) Dynegy, Rockingham Power
- (14) Progress Energy, Blewett
- (15) Progress Energy, Cape Fear
- (16) Progress Energy, Mark's Creek Richmond Co.
- (17) Progress Energy, Wayne County
- (18) Progress Energy, Woodleaf Rowan Co. Plant
- (19) Progress, Energy, Asheville
- (20) Progress, Energy, H.F. Lee
- (21) Progress, Energy, L.V. Sutton
- (22) Progress, Energy, Mayo
- (23) Progress, Energy, Roxboro
- (24) Progress, Energy, Weatherspoon
- (25) Westmoreland LG&E Partners Roanoke Valley I
- (26) Westmoreland LG&E Partners Roanoke Valley II

(b) Allocations. The annual allocation of sulfur dioxide allowances shall be determined by EPA. The allocations for acid rain facilities are in 40 CFR 73.10.

(c) Compliance. The emissions of sulfur dioxides of a source listed in the table in Paragraph (a) of this Rule shall not exceed the number of allowances that it has in its compliance account established under Rule .2408 of this Section.

(d) Emission measurement requirements. The emissions measurements recorded and reported according to 40 CFR Part 96 Subpart HHH shall be used to determine compliance by each source listed in this Rule with its emissions limitation according to 40 CFR 96.206(c).

(e) Excess emission requirements. The provisions of 40 CFR 96.206(d) shall be used for excess emissions.

(f) Liability. The owner or operator of any source covered under this Section shall be subject to the provisions of 40 CFR 96.206(f).

Authority G.S. 143-215.3(a); 143-215.65; 143-215.66; 143-215.107(a)(5),(10).

15A NCAC 02D .2405 NITROGEN OXIDE EMISSIONS DURING OZONE SEASON

(a) Allocations. The ozone season allocation of nitrogen oxide allowances are:

- (1) Facilities that meet the description in 15A NCAC 02D .2401(b)(1) or (b)(2):

PROPOSED RULES

| <u>FACILITY</u> | <u>ALLOCATION FOR 2009-2014 (TONS)</u> | <u>ALLOCATIONS FOR 2015 AND LATER (TONS)</u> |
|---|--|--|
| Butler-Warner Generation Plant | <u>56</u> | <u>46</u> |
| <u>Duke Energy, Belews Creek</u> | <u>5176</u> | <u>4314</u> |
| <u>Duke Energy, Buck</u> | <u>690</u> | <u>575</u> |
| <u>Duke Energy, Cliffside</u> | <u>1421</u> | <u>1184</u> |
| <u>Duke Energy, Dan River</u> | <u>459</u> | <u>382</u> |
| <u>Duke Energy, G.G. Allen</u> | <u>2207</u> | <u>1839</u> |
| <u>Duke Energy, Lincoln</u> | <u>178</u> | <u>148</u> |
| <u>Duke Energy, Marshall</u> | <u>4400</u> | <u>3666</u> |
| <u>Duke Energy, Riverbend</u> | <u>904</u> | <u>753</u> |
| <u>Dwane Colier Battle Cogeneration Facility</u> | <u>348</u> | <u>290</u> |
| <u>Dynergy-Rockingham Power</u> | <u>104</u> | <u>87</u> |
| <u>Elizabethtown Power</u> | <u>53</u> | <u>45</u> |
| <u>Lumberton Power</u> | <u>48</u> | <u>40</u> |
| <u>NC Electric Membership Corps., Anson</u> | <u>7</u> | <u>6</u> |
| <u>NC Electric Membership Corps., Person</u> | <u>7</u> | <u>6</u> |
| <u>NC Electric Membership Corps., Richmond</u> | <u>7</u> | <u>6</u> |
| <u>NC Electric Membership Corps., Wake</u> | <u>7</u> | <u>6</u> |
| <u>Primary Energy, Roxboro</u> | <u>88</u> | <u>73</u> |
| <u>Primary Energy, Southport</u> | <u>224</u> | <u>187</u> |
| <u>Progress Energy, Asheville</u> | <u>946</u> | <u>788</u> |
| <u>Progress Energy, Blewett</u> | <u>8</u> | <u>6</u> |
| <u>Progress Energy, Cape Fear</u> | <u>555</u> | <u>462</u> |
| <u>Progress Energy, H.F. Lee</u> | <u>886</u> | <u>738</u> |
| <u>Progress Energy, L.V. Sutton</u> | <u>1077</u> | <u>898</u> |
| <u>Progress Energy, Lee Wayne Co. Plant</u> | <u>67</u> | <u>56</u> |
| <u>Progress Energy, Mark's Creek Richmond Co.</u> | <u>353</u> | <u>294</u> |
| <u>Progress Energy, Mayo</u> | <u>1826</u> | <u>1522</u> |
| Progress Energy, Roxboro | <u>5337</u> | <u>4447</u> |
| Progress Energy, Weatherspoon | <u>364</u> | <u>304</u> |
| <u>Progress Energy, Woodleaf Rowan Co. Plant</u> | <u>25</u> | <u>21</u> |
| <u>Rosemary Power Station, Halifax</u> | <u>27</u> | <u>23</u> |
| <u>Westmoreland LG&E Partners Roanoke Valley I</u> | <u>407</u> | <u>339</u> |
| Westmoreland LG&E Partners Roanoke Valley II | <u>130</u> | <u>109</u> |

(2) Facilities that do not meet the description in 15A NCAC 02D .2401(b)(1) or (b)(2):

| <u>FACILITY</u> | <u>ALLOCATION FOR 2009-2014 (TONS)</u> | <u>ALLOCATIONS FOR 2015 AND LATER (TONS)</u> |
|--|--|--|
| <u>Blue Ridge Paper Products</u> | <u>839</u> | <u>839</u> |
| <u>International Paper Corp., Columbus Co.</u> | <u>307</u> | <u>307</u> |
| <u>International Paper Corp., Halifax Co.</u> | <u>346</u> | <u>346</u> |
| <u>United Cogen, Kenansville</u> | <u>113</u> | <u>113</u> |

PROPOSED RULES

| <u>FACILITY</u> | <u>ALLOCATION FOR 2009-2014 (TONS)</u> | <u>ALLOCATIONS FOR 2015 AND LATER (TONS)</u> |
|------------------------------------|--|--|
| <u>UNC-Chapel Hill</u> | <u>241</u> | <u>241</u> |
| <u>Weyerhaeuser, New Bern Mill</u> | <u>193</u> | <u>193</u> |
| <u>Weyerhaeuser, Plymouth</u> | <u>404</u> | <u>404</u> |

(b) Ozone season defined. The ozone season is from May 1 through September 30 of each year.

(c) Change in status. If a facility named in Subparagraph (a)(2) of this Rule meets the description under Subparagraphs (b)(1) or (b)(2) of Rule .2401 of this Section, it shall lose its allocation under Subparagraph (a)(2) of this Rule and shall receive an allocation under Rule .2412 of this Section as a new source until it receives an allocation under Rule .2413 of this Section.

(d) Compliance. The nitrogen oxide ozone season emissions of a source listed in the table in Paragraph (a) of this Rule shall not exceed the number of allowances that it has in its compliance account established under Rule .2408 of this Section.

(e) Emission measurement requirements. The emissions measurements recorded and reported according to 40 CFR Part 96 Subpart HHHH shall be used to determine compliance by each source listed in this Rule with its emissions limitation according to 40 CFR 96.306(c).

(f) Excess emission requirements. The provisions of 40 CFR 96.306(d) shall be used for excess emissions.

(g) Liability. The owner or operator of any source covered under this Section shall be subject to the provisions of 40 CFR 96.306(f).

(h) Modification and reconstruction, replacement, retirement, or change of ownership. The modification or reconstruction of a source at a facility covered under this Rule shall not make that source a "new" source. The source that is modified or reconstructed shall not change the emission allocation under Paragraph (a) of this Rule. If one or more sources at a facility covered under this Rule is replaced, the new source shall not receive an allocation under Rule .2412 of this Section, nor shall it change the allocation of the facility. If the owner of a facility changes, the emission allocations under this Rule and revised emission allocations made under Rule .2413 of this Section shall remain with the facility. If a source is retired, the owner or operator of the source shall follow the procedures in 40 CFR 96.305. The allocations of a retired source shall remain with the owner or operator of the retired source until a reallocation occurs under Rule .2413 of this Section when the allocation shall be removed and given to other sources if the retired source is still retired using the procedure in Rule .2413 of this Section.

Authority G.S. 143-215.3(a); 143-215.65; 143-215.66; 143-215.107(a)(5),(10).

15A NCAC 02D .2406 PERMITTING

(a) The owner or operator of any source covered under this Section shall submit permits applications to comply with the requirements of this Section following the procedures and

requirements in 15A NCAC 02Q .0500 (title v permitting procedures) and in:

- (1) 40 CFR 96.106(a), 96.121, and 96.122 for nitrogen oxide sources;
- (2) 40 CFR 96.206(a), 96.221, and 96.222 for sulfur dioxide sources; and
- (3) 40 CFR 96.306(a), 96.321, and 96.322 for ozone season nitrogen oxide sources.

(b) The Director shall review applications submitted under Paragraph (a) of this Rule and issue permits for compliance with this Section following the procedures and requirements in 15A NCAC 02Q .0500 (title v permitting procedures) and in:

- (1) 40 CFR 96.106(a), 96.120, 96.123, and 96.124 for nitrogen oxide sources;
- (2) 40 CFR 96.206(a), 96.220, 96.223, and 96.224 for sulfur dioxide sources; and
- (3) 40 CFR 96.306(a), 96.320, 96.323, and 96.324 for ozone season nitrogen oxides.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10); 143-215.108.

15A NCAC 02D .2407 MONITORING, REPORTING, AND RECORDKEEPING

(a) The owner or operator of a source covered under this Section shall comply with the monitoring, recordkeeping, and reporting requirements in:

- (1) 40 CFR 96.106(b) and (e) and in 40 CFR Part 96, Subpart HH for nitrogen oxide sources;
- (2) 40 CFR 96.206(b) and (e) and in 40 CFR Part 96, Subpart HHH for sulfur dioxide sources; and
- (3) 40 CFR 96.306(b) and (e) and in 40 CFR Part 96, Subpart HHHH for ozone season nitrogen oxides.

(b) To approve or disapprove monitors used to show compliance with Rules .2403, 2404, or .2405 of this Section, the Division shall follow the procedures in:

- (1) 40 CFR 96.171 for nitrogen oxides.
- (2) 40 CFR 96.271 for sulfur dioxides, and
- (3) 40 CFR 96.371 for ozone season nitrogen oxides.

Authority G.S. 143-215.3(a); 143-215.65; 143-215.66; 143-215.107(a)(5),(10).

15A NCAC 02D .2408 TRADING PROGRAM AND BANKING

(a) EPA to administer. The United States Environmental Protection Agency (EPA) shall administer the allowance tracking system according to the procedures in:

- (1) 40 CFR Part 96, Subpart FF and Subpart GG for nitrogen oxides;
- (2) 40 CFR Part 96, Subpart FFF and Subpart GGG for sulfur dioxide;
- (3) 40 CFR Part 96, Subpart FFFF and Subpart GGGG for ozone season nitrogen oxides.

(b) Compliance account. The owner or operator of each source covered under this Section shall have a compliance account in the EPA administered tracking system that satisfies the requirements of:

- (1) 40 CFR 96.151 for nitrogen oxides,
- (2) 40 CFR 96.251 for sulfur dioxides, and
- (3) 40 CFR 96.351 for ozone season nitrogen oxides.

(c) General account. Any person may apply to open a general account to hold and transfer allowances by using the procedures and meeting the requirements in:

- (1) 40 CFR 96.151(b) for nitrogen oxides and may close that account using the procedures in 40 CFR 96.157,
- (2) 40 CFR 96.251(b) for sulfur dioxides and may close that account using the procedures in 40 CFR 96.257, and
- (3) 40 CFR 96.351(b) for ozone season nitrogen oxides and may close that account using the procedures in 40 CFR 96.357.

(d) Allowance transfers.

- (1) Any person who has a compliance or general account established under 40 CFR 96.151 may transfer allowances using the procedures in 40 CFR 96.160.
- (2) Any person who has a compliance or general account established under 40 CFR 96.251 may transfer allowances using the procedures in 40 CFR 96.260.
- (3) Any person who has a compliance or general account established under 40 CFR 96.351 may transfer allowances using the procedures in 40 CFR 96.360.

(e) Submittal of information. Persons with accounts shall submit information to EPA following the requirement of:

- (1) 40 CFR 96.152 for nitrogen oxides,
- (2) 40 CFR 96.252 for sulfur dioxides, and
- (3) 40 CFR 96.352 for ozone season nitrogen oxides.

(f) Banking. Any person who has a compliance account or a general account may bank allowances for future use or transfer under:

- (1) 40 CFR 96.155 for nitrogen oxides,
- (2) 40 CFR 96.255 for sulfur dioxides, and
- (3) 40 CFR 96.355 for ozone season nitrogen oxides.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10).

15A NCAC 02D .2409 DESIGNATED

REPRESENTATIVE

(a) Designated representative. The owner or operator of any source covered under this Section shall select a designated representative according to 40 CFR 96.110 for nitrogen oxide, 96.210 for sulfur dioxide, and .96310 for ozone season nitrogen oxides. The designated representative shall have the responsibilities and duties set out in 40 CFR 96.110 for nitrogen oxides, 96.210 for sulfur dioxide, and 96.310 for ozone season nitrogen oxides.

(b) Alternate designated representative. The owner or operator of any source covered under this Section shall select an alternate designated representative according to 40 CFR 96.111 for nitrogen oxides, 96.211 for sulfur dioxide, and 96.311 for ozone season nitrogen oxides. The alternate designated representative shall have the responsibilities and duties set out in 40 CFR 96.111 for nitrogen oxides, 96.211 for sulfur dioxide, and 96.311 for ozone season nitrogen oxides.

(c) Changing designated representative and alternate designated representative. The owner or operator of any source covered under this Section may change the designated representative or the alternate designated representative using:

- (1) 40 CFR 96.112 for nitrogen oxides;
- (2) 40 CFR 96.212 for sulfur dioxide; and
- (3) 40 CFR 96.312 for ozone season nitrogen oxides.

(d) Changes in owners and operators. Whenever the owner or operator of a source covered under this Section changes, the following provisions shall be followed:

- (1) 40 CFR 96.112(c) for nitrogen oxides;
- (2) 40 CFR 96.212(c) for sulfur dioxide; and
- (3) 40 CFR 96.312(c) for ozone season nitrogen oxides.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10).

15A NCAC 02D .2410 COMPUTATION OF TIME

Time periods shall be determined as described in:

- (1) 40 CFR 96.107 for nitrogen oxides;
- (2) 40 CFR 96.207 for sulfur dioxide; and
- (3) 40 CFR 96.307 for ozone season nitrogen oxides.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10).

15A NCAC 02D .2411 OPT-IN PROVISIONS

(a) Opting in. The owner or operator of a source may opt into:

- (1) the nitrogen oxide trading program by following the procedures in and meeting the requirements of 40 CFR Part 96 Subpart II,
- (2) the sulfur dioxide trading program by following the procedures in and meeting the requirements of 40 CFR Part 96 Subpart III, and
- (3) the ozone season nitrogen oxide trading program by following the procedures in and meeting the requirements of 40 CFR Part 96 Subpart III.

(b) Permitting. The Director shall permit opt-in sources under Paragraph (a) of this Rule according to 15A NCAC 02Q .0500 and

- (1) 40 CFR 96.184 and 96.185 for nitrogen oxides and shall allocate allowances according to 40 CFR 96.188.
- (2) 40 CFR 96.284 and 96.285 for nitrogen oxides and shall allocate allowances according to 40 CFR 96.288, and
- (3) 40 CFR 96.384 and 96.385 for ozone season nitrogen oxides and shall allocate allowances according to 40 CFR 96.388.

(c) Withdrawing. The owner or operator of an opt-in source under Paragraph (a) of this Rule may withdraw from the trading program according to:

- (1) 40 CFR 96.186 for nitrogen oxides,
- (2) 40 CFR 96.286 for sulfur dioxides, and
- (3) 40 CFR 96.386 for ozone season nitrogen oxides.

(d) Change in regulatory status. If an opt-in source becomes:

- (1) a NOx unit under 40 CFR 96.104, then 40 CFR 96.187 shall apply.
- (2) a SO₂ unit under 40 CFR 96.204, then 40 CFR 96.287 shall apply, or
- (3) a ozone season NOx unit under 40 CFR 96.304, then 40 CFR 96.387 shall apply.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10); 143-215.108.

15A NCAC 02D .2412 NEW SOURCE GROWTH

(a) For nitrogen oxide emissions, the procedures in 40 CFR 96.142(c) shall be used to create allocations for sources that commenced operations on or after January 1, 2001 and that are not listed in the table in Rule .2503 of this Rule.

(b) For ozone season nitrogen oxides, emissions, the procedures in 40 CFR 96.342(c) shall be used to create allocations for sources that commenced operations on or after January 1, 2001 and that are not listed in the table in Rule .2505 of this Rule.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10).

15A NCAC 02D .2413 PERIODIC REVIEW AND REALLOCATIONS

In 2010 and every five years thereafter, the Environmental Management Commission shall review the emission allocations of sources covered under Rules .2403, .2404, and .2405 of this Section and decide if any revisions are needed. In making this decision the Environmental Management Commission shall consider the following:

- (1) the size of the allocation pool for new source growth under Rule .2412 of this Section;
- (2) the amount of emissions allocations requested by sources under Rule .2412 of this Section;
- (3) the amount of emissions allocations available through the respective trading programs under Rule .2408 of this Section;
- (4) the impact of reallocation on existing sources;

(5) the impact of reallocations on sources covered under Rule .2412 of this Section;

(6) impact on future growth; and

(7) other relevant information on the impacts of reallocation.

Authority G.S. 143-215.3(a); 143-215.107(a)(5),(10).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Secretary of the Department of Environment and Natural Resources intends to amend the rule cited as 15A NCAC 02G .0602 and repeal the rule cited as 15A NCAC 02G .0601.

Proposed Effective Date: April 1, 2006

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Contact Rob Emens: AWC Program – 1611 MSC – Raleigh, NC 27699, phone (919)715-5452, email rob.emens@ncmail.net.

Reason for Proposed Action: Language is inconsistent with G.S. – Chapter 113A, Articles 15, 113A-223 & 113A-224; Text contains dated material (e.g., department name, common names of plants); Working redundant to 113-222(a)(3); Additional species meet criteria outlined in 113A-222(a): *Eichhornia crassipes* (water hyacinth), *Myriophyllum aquaticum* (parrotfeather), *Pistia stratiotes* (water lettuce), List “(2) Additional Noxious Weeds” needs to be alphabetized by scientific name for reasons of consistency and logic.

Procedure by which a person can object to the agency on a proposed rule: Send written objections to: Division of Water Resources, Attn: Rob Emens, 1611 MSC Raleigh, NC 27699-1611.

Comments may be submitted to: Rob Emens, 1611 MSC, Raleigh, NC 27699-1611

Comment period ends: January 30, 2006

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 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2G - WATER RESOURCES PROGRAMS

SECTION .0600 - AQUATIC WEED CONTROL

15A NCAC 02G .0601 THE AQUATIC WEED CONTROL ACT

~~The North Carolina Aquatic Weed Control Act of 1991 empowers the State of North Carolina to control, eradicate, and regulate plants designated as noxious aquatic weeds. The Aquatic Weed Control Act and the existing powers of the Commissioner of Agriculture prohibit importation, sale, use, culture, collection, transportation, and distribution of these plants in North Carolina. Permits for the movement of noxious aquatic weeds may be obtained from the Commissioner of Agriculture pursuant to 2 NCAC 48A .1705 and .1706, subject to the conditions stated therein.~~

Authority G.S. 106-420; 113A-222; 113A-223; 113A-224.

15A NCAC 02G .0602 NOXIOUS AQUATIC WEED LIST

~~The Secretary of the Department of Environment, Health, Environment and Natural Resources has determined that designated the following aquatic plants exhibit characteristics which threaten or may threaten the health or safety of the people of North Carolina or beneficial uses of the waters of North Carolina: as noxious aquatic weeds:~~

- (1) ~~Aquatic~~ Species Listed on the Federal Noxious Weed List.
 - Azolla pinnata R. Brown - Pinnate mosquitofern
 - Eichhornia azurea (Sw.) Kunth - Anchored waterhyacinth
 - Hydrilla verticillata (L.f.) Royle - Hydrilla
 - Hygrophila polysperma (roxb.) T. Anderson - Indian hygrophila
 - Ipomoea aquatica Forsk. - Swamp morningglory, water spinach
 - Lagarosiphon major (Ridley) Moss - African elodea
 - Limnophila sessiliflora (Vahl) Blume-Limnophila
 - Melaleuca quinquenervia (Cav.) Blake-Melaluca
 - Monochoria hastata (L.) Solms - Arrowleaved monochoria
 - Monochoria vaginalis (Burm. f.) Kunth - Monochoria
 - Sagittaria sagittifolia L. - Arrowhead
 - Salvinia auriculata Aubl. - Giant salvinia
 - Salvinia biloba Raddi - Giant salvinia
 - Salvinia herzogii de la Sota - Giant salvinia

- Salvinia molesta Mitch. - Giant salvinia
- Sparganium erectum L. - Branched burreed
- Stratiotes aloides L. - Crab's ~~elaw~~ claw, Water-
aloe
- (2) Additional Noxious Aquatic Weeds.
 - ~~Crassula helmsii~~ - Swamp stonecrop
 - ~~Lagarosiphon spp. (All species)~~ - African elodea
 - ~~Salvinia spp. (All except S. rotundifolia)~~ - Water fern
 - ~~Trapa spp. (All species)~~ - Water Chestnut
 - ~~Ludwigia uruguayensis (Camb.) Hara~~ - Uruguay waterprimrose
 - ~~Lythrum salicaria L.~~ - Purple loosestrife
 - ~~Phragmites australis (Cav.) Trin. ex Steud.~~ - Common reed
 - ~~Alternanthera philoxeroides (Mart.) Griseb~~ - Alligatorweed
 - ~~Egeria densa Planch.~~ - Brazilian elodea
 - ~~Myriophyllum spicatum L.~~ - Eurasian watermilfoil
 - ~~Najas minor All.~~ - Brittleleaf naiad
 - ~~Alternanthera philoxeroides (Mart.) Griseb~~ - Alligatorweed
 - ~~Crassula helmsii~~ - Swamp stonecrop
 - ~~Egeria densa Planch.~~ - Brazilian elodea
 - ~~Eichhornia crassipes (Mart.) Solms.~~ - Waterhyacinth
 - ~~Lagarosiphon spp. (All species)~~ - African elodea
 - ~~Ludwigia uruguayensis (Camb.) Hara~~ - Uruguay waterprimrose, Creeping waterprimrose
 - ~~Lythrum salicaria L.~~ - Purple loosestrife
 - ~~Myriophyllum aquaticum (Vell.) Verdc.~~ - Parrotfeather
 - ~~Myriophyllum spicatum L.~~ - Eurasian watermilfoil
 - ~~Najas minor All.~~ - Brittleleaf naiad, Slender naiad
 - ~~Phragmites australis (Cav.) Trin. ex Steud.~~ - Common reed
 - ~~Pistia stratiotes L.~~ - Water lettuce
 - ~~Salvinia spp. (All except S. rotundifolia)~~ - Water fern
 - ~~Trapa spp. (All species)~~ - Water Chestnut

Authority G.S. 113A-222.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 54 - NORTH CAROLINA PSYCHOLOGY BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the Psychology Board intends to amend the rules cited as 21 NCAC 54 .1701, .1802 with changes from the proposed text noticed in the Register, Volume 19, Issue 19, pages 1554-1561.

Proposed Effective Date: May 1, 2006

Reason for Proposed Action: To amend requirements for applying and qualifying for licensure under senior psychologist provisions and at the psychological associate level.

Procedure by which a person can object to the agency on a proposed rule: Mail written objections to Martha Storie, Executive Director, NC Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607. Letters of objections must be received no later than January 30, 2006.

Written comments may be submitted to: Martha N. Storie, Psychology Board, 895 State Farm Road, Suite 101, Boone, NC 28607, phone (828)265-8611.

Comment period ends: January 30, 2006

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

Fiscal Impact

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

SECTION .1700 - APPLICATION FOR LICENSURE

21 NCAC 54 .1707 SENIOR PSYCHOLOGIST

(a) A senior psychologist shall be someone who has achieved longevity in the practice of psychology and has demonstrated exemplary professional behavior over the course of his/her career, as defined in this Rule.

(b) Except as provided in Paragraph (c) of this Rule, to be approved for licensure at the Licensed Psychologist level on the basis of senior psychologist status, an applicant shall hold a doctoral degree in psychology from an institution of higher education which meets the residency requirement specified in 21 NCAC 54 .1803(7), and shall meet all of the following requirements:

- (1) is licensed and has been licensed for 15 10 continuous years at the doctoral level by one or more other state or provincial psychology

boards in one or more jurisdictions which are members of the Association of State and Provincial Psychology Boards, during which time, and in which jurisdiction(s), he/she has practiced psychology for a minimum of 10 years on at least a half-time (i.e., 20 hours per week) basis;

- (2) has had no disciplinary sanction during his/her entire period of licensure in any jurisdiction;
(3) has no unresolved complaint in any jurisdiction at the time of application or during the pendency of application in North Carolina; and
(4) passes the North Carolina State Written Examination.

(c) An applicant who received his or her doctoral degree prior to January 1, 1978, shall hold a doctoral degree from an institution of higher education and meet all of the requirements specified in Subparagraphs (b)(1) through (b)(4) of this Rule.

(d) Except as provided in Paragraph (e) of this Rule, to be approved for licensure at the Licensed Psychological Associate level on the basis of senior psychologist status, an applicant shall hold a master's, specialist, or doctoral degree in psychology from an institution of higher education which meets the residency requirement specified in 21 NCAC 54 .1802(a)(7), and shall meet all of the following requirements:

- (1) is licensed and has been licensed for 15 10 continuous years at the masters level by one or more other state or provincial psychology boards in one or more jurisdictions which are members of the Association of State and Provincial Psychology Board, Boards during which time, and in which jurisdiction(s), he/she has practiced psychology for a minimum of 10 years on at least a half-time (i.e., 20 hours per week) basis;
(2) has had no disciplinary sanction during his/her entire period of licensure in any jurisdiction;
(3) has no unresolved complaint in any jurisdiction at the time of application or during the pendency of application in North Carolina; and
(4) passes the North Carolina State Written Examination.

(e) An applicant who received the degree upon which his or her psychology licensure is based in another jurisdiction, prior to January 1, 1978, shall hold a master's, specialist, or doctoral degree from an institution of higher education and shall meet all of the requirements specified in Subparagraphs (d)(1) through (d)(4) of this Rule.

(f) The information required for each applicant shall consist of:

- (1) typed, or legibly printed, notarized application form, including an affidavit which attests to meeting the requirements specified in Paragraph (b) Subparagraphs (b)(1) through (b)(3) or (c) Subparagraphs (d)(1) through (d)(3) of this Rule;

- (2) typed, or legibly printed, notarized supervision contract form;
- (3) application fee;
- ~~(2)~~(4) ~~official, graduate~~ official college ~~transcripts~~ transcript(s) sent directly to the Board by ~~the~~ any training ~~institution(s);~~ institution(s) from which the applicant received a graduate degree;
- ~~(3)~~(5) three completed reference forms from professionals who are familiar with the applicant's current work, one of which is from a doctoral level psychologist; and
- ~~(4)~~(6) verification and report on the status of licensure, including dates of licensure and any disciplinary action which is pending or has been taken, sent directly to the Board from any other regulatory agency in North Carolina and any other jurisdiction ~~state or province~~ in which the applicant has applied for a ~~license~~ license, is currently licensed, or previously has been licensed.

- (4) There shall be an identifiable full-time psychology faculty in residence at the institution, sufficient in size and breadth to carry out its responsibilities, employed by and providing instruction at the home campus of the institution.
- (5) There shall be a psychologist responsible for the ~~applicant's~~ student's program either as the administrative head of the program, or as the advisor, major professor, or committee chair for the individual ~~applicant's~~ student's program.
- (6) The program shall be an integrated, organized sequence of study in psychology as demonstrated by an identifiable curriculum track or tracks wherein course sequences are ~~outlined, described in institutional catalogues, departmental handbooks, or other institutional publications.~~
- (7) The program shall encompass the equivalent of a minimum of one academic year of full-time graduate study in student residence at the institution from which the degree is granted. Residence requires interaction with psychology faculty and other matriculated psychology ~~students,~~ students at the institution. One year's residency is defined as 30 semester (45 ~~quarter~~) quarter or 40 trimester) hours taken on a full-time or part-time basis at the institution.

- (8) The program shall ~~include~~ include, as listed on the transcript, internship, externship, practicum, or other supervised field experience appropriate to the area of specialty and the practice of ~~psychology-~~ psychology, as defined in G.S. 90-270.2(8), which shall be referred to hereinafter as supervised training experience. This supervised training experience shall meet all of the following criteria:

- (A) It shall ~~have been~~ be a planned and directed program of training ~~in~~ for the practice of psychology, in contrast to on-the-job training, and shall ~~have provided~~ provide the trainee with a planned and directed sequence of training that is integrated with the educational program in which the ~~individual was~~ student is enrolled. This supervised training experience shall ~~have been~~ be planned by the ~~program's faculty,~~ educational program faculty and training site staff, rather than by the student.

- ~~(C)~~(B) The supervised training experience site shall have ~~had~~ a clearly designated and appropriately licensed or certified psychologist or psychological associate ~~who was~~ responsible for the integrity and

~~(e)~~(g) An application shall contain all requested materials to be complete. An incomplete application shall be active for three months from the date of ~~application.~~ on which the application is received in the Board office. At the end of such time, if still incomplete, the application shall be void, the applicant shall be deemed to have discontinued the application process, and the ~~applicant individual~~ shall totally ~~reapply.~~ reapply if the individual wishes to pursue licensure further.

Authority G.S. 90-270.4(h); 90-270.5(a); 90-270.9; 90-270.13(a)(e).

SECTION .1800 – EDUCATION

21 NCAC 54 .1802 PSYCHOLOGICAL ASSOCIATE

(a) Licensure for the level of psychological associate requires a master's degree or specialist degree in psychology from an institution of higher education. ~~For an individual applying before January 1, 1999, his or her degree program shall be publicly identified and clearly labeled as a psychology program. For an individual applying on or after January 1, 1999, his or her degree program~~ The degree program shall meet all of the following requirements:

- (1) The program shall be publicly identified and clearly labeled as a psychology program; such a program shall specify in pertinent institutional catalogues its intent to educate and train ~~psychologists~~ students to engage in the activities which constitute the practice of psychology as defined in G.S. 90-270.2(8).
- (2) The program shall maintain clear authority and primary responsibility for the core and specialty areas ~~whether or not even if~~ the program crosses administrative lines.
- (3) The program shall have an identifiable body of students in residence at the institution who are matriculated in that program for a degree.

- quality of the supervised training ~~program.~~ experience.
- (E)(C) The supervised training experience shall ~~have been~~ be a minimum of 12 weeks consisting of at least 500 hours of supervised training. ~~At least 50% of the training shall have been spent in the practice of psychology.~~ practice in psychology as defined by G.S. 90-270.2(8). Supervision for this training experience shall be provided as required by Parts (a)(8)(G) or (a)(8)(H) of this Rule.
- (B)(D) The supervised training experience ~~program~~ shall have had a written ~~program~~ description detailing its functioning and the program of training, or a written agreement, developed prior to the time of the training, between the student's educational program and the training site, detailing the responsibilities of the student and the training site. Such an agreement shall ~~have been~~ be approved by the ~~applicant's~~ student's educational program prior to its ~~occurrence.~~ the beginning of the supervised training experience.
- (E) ~~The training site shall have provided a minimum of one hour per week of individual face to face, regularly scheduled supervision with the specific intent of overseeing the practice of psychology.~~
- (F) ~~Supervision may have been provided in part by psychiatrists, social workers, or other related professionals qualified by the training site, but at least 50% of supervision shall have been provided by an appropriately licensed or certified psychologist or psychological associate, or other psychologist who is exempt from licensure under the North Carolina Psychology Practice Act.~~
- (D)(G) ~~Persons~~ A student enrolled in the training a supervised training experience shall ~~have been~~ be designated as "~~interns~~", "~~externs~~", or "~~practicum students~~", any of the following: an "intern," "extern," or "practicum student," or shall hold a ~~title other designation~~ which ~~clearly indicated~~ indicates training status. ~~status for the practice of psychology.~~
- (F) The supervised training experience shall be completed within a period of
- 12 consecutive months at not more than two training sites.
- (G) Except as provided in Part (a)(8)(H) of this Rule, regularly scheduled individual face-to-face supervision with the specific intent of overseeing the practice of psychology shall be provided by a North Carolina licensed or certified psychologist or psychological associate or by a psychologist who is exempt from licensure, pursuant to G.S. 90-270.4(b), at a rate of not less than one hour per week during at least 12 separate weeks of the internship. The supervisor shall establish and maintain a level of supervisory contact consistent with professional standards and shall be accessible to the student.
- (H) If completing a supervised training experience outside of North Carolina, the student shall be provided regularly scheduled individual face-to-face supervision with the specific intent of overseeing the practice of psychology by a licensed or certified psychologist or psychological associate or by an individual holding a master's, specialist, or doctoral degree in psychology, at a rate of not less than one hour per week during at least 12 separate weeks of the supervised training experience. The supervisor shall establish and maintain a level of supervisory contact consistent with professional standards and shall be accessible to the student. Proof of the supervisor's license or degree program, as applicable, may be required by the Board to establish the supervisor's training in psychology.
- (9) Except as provided in Paragraph (b) of this Rule, the ~~The~~ program of study shall include a minimum of 45 semester (68 ~~quarter~~) quarter or 60 trimester) hours of graduate study in standard psychology courses, including courses drawn from academic psychology (e.g., social, experimental, physiological, developmental, history and systems), statistics and research design, scientific and professional ethics and standards, and a specialty area. Of the required 45 semester (68 ~~quarter~~) quarter or 60 trimester) program hours, not more than 6 semester (9 ~~quarter~~) quarter or 9 trimester) hours shall be credited for internship/practicum and not more than 6 semester (9 ~~quarter~~) quarter or 9 trimester)

hours shall be credited for thesis/dissertation. No credit shall be allowed for audited courses or courses taken at an institution which does not meet the definition of an "institution of higher education" as defined by G.S. 90-270.2(5).

(b) If an individual's degree program did not include a minimum of 45 semester (68 quarter or 60 trimester) hours of course content, as defined in Subparagraph (a)(9) of this Rule, but included a minimum of 39 semester (59 quarter or 51 trimester) hours of graduate study in standard psychology courses, as specified in Subparagraph (a)(9) of this Rule, allowing not more than 6 semester (9 quarter or 9 trimester) hours for practicum/internship or 6 semester (9 quarter or 9 trimester) hours for thesis/dissertation, the individual shall be allowed to take, and must pass with a grade of "B" or above, additional graduate level course work to meet the hourly requirement specified in Subparagraph (a)(9) of this Rule. The individual shall complete specified course content, as defined by Subparagraph (a)(9) of this Rule, to meet the minimum educational requirements to apply for licensure. The aforementioned course work shall be completed at an institution of higher education, as defined by G.S. 90-270.2(5), in a graduate psychology program in the same specialty area as the degree program completed by the individual and shall be reported on an official transcript. It is within the discretion of any institution of higher education to permit any student to take additional course work at the institution. The institution of higher education where the student takes additional course work shall be responsible only for the specific course work taken at that institution and not for the student's entire course of study, unless the student's entire program was completed at that institution. No credit shall be accepted by the Board for audited courses. This additional graduate level course work shall not duplicate course work taken by the individual in his or her degree program or prior to admittance to his or her degree program and shall be completed in one or more of the following areas:

- (1) academic psychology (e.g., social, experimental, physiological, developmental, history and systems);
- (2) statistics and research design;
- (3) scientific and professional ethics and standards; or
- (4) electives offered in the course of study for the individual's specialty area (e.g., clinical psychology, counseling psychology, school psychology, or other specialty area in psychology).

(c) If an individual's degree program did not include a minimum of 39 semester (59 quarter or 51 trimester) hours in standard psychology courses, as specified in Subparagraph (a)(9) of this Rule, allowing not more than 6 semester (9 quarter or 9 trimester) hours for practicum/internship and not more than 6 semester (9 quarter or 9 trimester) hours for thesis/dissertation, the individual shall not be allowed to obtain additional hours at a post-graduate level to meet the hourly requirements in Subparagraph (a)(9) of this Rule.

(d) An individual shall not, under any circumstance following the completion of the individual's master's or specialist degree in psychology, be allowed to complete a practicum, internship, or other supervised training experience requiring the individual to practice psychology in order to meet the minimum educational requirement.

~~(b)~~(e) An applicant whose credentials have been approved by the Board for examination at the licensed psychologist level may be issued a license as a psychological associate if the applicant fails an examination at the licensed psychologist level but passes such at the psychological associate level. To receive this license, the applicant shall make a written request to the Board for licensure at the psychological associate level within 30 days from the date on which the applicant is notified of his or her examination score.

Authority G.S. 90-270.9; 90-270.11(b).

TITLE 23 – COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Community Colleges intends to adopt the rule cited as 23 NCAC 02C .0605 and amend the rule cited as 23 NCAC 02C .0503.

Proposed Effective Date: April 1, 2006

Public Hearing:

Date: December 16, 2005

Time: 9:00 a.m.

Location: NCCCS, Caswell Building, 200 West Jones Street, Raleigh, NC 27603

Reason for Proposed Action: 23 NCAC 02D .0605 is to establish policy to simplify the bid process for small community college capital improvement projects and to study the use of reverse auction for the procurement of construction services by private construction entities to comply with Session Law 2005-370. 23 NCAC 02C .0503 is to amend policy to authorize limited use of community college facilities by private companies that have loaned or donated instruction equipment to the college to comply with Session Law 2005-241.

Procedure by which a person can object to the agency on a proposed rule: *Written objections may be addressed to President, NC Community College System Office, 5001 MSC, Raleigh, NC 27699-5001 within the comment period, and must be post marked by 11:59 p.m. on the last day of the comment period.*

Comments may be submitted to: *President, Community College System, 5001 MSC, Raleigh, NC 27699-5001.*

Comment period ends: January 30, 2006

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: A copy of the fiscal note can be obtained from the agency.

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

CHAPTER 2 - COMMUNITY COLLEGES

SUBCHAPTER 2C - COLLEGES: ORGANIZATION AND OPERATIONS

SECTION .0500 - EQUIPMENT

23 NCAC 02C .0503 DONATED OR LOANED PROPERTY

- (a) A board of trustees may accept property donated to the college for any lawful educational purpose that is consistent with the mission and purpose of the community college system.
- (b) Prior to a board of trustees accepting any property that restricts the use of funds derived from the sale or lease of the property, the college shall submit to the Department a copy of the document transferring the property for review.
- (c) Any funds derived from the sale or lease of property donated to a college for a specific educational purpose shall be used to accomplish that purpose.
- (d) A board of trustees may permit a private business enterprise that loans or donates instructional equipment to the college to use the college's facilities to demonstrate the donated or loaned equipment to customers or potential customers of the private business enterprise provided that:
 - (1) The board of trustees develop procedures to regulate the use of its facilities for this purpose;
 - (2) The procedures must comply with G.S. 115D-15;
 - (3) The college provides an annual report to the State Board regarding the use of its facilities for these purposes; and
 - (4) The lender's or donor's use of the college facilities shall not unreasonably interfere with the education of students.

Authority G.S. 115D-5; S.L. 2005-247.

SUBCHAPTER 2D - COMMUNITY COLLEGES: FISCAL

AFFAIRS

SECTION .0600 - CAPITAL CONSTRUCTION

23 NCAC 02D .0605 OPEN-END DESIGN AGREEMENTS

A board of trustees of a community college may enter into open-end design agreements subject to the following limitations:

- (1) The open-end design agreement must be publicly announced in a manner reasonably expected to inform interested designers of the college's need for an open-end agreement for designer services.
- (2) Designers or consultants for open-end design agreements shall be selected in accordance with the college's designer selection procedures for minor projects.
- (3) The total estimated cost of each small project shall not exceed the maximum expenditure established by G.S. 143-64.34(c) for each small project that can be designed using the services of a designer secured through an open-end design agreement.
- (4) The initial term of the open-end design agreement shall be the same as the initial term established for fixed term contracts in 01 NCAC 30D .0302(f).
- (5) Design fees for any single project designed under an open-end design agreement shall not exceed the single project monetary limit established for a fixed term contract by 01 NCAC 30D .0302(f).
- (6) Regardless of the number of projects during the initial term of an open-end design agreement, the total amount of fees paid under an open-end design agreement during its initial term shall not exceed the maximum fees payable under a fixed term contract during the fixed term contract's initial year as established by 01 NCAC 30D .0302(f).
- (7) A board of trustees of a community college may extend the initial term of the original open-end design agreement for a maximum of one additional year.
- (8) The maximum amount payable under an open-end design agreement during any additional term after the initial term shall not exceed the maximum amount payable under a fixed term contract during any additional term after the initial term as established by 01 NCAC 30D .0302(f).
- (9) If the term of an open-end design agreement is extended for one additional year and regardless of the number of projects, the sum of the fees paid for the initial term of the agreement and for the year long extension shall not exceed the limitation established by the State Building Commission for the

maximum amount payable under fixed term contracts in 01 NCAC 30D .0302(f).

- (10) A community college may not have more than one open-end design agreement with the same firm at the same time.

Authority G.S. 115D-5; S.L. 2005-379.

APPROVED RULES

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting November 17, 2005, and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

These rules have been entered into the North Carolina Administrative Code.

| APPROVED RULE CITATION | | | | REGISTER CITATION TO THE NOTICE OF TEXT |
|-------------------------------|------|-----|--------------|--|
| 10A | NCAC | 09 | .0705* | n/a G.S. 150B 21.5(a)(4), Eff. November 1, 2005 |
| 10A | NCAC | 09 | .2608* | 19:12 NCR |
| 10A | NCAC | 13B | .3302* | 19:20 NCR |
| 10A | NCAC | 13B | .4511* | 19:20 NCR |
| 10A | NCAC | 14C | .1602 | 19:23 NCR |
| 10A | NCAC | 14C | .1901-.1902 | 19:23 NCR |
| 10A | NCAC | 14C | .2101* | 19:23 NCR |
| 10A | NCAC | 14C | .2103 | 19:23 NCR |
| 10A | NCAC | 14C | .2202-.2203 | 19:23 NCR |
| 10A | NCAC | 14C | .2701-.2702* | 19:23 NCR |
| 10A | NCAC | 14C | .2703-.2705 | 19:23 NCR |
| 10A | NCAC | 14C | .3703 | 19:23 NCR |
| 10A | NCAC | 14C | .3802 | 19:23 NCR |
| 10A | NCAC | 26F | .0102* | n/a G.S. 90-88(d), Eff. November 1, 2005 |
| 10A | NCAC | 26F | .0105* | n/a G.S. 90-88(d), Eff. November 1, 2005 |
| 10A | NCAC | 27G | .1901-.1904* | 19:18 NCR |
| 10A | NCAC | 28F | .0212 | 19:21 NCR |
| 10A | NCAC | 39A | .1002* | 19:21 NCR |
| 10A | NCAC | 39A | .1005* | 19:21 NCR |
| 10A | NCAC | 39A | .1006 | 19:21 NCR |
| 10A | NCAC | 41A | .0401* | 19:21 NCR |
| 10A | NCAC | 41B | .0102 | 19:24 NCR |
| 10A | NCAC | 41B | .0503* | 19:24 NCR |
| 10A | NCAC | 43D | .0706* | 19:23 NCR |
| 10A | NCAC | 45B | .0104* | 19:23 NCR |
| 10A | NCAC | 46 | .0401-.0404 | 19:23 NCR |
| 10A | NCAC | 46 | .0501-.0503 | 19:23 NCR |
| 11 | NCAC | 01 | .0103* | n/a G.S. 150B-21.5(a)(4), Eff. November 1, 2005 |
| 12 | NCAC | 09A | .0103* | 19:24 NCR |
| 12 | NCAC | 09B | .0202* | 19:24 NCR |
| 12 | NCAC | 09B | .0205* | 19:24 NCR |
| 12 | NCAC | 09B | .0210* | 19:24 NCR |
| 12 | NCAC | 09B | .0302-.0305* | 19:24 NCR |
| 12 | NCAC | 09B | .0307 | 19:24 NCR |
| 12 | NCAC | 09B | .0308* | 19:24 NCR |
| 12 | NCAC | 09B | .0312 | 19:24 NCR |
| 12 | NCAC | 09E | .0102* | 19:24 NCR |
| 12 | NCAC | 09E | .0104-.0106* | 19:24 NCR |
| 12 | NCAC | 09E | .0109-.0110* | 19:24 NCR |
| 12 | NCAC | 09G | .0308-.0311* | 19:24 NCR |
| 12 | NCAC | 09G | .0312 | 19:24 NCR |
| 12 | NCAC | 09G | .0405* | 19:24 NCR |
| 12 | NCAC | 09G | .0416* | 19:24 NCR |
| 15A | NCAC | 03O | .0302* | 19:20 NCR |
| 15A | NCAC | 10B | .0209* | 19:09 NCR |
| 15A | NCAC | 10D | .0102* | 19:20 NCR |

| | | | | |
|-----|------|-----|--------------|--|
| 15A | NCAC | 13A | .0110* | 19:23 NCR |
| 15A | NCAC | 13A | .0112 | 19:23 NCR |
| 15A | NCAC | 18A | .2801-.2804* | 19:17 NCR |
| 15A | NCAC | 18A | .2805 | 19:17 NCR |
| 15A | NCAC | 18A | .2806-.2810* | 19:17 NCR |
| 15A | NCAC | 18A | .2811 | 19:17 NCR |
| 15A | NCAC | 18A | .2812* | 19:17 NCR |
| 15A | NCAC | 18A | .2813 | 19:17 NCR |
| 15A | NCAC | 18A | .2814-.2827* | 19:17 NCR |
| 15A | NCAC | 18A | .2828 | 19:17 NCR |
| 15A | NCAC | 18A | .2829-.2836* | 19:17 NCR |
| 15A | NCAC | 18C | .2007 | 19:22 NCR |
| 21 | NCAC | 14F | .0108* | 19:17 NCR |
| 21 | NCAC | 14F | .0112 | 19:17 NCR |
| 21 | NCAC | 14G | .0107* | 19:17 NCR |
| 21 | NCAC | 14H | .0112* | 19:17 NCR |
| 21 | NCAC | 14H | .0120* | 19:17 NCR |
| 21 | NCAC | 14J | .0207* | 19:17 NCR |
| 21 | NCAC | 26 | .0209-.0210* | 19:08 NCR |
| 21 | NCAC | 32U | .0101* | 19:07 NCR |
| 21 | NCAC | 36 | .0228* | n/a G.S. 150B 21.5(a)(3) and (a)(6), Eff. November 1, 2005 |
| 21 | NCAC | 46 | .2507* | 19:08 NCR |
| 23 | NCAC | 02C | .0301* | 19:21 NCR |
| 23 | NCAC | 02E | .0306* | 19:07 NCR |

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .0705 SPECIAL TRAINING REQUIREMENTS

- (a) At least one staff member shall be knowledgeable of and able to recognize common symptoms of illness.
- (b) Staff who have completed within the last three years a course in basic first aid shall be present at all times children are present. The number of staff required to complete the course shall be based on the number of children present as shown in the following chart:

| | |
|----------------------------|---|
| Number of children present | Number of staff trained in first aid required |
| 1-29 | 1 staff |
| 30-79 | 2 staff |
| 80 and above | 3 staff |

Verification of each required staff person's completion of this course shall be maintained in the person's individual personnel file in the center. The basic first aid course shall address principles for responding to emergencies, rescue breathing, and techniques for handling common childhood injuries, accidents and illnesses such as: choking, burns, fractures, bites and stings, wounds, scrapes, bruises, cuts and lacerations, poisoning, seizures, bleeding, allergic reactions, eye and nose injuries and sudden changes in body temperature.

- (c) A first aid information sheet shall be posted in a prominent place for quick referral. An acceptable form may be requested free of charge from the North Carolina Child Care Health and Safety Resource Center.

(d) Each child care center shall have at least one person on the premises at all times, and at least one person who accompanies the children whenever they are off the premises, who has successfully completed within the last 12 months a cardiopulmonary resuscitation (CPR) course provided by either the American Heart Association or the American Red Cross or other organizations approved by the Division. Other organizations shall be approved if the Division determines that the courses offered are substantially equivalent to those offered by the American Red Cross. Successfully completed is defined as demonstrating competency, as evaluated by the instructor, in performing CPR. The course shall provide training in CPR appropriate for the ages of children in care. Documentation of successful completion of the course from the American Heart Association, the American Red Cross, or other organization approved by the Division shall be on file in the center.

(e) Staff shall complete at least four clock hours of training in safety. This training shall address playground safety hazards, playground supervision, maintenance and general upkeep of the outdoor area, and age and developmentally appropriate playground equipment. Staff counted to comply with this Rule shall have six months from the date of employment, or from the date a vacancy occurs, to complete the required safety training. The number of staff required to complete this training shall be as follows:

- (1) In centers with a licensed capacity of less than 30 children, at least one staff person shall complete this training.
- (2) In centers with a licensed capacity of 30 or more children, at least two staff, including the administrator, shall complete this training.

- (f) In centers that are licensed to care for infants ages 12 months and younger:
 - (1) the center director and any child care provider scheduled to work in the infant room, including volunteers counted in staff/child ratios, shall complete ITS-SIDS training;
 - (2) ITS-SIDS training shall be completed within four months of the individual assuming responsibilities in the infant room or as an administrator, or within four months of these rules becoming effective, whichever is later, and shall be completed again every three years from the completion of previous ITS-SIDS training;
 - (3) Completion of ITS-SIDS training may be included once every three years in the number of hours needed to meet annual in-service training requirements in Section .0700 of this Chapter;
 - (4) Individuals who have completed initial ITS-SIDS training prior to this Rule becoming effective shall not be required to repeat the training until three years from the completion of initial ITS-SIDS training; and
 - (5) Prior to an individual assuming responsibility for the care of an infant, the center's safe sleep policy for infants shall be reviewed with the individual as required by Rule .0707(a) of this Section.

- (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 shall 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. 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. 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. 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:

History Note: Authority G.S. 110-91(1),(8); 143B-168.3; Eff. January 1, 1986; Amended Eff. January 1, 1996; January 1, 1992; January 1, 1991; January 1, 1987; Temporary Amendment Eff. October 1, 1997; Amended Eff. November 1, 2005; May 1, 2004; July 1, 1998.

10A NCAC 09 .2608 CHILDREN'S PLAN OF CARE

- (a) Each child shall have an individualized plan of care that includes written goals and intervention that address their social, emotional, physical and cognitive needs. The individualized plan of care shall be developed in collaboration with the following, as designated by their signatures: direct caregivers, parents, the child's physician(s), and other individuals providing care or services for the child, such as early intervention coordinators, therapists, and teachers."
- (b) The initial individualized plan of care shall be developed prior to admission and reviewed and revised every 60 days or when the medical condition of a child changes, whichever comes first.

History Note: Authority G.S. 110-88(13); Eff. November 1, 2005.

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

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

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 convened by a Medical Care Commission member in the community where the proposed research study is to take place 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 shall not 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; Amended Eff. November 1, 2005.

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:

- (1) accountability of controlled substances as defined by the G.S. 90, Article 5; and
- (2) 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 signed in accordance with Rule .3707(c) of this Subchapter.

*History Note: Authority G.S. 131E-79;
Eff. January 1, 1996;
Amended Eff. November 1, 2005; May 1, 2005.*

10A NCAC 14C .2101 DEFINITIONS

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

- (1) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1b).
- (2) "Operating room" means an inpatient operating room, an outpatient or ambulatory surgical operating room, a shared operating room, or an endoscopy procedure room in a licensed health service facility.
- (3) "Ambulatory surgical program" means a program as defined in G.S. 131E-176(1c).
- (4) "Existing operating rooms" means those operating rooms in ambulatory surgical facilities and hospitals which were reported in the License Application for Ambulatory Surgical Facilities and Programs and in Part III of Hospital Licensure Renewal Application Form submitted to the Licensure Section of the Division of Facility Services and which were licensed and certified prior to the beginning of the review period.
- (5) "Approved operating rooms" means those operating rooms that were approved for a certificate of need by the Certificate of Need Section prior to the date on which the applicant's proposed project was submitted to the Agency but that have not been licensed and certified.
- (6) "Multispecialty ambulatory surgical program" means a program as defined in G.S. 131E-176(15a).
- (7) "Outpatient or ambulatory surgical operating room" means an operating room used solely for the performance of surgical procedures which require local, regional or general

- (8) "Service area" means the Operating Room Service Area as defined in the applicable State Medical Facilities Plan.
- (9) "Shared operating room" means an operating room that is used for the performance of both ambulatory and inpatient surgical procedures.
- (10) "Specialty area" means an area of medical practice in which there is an approved medical specialty certificate issued by a member board of the American Board of Medical Specialties and includes, the following: gynecology, otolaryngology, plastic surgery, general surgery, ophthalmology, urology, orthopedics, and oral surgery.
- (11) "Specialty ambulatory surgical program" means a program as defined in G.S. 131E-176(24c).
- (12) "Surgical case" means an individual who receives one or more surgical procedures in an operating room during a single operative encounter.

*History Note: Authority G.S. 131E-177(1); 131E-183(b);
Eff. November 1, 1990;
Amended Eff. March 1, 1993;
Temporary Amendment Eff. September 1, 1993 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;
Amended Eff. January 4, 1994;
Temporary Amendment Eff. January 1, 1999;
Temporary Eff. January 1, 1999 Expired on October 12, 1999;
Temporary Amendment Eff. January 1, 2000;
Temporary Amendment effective January 1, 2000 amends and replaces a permanent rulemaking originally proposed to be effective August 2000;
Amended Eff. April 1, 2001;
Temporary Amendment Eff. January 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;
Amended Eff. April 1, 2003;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. November 1, 2005.*

10A NCAC 14C .2701 DEFINITIONS

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

- (1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
- (2) "Capacity of fixed MRI scanner" means 100% of the procedure volume that the MRI scanner is capable of completing in a year,

- given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a fixed MRI scanner is 6,864 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 66 hours per week, 52 weeks per year.
- (3) "Capacity of mobile MRI scanner" means 100% of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a mobile MRI scanner is 4,160 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 40 hours per week, 52 weeks per year.
- (4) "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.
- (5) "Fixed MRI scanner" means an MRI scanner that is not a mobile MRI scanner.
- (6) "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.
- (7) "Magnetic resonance imaging scanner" (MRI Scanner) is defined in G.S. 131E-176(14e).
- (8) "Mobile MRI region" means either the eastern part of the State which includes the counties in Health Service Areas IV, V and VI, or the western part of the State which includes the counties in Health Service Areas I, II, and III. The counties in each Health Service Area are identified in Appendix A of the State Medical Facilities Plan.
- (9) "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved at least weekly to provide services at two or more host facilities.
- (10) "MRI procedure" means a single discrete MRI study of one patient.
- (11) "MRI service area" means the Magnetic Resonance Imaging Planning Areas, as defined in the applicable State Medical Facilities Plan, except for proposed new mobile MRI scanners for which the service area is a mobile MRI region.
- (12) "MRI study" means one or more scans relative to a single diagnosis or symptom.
- (13) "Pediatric MRI patient" means a patient requiring an MRI scan who is under the age of 12 years or who is a special needs patient and is under the age of 21 years.
- (14) "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50% or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).
- (15) "Special Needs patient" means a patient who has cerebral palsy, encephalomyelopathy, central nervous system injuries, genetic and metabolic disorders, autism or mental retardation.
- (16) "Temporary MRI scanner" means a MRI scanner that the Certificate of Need Section has approved to be temporarily located in North Carolina at a facility that holds a certificate of need for a new fixed MRI scanner, but which is not operational because the project is not yet complete.
- (17) "Weighted MRI procedures" means MRI procedures which are adjusted to account for the length of time to complete the procedure, based on the following weights: one outpatient MRI procedure without contrast or sedation is valued at 1.0 weighted MRI procedure, one outpatient MRI procedure with contrast or sedation is valued at 1.4 weighted MRI procedures, one inpatient MRI procedure without contrast or sedation is valued at 1.4 weighted MRI procedures; and one inpatient MRI procedure with contrast or sedation is valued at 1.8 weighted MRI procedures.

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

Temporary Amendment effective January 1, 2001 amends and replaces a permanent rulemaking originally proposed to be effective April 1, 2001;
Temporary Amendment Eff. January 1, 2002;
Amended Eff. August 1, 2002;
Temporary Amendment effective January 1, 2002 amends and replaces the permanent rule effective August 1, 2002;
Temporary Amendment Eff. January 1, 2003;
Amended Eff. August 1, 2004; April 1, 2003;
Temporary Amendment Eff. January 1, 2005;
Amended Eff. November 1, 2005.

10A NCAC 14C .2702 INFORMATION REQUIRED OF APPLICANT

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

- (7) a detailed description of the methodology used to project the number of weighted MRI procedures to be performed;
 - (8) documentation to support each assumption used in projecting the number of procedures to be performed;
 - (9) for each existing fixed or mobile MRI scanner owned by the applicant or a related entity and operated in North Carolina in the month the application is submitted, the vendor, tesla strength, serial number or vehicle identification number, CON project identification number, physical location for fixed MRI scanners, and host sites for mobile MRI scanners;
 - (10) for each approved fixed or mobile MRI scanner to be owned by the applicant or a related entity and approved to be operated in North Carolina, the proposed vendor, proposed tesla strength, CON project identification number, physical location for fixed MRI scanners, and host sites for mobile MRI scanners;
 - (11) if proposing to acquire a mobile MRI scanner, an explanation of the basis for selection of the proposed host sites if the host sites are not located in MRI service areas that lack a fixed MRI scanner.
- (d) An applicant proposing to acquire a mobile MRI scanner shall provide copies of letters of intent from, and proposed contracts with, all of the proposed host facilities of the new MRI scanner.
 - (e) An applicant proposing to acquire a dedicated fixed breast MRI scanner shall:
 - (1) provide a copy of a contract or working agreement with a radiologist or practice group that has experience interpreting images and is trained to interpret images produced by an MRI scanner configured exclusively for mammographic studies;
 - (2) document that the applicant performed mammograms without interruption in the provision of the service during the last year; and
 - (3) document that the applicant's existing mammography equipment is in compliance with the U.S. Food and Drug Administration Mammography Quality Standards.
 - (f) An applicant proposing to acquire a dedicated fixed pediatric MRI scanner shall:
 - (1) provide a copy of a contract or working agreement with two pediatric radiologists qualified as described in 10A NCAC 14C .2705(f)(1);
 - (2) provide a copy of the facility's emergency plan for pediatric and special needs patients that outline all emergency procedures including acute care transfers and a copy of

- (3) a contract with an ambulance service for transportation during any emergencies; commit that the proposed MRI scanner shall be used exclusively to perform procedures on pediatric MRI patients;
- (4) provide a description of the scope of the research studies that shall be conducted to develop protocols related to MRI scanning of pediatric MRI patients; which includes special needs patients; and
- (5) commit to prepare an annual report, to be submitted to the Medical Facilities Planning Section and the Certificate of Need Section, which shall include the protocols for scanning pediatric MRI patients and the annual volume of weighted MRI procedures performed, by type.

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

10A NCAC 26F .0102 SCHEDULE I

- (a) Schedule I shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name or brand name designated and as specified in G.S. 90-89. Each drug or substance has been assigned the Drug Enforcement Administration controlled substances code number set forth in the Code of Federal Regulations, Title 21, Section 1308.11.
- (b) The Commission for MH/DD/SAS may add, delete or reschedule substances within Schedules I-VI as specified in G.S. 90-88.
- (c) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds the following substance within Schedule I for Stimulants:
 - (1) 2, 5-Dimethoxy-4-(n)-propylthiophenethylamine; and
 - (2) N-Benzylpiperazine.
- (d) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds the following substance within Schedule I for Hallucinogens:
 - (1) Alpha-Methyltryptamine
 - (2) 5-Methoxy-n-diisopropyltryptamine.

History Note: Authority G.S. 90-88; 90-89; 143B-147; Eff. June 30, 1978; Amended Eff. November 1, 2005; July 1, 1995; November 1, 1994; April 1, 1994; January 1, 1994.

10A NCAC 26F .0105 SCHEDULE IV

- (a) Schedule IV shall consist of the drugs and other substances by whatever official name, common or usual name, chemical name or brand name designated and as specified in G.S. 90-92. Each drug or substance has been assigned the Drug Enforcement Administration controlled substances code number set forth in the Code of Federal Regulations, Title 21, Section 1308.14.
- (b) The Commission for MH/DD/SAS may add, delete or reschedule substances within Schedules I-VI as specified in G.S. 90-88.
- (c) As specified in G.S. 90-88, the Commission for MH/DD/SAS adds the following substances within Schedule IV for Depressants:
 - (1) Dichloralphenazone; and
 - (2) Zopiclone.

History Note: Authority G.S. 90-88; 90-92; 143B-147; Eff. June 30, 1978; Amended Eff. July 1, 1993; January 1, 1989; December 1, 1987; August 1, 1987; Temporary Amendment Eff. May 28, 1998; Temporary Amendment Expired March 12, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. January 1, 2002; February 15, 2001; Amended Eff. November 1, 2005; April 1, 2003; August 1, 2002.

10A NCAC 27G .1901 SCOPE

- (a) The rules in this Section apply to psychiatric residential treatment facilities (PRTF)s.
- (b) A PRTF is one that provides care for children or adolescents who have mental illness or substance abuse/dependency in a non-acute inpatient setting.
- (c) The PRTF shall provide a structured living environment for children or adolescents who do not meet criteria for acute inpatient care, but do require supervision and specialized interventions on a 24-hour basis.
- (d) Therapeutic interventions shall address functional deficits associated with the child or adolescent's diagnosis and include psychiatric treatment and specialized substance abuse and mental health therapeutic care. These therapeutic interventions and services shall be designed to address the treatment needs necessary to facilitate a move to a less intensive community setting.
- (e) The PRTF shall serve children or adolescents for whom removal from home or a community-based residential setting is essential to facilitate treatment.
- (f) The PRTF shall coordinate with other individuals and agencies within the child or adolescent's catchment area.
- (g) The PRTF shall be accredited through one of the following; Joint Commission on Accreditation of Healthcare Organizations; the Commission on Accreditation of Rehabilitation Facilities; the Council on Accreditation or other national accrediting bodies as set forth in the Division of Medical Assistance Clinical Policy Number 8D-1, Psychiatric

Residential Treatment Facility, including subsequent amendments and editions. A copy of Clinical Policy Number 8D-1 is available at no cost from the Division of Medical Assistance website at <http://www.dhhs.state.nc.us/dma/>.

History Note: Authority G.S. 122C-26; 143B-147; Eff. November 1, 2005.

10A NCAC 27G .1902 STAFF

- (a) Each facility shall be under the direction a physician board-eligible or certified in child psychiatry or a general psychiatrist with experience in the treatment of children and adolescents with mental illness.
- (b) At all times, at least two direct care staff members shall be present with every six children or adolescents in each residential unit.
- (c) If the PRTF is hospital based, staff shall be specifically assigned to this facility, with responsibilities separate from those performed on an acute medical unit or other residential units.
- (d) A psychiatrist shall provide weekly consultation to review medications with each child or adolescent admitted to the facility.
- (e) The PRTF shall provide 24 hour on-site coverage by a registered nurse.

History Note: Authority G.S. 122C-26; 143B-147; Eff. November 1, 2005.

10A NCAC 27G .1903 OPERATIONS

- (a) A PRTF may have more than one residential unit. Each unit of a PRTF shall serve no more than 12 children or adolescents except as set out in Paragraph (b) of this Rule. Each residential unit shall be administered, staffed, and located to function separately from all other residential units in the facility.
- (b) A facility licensed to provide PRTF services with a unit capacity of greater than 12, as of the effective date of these Rules may continue to provide these services at that greater capacity and may continue to renew its license at that greater capacity.
- (c) Discharge planning shall begin on the day of admission. Efforts for discharge to a less restrictive community residential setting shall be documented from the date of admission. Legally responsible persons, family members or both and the child or adolescent shall be present at discharge planning meetings.
- (d) Each facility shall operate 24-hours a day, seven days a week and each day of the year.
- (e) Family members or other legally responsible persons shall be involved in the development and implementation of treatment plans in order to assure a smooth transition to a less restrictive setting.
- (f) Children or adolescents residing in a PRTF shall receive educational services through a facility-based school. Educational services shall meet applicable standards as required by federal and State law.

- (g) Each child or adolescent shall be entitled to age-appropriate personal belongings unless such entitlement is counter-indicated in the treatment plan.

History Note: Authority G.S. 143B-147; Eff. November 1, 2005.

10A NCAC 27G .1904 TRANSFER OR DISCHARGE

- (a) The purpose of this Rule is to address the transfer or discharge of a child or adolescent from the facility.
- (b) A child or adolescent shall not be discharged or transferred from a facility, except in case of emergency, without the advance written notification of the treatment team, including the legally responsible person. For purposes of this Rule, treatment team means the same as the existing child and family team or other involved persons as set forth in Paragraph (c) of this Rule.
- (c) The PRTF shall meet with existing child and family teams and other involved persons including the parent(s) or legal guardian, area authority or county program representative(s) and other representatives involved in the care and treatment of the child or adolescent including local Department of Social Services, Local Education Agency and criminal justice agency, to make service planning decisions prior to the transfer or discharge of the child or adolescent from the facility.
- (d) In case of an emergency, the facility shall notify the treatment team including the legally responsible person of the transfer or discharge the child or adolescent as soon as the emergency situation is stabilized.
- (e) In case of an emergency, notification may be by telephone. A service planning meeting as set forth in Paragraph (c) of this Rule shall be held within five business days of an emergency transfer or discharge.

History Note: Authority G.S. 122C-26; 143B-147; Eff. November 1, 2005.

10A NCAC 39A .1002 COVERED MEDICATIONS

- (a) Medications covered by the HIV Medication Program shall be specified on a formulary established by the Program based upon the following factors: the medical needs of persons living with HIV disease, the cost effectiveness of the drugs, the availability of generic or other less costly alternatives, and the need to maximize the benefits to patients using finite Program dollars. The covered medications include: antiretroviral medications used to treat HIV infection in accordance with FDA approved indications included in the official product labeling and other FDA approved medications as approved by the program, used for the prevention and treatment of the side effects of and opportunistic infections related to a diagnosis of HIV disease, or to treat the side effects and toxicities of the other covered medications.
- (b) Other medications shall be approved by the program based on:
 - (1) the expert input and recommendations received from a panel of physicians in North

Carolina working directly with the HIV infected community, including physicians at the tertiary care centers, in community practice, in research, and represented on the AIDS Care Advisory Committee; and
(2) an evaluation of the availability of adequate financial resources.

(c) A list of medications on the HIV Medications Program formulary shall be made available upon request by the Purchase of Medical Care Services or the Division of Public Health – AIDS Drug Assistance Program, 1902 Mail Service Center, Raleigh, NC 27699-1902. Additionally, as medications are added to the program, announcements shall be made through the monthly newsletter distributed by the Purchase of Medical Care Services to participating pharmacies and through announcements mailed to HIV care consortia, tertiary care centers and other agencies serving HIV infected individuals by the Division of Public Health.

History Note: Authority G.S. 130A-5(3); Eff. January 1, 1996; Temporary Amendment Eff. July 1, 2005; Amended Eff. November 1, 2005.

10A NCAC 39A .1005 APPLICATION PROCESS

- (a) Applications for assistance must be submitted and shall be processed in accordance with 15A NCAC 45A. All necessary forms may be obtained from the Purchase of Medical Care Services, Office of the Controller, Department of Health and Human Services, 1904 Mail Service Center, Raleigh, N.C. 27699-1904.
- (b) Applications must be renewed at least annually for the fiscal year beginning July 1, and ending June 30.

History Note: Authority G.S. 130A-5(3); Eff. January 1, 1996; Temporary Amendment Eff. July 1, 2005; Amended Eff. November 1, 2005.

10A NCAC 41A .0401 DOSAGE AND AGE REQUIREMENTS FOR IMMUNIZATION

(a) Every individual in North Carolina required to be immunized pursuant to G.S. 130A-152 through 130A-157 shall be immunized against the following diseases by receiving the specified minimum doses of vaccines by the specified ages:

- (1) Diphtheria, tetanus, and whooping cough vaccine -- five doses: three doses by age seven months and two booster doses, one by age 19 months and the second on or after the fourth birthday and before enrolling in school (K-1) for the first time. However:
 - (A) An individual who has attained his or her seventh birthday without having been immunized against whooping cough shall not be required to be immunized with a

- vaccine preparation containing whooping cough antigen;
- (B) Individuals who receive the first booster dose of diphtheria, tetanus, and whooping cough vaccine on or after the fourth birthday shall not be required to have a second booster dose;
- (C) Individuals attending school, college or university or who began their tetanus/diphtheria toxoid series on or after the age of seven years shall be required to have three doses of tetanus/diphtheria toxoid of which one must have been within the last 10 years;
- (D) The requirements for booster doses of diphtheria, tetanus, and whooping cough vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.

(2) Poliomyelitis vaccine--four doses: two doses of trivalent type by age five months; a third dose trivalent type before age 19 months, and a booster dose of trivalent type before enrolling in school (K-1) for the first time. However:

- (A) An individual attending school who has attained his or her 18th birthday shall not be required to receive polio vaccine;
- (B) Individuals who receive the third dose of poliomyelitis vaccine on or after the fourth birthday shall not be required to receive a fourth dose;
- (C) The requirements for booster doses of poliomyelitis vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987.

(3) Measles (rubeola) vaccine--two doses of live, attenuated vaccine administered at least 28 days apart: one dose on or after age 12 months and before age 16 months and a second dose before enrolling in school (K-1) for the first time. However:

- (A) An individual who has been documented by serological testing to have a protective antibody titer against measles shall not be required to receive measles vaccine;
- (B) An individual who has been diagnosed prior to January 1, 1994, by a physician licensed to practice medicine as having measles (rubeola) disease shall not be

- required to receive measles vaccine;
 - (C) An individual born prior to 1957 shall not be required to receive measles vaccine;
 - (D) The requirement for a second dose of measles vaccine shall not apply to individuals who enroll in school (K-1) or in college or university for the first time before July 1, 1994.
- (4) Rubella vaccine--one dose of live, attenuated vaccine on or after age 12 months and before age 16 months. However:
 - (A) An individual who has been documented by serologic testing to have a protective antibody titer against rubella shall not be required to receive rubella vaccine;
 - (B) An individual who has attained his or her fiftieth birthday shall not be required to receive rubella vaccine except in outbreak situations;
 - (C) An individual who entered a college or university after his or her thirtieth birthday and before February 1, 1989 shall not be required to meet the requirement for rubella vaccine except in outbreak situations.
- (5) Mumps vaccine--one dose of live, attenuated vaccine administered on or after age 12 months and before age 16 months. However:
 - (A) An individual born prior to 1957 shall not be required to receive mumps vaccine;
 - (B) The requirements for mumps vaccine shall not apply to individuals who enrolled for the first time in the first grade before July 1, 1987 or in college or university before July 1, 1994.
 - (C) An individual who has been documented by serological testing to have a protective antibody titer against mumps shall not be required to receive mumps vaccine.
- (6) Haemophilus influenzae, b, conjugate vaccine--three doses of HbOC or PRP-T or two doses of PRP-OMP before age seven months and a booster dose of any type on or after age 12 months and by age 16 months. However:
 - (A) Individuals born before October 1, 1988 shall not be required to be vaccinated against Haemophilus influenzae, b;
 - (B) Individuals who receive the first dose of Haemophilus influenzae, b, vaccine on or after 12 months of age and before 15 months of age shall be required to have only two doses of HbOC, PRP-T or PRP-OMP;
 - (D) Individuals who receive the first dose of Haemophilus influenzae, b, vaccine on or after 15 months of age shall be required to have only one dose of any of the Haemophilus influenzae conjugate vaccines, including PRP-D;
 - (E) No individual who has passed their fifth birthday shall be required to be vaccinated against Haemophilus influenzae, b.
- (7) Hepatitis B vaccine--three doses: one dose by age three months, a second dose before age five months and a third dose by age 19 months. However:
 - (A) The last dose of the hepatitis B vaccine series shall not be administered prior to 24 weeks of age;
 - (B) Individuals born before July 1, 1994 shall not be required to be vaccinated against hepatitis B.
- (8) Varicella vaccine--1 dose administered on or after age 12 months and before age 19 months. However:
 - (A) An individual with a laboratory test indicating immunity or with a history of varicella disease, documented by a health care provider, parent, guardian or person in loco parentis shall not be required to receive varicella vaccine. Serologic proof of immunity or documentation of previous illness must be presented whenever a certificate of immunization is required by North Carolina General Statute. The documentation shall include the name of the individual with a history of varicella disease and the approximate date or age of infection. Previous illness shall be documented by:
 - (i) a written statement from a health care provider documented on or attached to the lifetime immunization card or certificate of immunization; or
 - (ii) a written statement from the individual's parent, guardian or person in loco parentis attached to the

lifetime immunization card or certificate of immunization.

(B) An individual born prior to April 1, 2001 shall not be required to receive varicella vaccine.

(9) The healthcare provider shall administer immunizations in accordance with this Rule. However, if a healthcare provider administers vaccine up to and including the fourth day prior to the required minimum age, the individual dose is not required to be repeated. Doses administered more than 4 days prior to the requirements are considered invalid doses and shall be repeated.

(b) The State Health Director may suspend temporarily any portion of the requirements of these immunization rules due to emergency conditions, such as the unavailability of vaccine. The Department shall give notice in writing to all local health departments and other providers currently receiving vaccine from the Department when the suspension takes effect and when the suspension is lifted. When any vaccine series is disrupted by such a suspension, the next dose shall be required to be administered within 90 days of the lifting of the suspension and the series resumed in accordance with intervals determined by the most recent recommendations of the Advisory Committee on Immunization Practices.

History Note: Authority G.S. 130A-152(c); 130A-155.1; Eff. February 1, 1976; Amended Eff. July 1, 1977; Readopted Eff. December 5, 1977; Temporary Amendment Eff. February 1, 1988, for a period of 180 days to expire on July 29, 1988; Amended Eff. October 1, 1995; October 1, 1994; January 1, 1994; January 4, 1993; Temporary Amendment Eff. February 23, 2000; August 20, 1999; May 21, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. May 17, 2002; April 1, 2002; February 18, 2002; August 1, 2001; Amended Eff. November 1, 2005; January 1, 2005; April 1, 2003.

10A NCAC 41B .0503 APPROVED ALCOHOL SCREENING TEST DEVICES: CALIBRATION

(a) The following breath alcohol screening test devices are approved as to type and make:

- (1) ALCO-SENSOR (with two-digit display), made by Intoximeters, Inc.
(2) ALCO-SENSOR III (with three-digit display), made by Intoximeters, Inc.
(3) ALCO-SENSOR IV, manufactured by Intoximeters, Inc.
(4) ALCO-SENSOR FST, manufactured by Intoximeters, Inc.

(5) SD-2, manufactured by CMI, Inc.

(b) The agency or operator shall verify instrument calibration of each alcohol screening test device at least once during each 30 day period of use. The verification shall be performed by employment of an alcoholic breath simulator using simulator solution in accordance with the rules in this Section or an ethanol gas canister.

(c) Alcoholic breath simulators used exclusively to verify instrument calibration of alcohol screening test devices shall have the solution changed every 30 days or after 25 calibration tests, whichever occurs first.

(d) Ethanol gas canisters used exclusively to verify instrument calibration of alcohol screening test devices shall not be utilized beyond the expiration date on the canister.

(e) Requirements of Paragraphs (b), (c), and (d) of this Rule shall be recorded on an alcoholic breath simulator log or an ethanol gas canister log designed by the Forensic Tests for Alcohol Branch and maintained by the user agency.

History Note: Authority G.S. 20-16.3; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. November 1, 2005; April 1, 2001; January 1, 1995; January 4, 1994; April 1, 1993; January 4, 1993.

10A NCAC 43D .0706 AUTHORIZED WIC VENDORS

(a) Vendor applicants and authorized vendors shall be placed into peer groups as follows:

(1) When annual WIC supplemental food sales are not yet available, vendor applicants and authorized vendors, excluding chain stores, stores under a WIC corporate agreement, military commissaries, and free-standing pharmacies, shall be placed into peer groups based on the number of cash registers in the store until six months WIC supplemental food sales become available. The following are the peer groups based on the number of cash registers in the store:

- Peer Group I - - zero to two cash registers;
Peer Group II - - three to five cash registers; and
Peer Group III - - six or more cash registers.

WIC sales figures of new vendors shall be reviewed six months from authorization. A vendor whose first six months of WIC sales exceed twenty five thousand dollars (\$25,000) shall be placed in the peer group designation in accordance with the dollar thresholds of Subparagraph (a)(2) of this Rule.

(2) Authorized vendors for which annual WIC supplemental food sales is available, excluding chain stores, stores under a WIC corporate agreement, military commissaries,

and free-standing pharmacies, shall be placed into peer groups as follows, except as provided in Subparagraph (a)(8) of this Rule.

Peer Group I - - two thousand dollars (\$2,000) to twenty five thousand dollars (\$25,000) annually in WIC supplemental food sales at the store;

Peer Group II - - greater than twenty five thousand dollars (\$25,000) but not exceeding seventy five thousand dollars (\$75,000) annually in WIC supplemental food sales at the store;

Peer Group III - - greater than seventy five thousand dollars (\$75,000) but not exceeding three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store; and

Peer Group IV - - greater than three hundred thousand dollars (\$300,000) annually in WIC supplemental food sales at the store;

- (3) Chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement), military commissaries, and free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement, shall be placed into peer groups as follows:

Peer Group IV - - chain stores, stores under a WIC corporate agreement (20 or more authorized vendors under one agreement) and military commissaries; and

Peer Group V - - free-standing pharmacies, including free-standing pharmacy chain stores and free-standing pharmacies participating under a WIC corporate agreement;

- (4) Annual WIC supplemental food sales is the dollar amount in sales of WIC supplemental foods at the store within a 12-month period.
- (5) If a vendor applicant has at least 30% ownership in the applying store and at least 30% ownership in a store(s) already authorized, the applying store shall be placed in the peer group of the highest designation of the already authorized stores(s). Upon reauthorization of the WIC Vendor Agreement, all stores held under common ownership shall be placed in the

highest peer group among those held commonly. Common ownership is ownership of 30% or more in two or more stores.

- (6) In determining a vendor's peer group designation based on annual WIC supplemental food sales under Subparagraph (a)(2) of this Rule, the state agency shall look at the most recent 12-month period for which sales data is available. If the most recent available 12-month period of WIC sales data ends more than one year prior to the time of designation, the peer group designation shall be based on the number of cash registers in the store in accordance with Subparagraph (a)(1) of this Rule.

- (7) The state agency may reassess an authorized vendor's peer group designation at any time during the vendor's agreement period and place the vendor in a different peer group if upon reassessment the state agency determines that the vendor is no longer in the appropriate peer group.

- (8) A vendor applicant previously authorized in a peer group under Subparagraph (a)(2) of this Rule that is being reauthorized following the nonrenewal or termination of its Agreement or disqualification from the WIC Program shall be placed into the same peer group the vendor applicant was previously in under Subparagraph (a)(2) of this Rule, provided that no more than one year has passed since the nonrenewal, termination or disqualification. If more than one year has passed, the vendor applicant shall be placed into a peer group in accordance with Subparagraph (a)(1) of this Rule.

(b) To become authorized as a WIC vendor, a vendor applicant shall comply with the following vendor selection criteria:

- (1) Accurately complete a WIC Vendor Application, a WIC Price List, and a WIC Vendor Agreement. A vendor applicant must submit its current highest shelf price for each WIC supplemental food listed on the WIC Price List;
- (2) At the time of application and throughout the term of authorization, submit all completed forms to the local WIC program, except that a corporate entity operating under a WIC corporate agreement shall submit one completed WIC corporate agreement and the WIC Price Lists to the state agency and a separate WIC Vendor Application for each store to the local WIC agency. A corporate entity operating under a WIC corporate agreement may submit a single WIC Price List for those stores that

- have the same prices for WIC supplemental foods in each store, rather than submitting a separate WIC Price List for each store;
- (3) Authorized vendors shall agree to purchase all infant formula, exempt infant formula, and WIC-eligible medical food directly from:
- (A) Infant formula manufacturers registered with the U.S. Food and Drug Administration;
 - (B) Food and drug wholesalers registered with the North Carolina Secretary of State and inspected or licensed by the North Carolina Department of Agriculture;
 - (C) Retail food stores that purchase directly from infant formula manufacturers in accordance with Part (b)(3)(A) of this Rule or an approved wholesaler in accordance with Part (b)(3)(B) of this Rule; or
 - (D) A supplier on another state's list of approved infant formula suppliers as verified by this state agency.

Authorized vendors shall agree to make available to the state or local WIC agency, upon request, invoices or receipts documenting purchases of all infant formula, exempt infant formula, and WIC-eligible medical food directly from the above listed sources. Acceptable receipts include company letterhead or name of wholesaler/manufacturer, date(s) of purchase and itemization of purchases reflecting infant formula, exempt infant formula, and WIC-eligible medical food purchases;

- (4) A vendor applicant's current highest shelf price for each WIC supplemental food listed on the WIC Price List must not exceed the maximum price set by the state agency for each supplemental food within that vendor applicant's peer group, except as provided in Part (b)(4)(B) of this Rule:
- (A) The most recent WIC Price Lists submitted by authorized vendors within the same peer group shall be used to determine the maximum price for each supplemental food. The maximum price shall be the 97th percentile of the current highest shelf prices for each supplemental food within a vendor peer group. The state agency shall reassess the maximum price set for each supplemental food at least four times a year. For two of its price assessments, the state agency shall use the WIC Price Lists which

must be submitted by all vendors by April 1 and October 1 each year in accordance with Subparagraph (c)(30) of this Rule. The other two price assessments shall be based on WIC Price Lists requested from a sample of vendors within each peer group in January and July of each year;

- (B) If any of the vendor applicant's price(s) on its WIC Price List exceed the maximum price(s) set by the state agency for that applicant's peer group, the applicant shall be notified in writing. Within 30 days of the date of the written notice, the vendor applicant may resubmit price(s) that it will charge the state WIC Program for those foods that exceeded the maximum price(s). If none of the vendor applicant's resubmitted prices exceed the maximum prices set by the state agency, the vendor applicant shall be deemed to have met the requirements of Subparagraph (b)(4) of this Rule. If any of the vendor applicant's resubmitted prices still exceed the maximum prices set by the state agency, or the vendor applicant does not resubmit prices within 30 days of the date of written notice, the application shall be denied in writing. The vendor applicant must wait 90 days from the date of receipt of the written denial to reapply for authorization;

- (5) Pass a monitoring review by the local WIC program to determine whether the store has minimum inventory of supplemental foods as specified in Subparagraph (c)(23) of this Rule. A vendor applicant who fails this review shall be allowed a second opportunity for an unannounced monitoring review within 14 days. If the applicant fails both reviews, the applicant shall wait 90 days from the date of the second monitoring review before submitting a new application;
- (6) Attend, or cause a manager or other authorized store representative to attend, WIC Vendor Training provided by the local WIC Program prior to authorization and ensure that the applicant's employees receive instruction in WIC program procedures and requirements;
- (7) Mark the current shelf prices of all WIC supplemental foods on the foods or have the

- prices posted on the shelf or display case at all times;
- (8) The store shall be located at a permanent and fixed location within the State of North Carolina. The store shall be located at the address indicated on the WIC vendor application and shall be the site at which WIC supplemental foods are selected by the WIC customer;
 - (9) The store shall be open throughout the year for business with the public at least six days a week for at least 40 hours per week between 8:00 a.m. and 11:00 p.m.;
 - (10) The store shall not use either the acronym "WIC" or the WIC logo, including close facsimiles, in total or part, either in the official name in which the business is registered or in the name under which it does business, if different;
 - (11) A vendor applicant shall not submit false, erroneous, or misleading information in an application to become an authorized WIC vendor or in subsequent documents submitted to the state or local WIC agency;
 - (12) The owner(s), officer(s) or manager(s) of a vendor applicant shall not be employed, or have a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business. A vendor applicant shall not have an employee who handles, transacts, deposits, or stores WIC food instruments who is employed, or has a spouse, child, or parent who is employed by the state WIC program or the local WIC program serving the county in which the vendor applicant conducts business;
 - (13) WIC vendor authorization shall be denied if in the last six years any of the vendor applicant's current owners, officers, or managers have been convicted of or had a civil judgment entered against them for any activity indicating a lack of business integrity, including, fraud, antitrust violations, embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, receiving stolen property, making false claims, and obstruction of justice. For purposes of this Subparagraph, "convicted" or "conviction" means and includes a plea of guilty, a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established, adjudicating body, tribunal, or official, either civilian or military, or a plea of no contest, nolo contendere, or the equivalent. Entry of a prayer for judgment continued following a conviction as defined in this Rule is the same as a conviction for purposes of this Subparagraph.
 - (14) A vendor applicant shall not be authorized if it is currently disqualified from the Food Stamp Program or it has been assessed a Food Stamp Program civil money penalty for hardship and the disqualification period that otherwise would have been imposed has not expired;
 - (15) A vendor applicant, excluding chain stores and stores under a WIC corporate agreement that have a separate manager on site for each store, shall not have an owner who holds a financial interest in any of the following:
 - (A) a Food Stamp vendor which is disqualified from participation in the Food Stamp Program or has been assessed a civil money penalty for hardship in lieu of disqualification and the time period during which the disqualification would have run, had a penalty not been paid, is continuing; or
 - (B) another WIC vendor which is disqualified from participation in the WIC Program or which has been assessed an administrative penalty pursuant to G.S. 130A-22(c1), Paragraph (k), or Paragraph (l) of this Rule as the result of violation of Paragraphs (g), (h)(1)(A), (h)(1)(B), (h)(1)(C), (h)(1)(D) or (h)(2)(D) of this Rule, and if assessed a penalty, the time during which the disqualification would have run, had a penalty not been assessed, is continuing.
- The requirements of this Subparagraph shall not be met by the transfer or conveyance of financial interest during the period of disqualification. Additionally, the requirements of this Subparagraph shall not be met even if such transfer or conveyance of financial interest in a Food Stamp vendor under Part (b)(15)(A) of this Subparagraph prematurely ends the disqualification period applicable to that Food Stamp vendor. The requirements of this Subparagraph shall apply until the time the Food Stamp vendor disqualification otherwise would have expired;
- (16) A vendor applicant, excluding free-standing pharmacies, must have Food Stamp Program authorization for the store as a prerequisite for WIC vendor authorization and must provide its Food Stamp Program authorization number to the state agency; and

- (17) A vendor applicant shall not become authorized as a WIC vendor if the store has been disqualified from participation in the WIC Program and the disqualification period has not expired.
- (c) By signing the WIC Vendor Agreement, the vendor agrees to:
- (1) Process WIC program food instruments in accordance with the terms of this agreement, state and federal WIC program rules, and applicable law;
 - (2) Accept WIC program food instruments in exchange for WIC supplemental foods. Supplemental foods are those foods which satisfy the requirements of 10A NCAC 43D .0501;
 - (3) Provide only the authorized supplemental foods listed on the food instrument, accurately determine the charges to the WIC program, and complete the "Pay Exactly" box on the food instrument prior to obtaining the countersignature of the WIC customer. The WIC customer is not required to get all of the supplemental foods listed on the food instrument;
 - (4) Enter in the "Pay Exactly" box on the food instrument only the total amount of the current shelf prices, or less than the current shelf prices, for the supplemental food actually provided and shall not charge or collect sales taxes for the supplemental food provided;
 - (5) Charge no more for supplemental food provided to a WIC customer than to a non-WIC customer or no more than the current shelf price, whichever is less;
 - (6) Accept payment from the state WIC Program only up to the maximum price set by the state agency for each food instrument within that vendor's peer group. The maximum price for each food instrument shall be based on the maximum prices set by the state agency for each supplemental food, as described in Part (b)(4)(A) of this Rule, listed on the food instrument. A food instrument deposited by a vendor for payment which exceeds the maximum price shall be paid at the maximum price set by the state agency for that food instrument.
 - (7) Not charge the state WIC Program more than the maximum price set by the state agency under Part (b)(4)(A) of this Rule for each supplemental food within the vendor's peer group;
 - (8) For non-contract brand milk-based and soy-based infant formulas, excluding exempt infant formulas, accept payment from the state WIC Program only up to the maximum price established for contract brand infant formulas under Part (b)(4)(A) of this Rule for the vendor's peer group;
 - (9) For free-standing pharmacies, provide only infant formula and WIC-eligible medical foods;
 - (10) Excluding free-standing pharmacies, redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales. Failure to redeem at least two thousand dollars (\$2,000) annually in WIC supplemental food sales shall result in termination of the WIC Vendor Agreement. The store must wait 180 days to reapply for authorization;
 - (11) Accept WIC program food instruments only on or between the "Date of Issue" and the "Participant Must Use By" dates;
 - (12) Prior to obtaining the countersignature, enter in the "Date Transacted" box the month, day and year the WIC food instrument is exchanged for supplemental food;
 - (13) Ensure that the food instrument is countersigned in the presence of the cashier;
 - (14) Refuse acceptance of any food instrument on which quantities, signatures or dates have been altered;
 - (15) Not transact food instruments in whole or in part for cash, credit, unauthorized foods, or non-food items;
 - (16) Not provide refunds or permit exchanges for authorized supplemental foods obtained with food instruments, except for exchanges of an identical authorized supplemental food when the original authorized supplemental food is defective, spoiled, or has exceeded its "sell by," "best if used by," or other date limiting the sale or use of the food. An identical authorized supplemental food means the exact brand, type and size as the original authorized supplemental food obtained and returned by the WIC customer;
 - (17) Imprint the authorized WIC vendor stamp in the "Pay the Authorized WIC Vendor Stamped Here" box on the face of the food instrument to enable the vendor number to be read during the Program editing process;
 - (18) Imprint the vendor's bank deposit stamp or the vendor's name, address and bank account number in the "Authorized WIC Vendor Stamp" box in the endorsement;
 - (19) Promptly deposit WIC program food instruments in the vendor's bank. All North Carolina WIC program food instruments must be deposited in the vendor's bank within 60 days of the "Date of Issue" on the food instrument;
 - (20) Ensure that the authorized WIC vendor stamp is used only for the purpose and in the manner authorized by this agreement and

- assume full responsibility for the unauthorized use of the authorized WIC vendor stamp;
- (21) Maintain storage so only the staff designated by the vendor owner or manager have access to the authorized WIC vendor stamp and immediately report loss of this stamp to the local agency;
- (22) Notify the local WIC agency of misuse (attempted or actual) of the WIC program food instrument(s);
- (23) Maintain a minimum inventory of supplemental foods in the store for purchase.

Supplemental foods that are outside of the manufacturer's expiration date do not count towards meeting the minimum inventory requirement. The following items and sizes constitute the minimum inventory of supplemental foods for vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, vendors in Peer Groups I through IV of Subparagraph (a)(2) of this Rule and vendors in Peer Group IV of Subparagraph (a)(3) of this Rule:

| Food Item | Type of Inventory | Quantities Required |
|----------------------|---|--------------------------------------|
| Milk | Whole fluid: gallon | Total of 6 gallons fluid milk |
| | -and- | |
| | Skim/lowfat fluid: gallon | |
| | Nonfat dry: quart package | Total of 5 quarts when reconstituted |
| | -or- | |
| | Evaporated: 12 oz. can | 5 cans |
| Cheese | 2 varieties in 8 or 16 oz. package | Total of 6 pounds |
| Cereals | 4 types (minimum package size 12 oz.) | Total of 12 packages |
| Eggs | Grade A, large or extra-large: white or brown: one dozen size carton | 6 dozen |
| Juices | Frozen: 11.5-12 oz. container | 10 containers |
| | Single strength: 46 oz. container | 10 containers |
| | Orange juice must be available in frozen and single strength. A second flavor must be available in frozen or single strength. | |
| Dried Peas and Beans | 2 varieties: one pound package | 3 packages |
| or | | |
| Peanut Butter | Plain (smooth, crunchy, or whipped; No reduced fat): 18 oz. container | 3 containers |
| Infant Cereal | Plain-no fruit added: 2 cereal grains (one must be rice); 8-oz. box; brand specified in Vendor Agreement | 6 boxes |
| Infant Formula | milk-based concentrate; 13 oz. | 31 cans |
| | -and- | |

| | | |
|---------|---|-----------------|
| | soy-based concentrate; 13 oz. | 15 cans |
| | -and- | |
| | milk-based powder; 12 – 14.3 oz. | 9 cans |
| | -and- | |
| | soy-based powder; 12 – 14.3 oz. | 4 cans |
| | Brand specified in Vendor Agreement | |
| Tuna | Chunk light in water: 6-6.5 oz. can | 4 cans |
| Carrots | Raw, canned or frozen 14.5-16 oz. size | 2 packages/cans |

- All vendors in Peer Groups I through III of Subparagraph (a)(1) of this Rule, Peer Groups I through IV of Subparagraph (a)(2) of this Rule and Peer Groups IV and V of Subparagraph (a)(3) of this Rule shall supply milk or soy-based infant formula in 32 oz. ready-to-feed or lactose-free infant formula in 32 oz. ready-to-feed or powder within 48 hours of request by the state or local WIC agency;
- (24) Ensure that all supplemental foods in the store for purchase are within the manufacturer's expiration date;
- (25) Permit the purchase of supplemental food without requiring other purchases;
- (26) Attend, or cause a manager or other authorized store representative to attend, annual vendor training class upon notification of class by the local agency;
- (27) Inform and train vendor's cashiers and other staff on WIC Program requirements;
- (28) Be accountable for the actions of its owners, officers, managers, agents, and employees who commit vendor violations;
- (29) Allow reasonable monitoring and inspection of the store premises and procedures to ensure compliance with the agreement and state and federal WIC Program rules, regulations and statutes. This includes allowance of access to all WIC food instruments at the store, vendor records pertinent to the purchase and sale of WIC supplemental foods, including invoices, copies of purchase orders, and any other proofs of purchase, federal and state corporate and individual income tax and sales and use tax returns and all records pertinent to these returns, and books and records of all financial and business transactions. These records must be retained by the vendor for a period of three years or until any audit pertaining to these records is resolved, whichever is later. Failure or inability to provide these records or providing false records for an inventory
- audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;
- (30) Submit a current accurately completed WIC Price List when signing this agreement, and by April 1 and October 1 of each year. The vendor also agrees to submit a WIC Price List within one week of any written request by the state or local WIC agency. Failure to submit a WIC Price List as required by this Subparagraph within 30 days of the required submission date shall result in disqualification of the vendor from the WIC Program in accordance with Part (h)(1)(D) of this Rule;
- (31) Reimburse the state agency within 30 days of written notification of a claim assessed due to a vendor violation that affects payment to the vendor or a claim assessed due to the unauthorized use of the authorized WIC vendor stamp. The state agency shall deny payment or assess a claim in the amount of the full purchase price of each food instrument rendered invalid under Subparagraphs (a)(2), (a)(5), (a)(6) or (a)(7) of Rule .0704 of this Section. Denial of payment by the state agency or payment of a claim by the vendor for a vendor violation(s) shall not absolve the vendor of the violation(s). The vendor shall also be subject to any vendor sanctions authorized under this Rule for the vendor violation(s);
- (32) Not seek restitution from the WIC customer for reimbursement paid by the vendor to the state agency or for WIC food instruments not paid or partially paid by the state agency. Additionally, the vendor shall not charge the WIC customer for authorized supplemental foods obtained with food instruments;
- (33) Not contact a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
- (34) Notify the local WIC agency in writing at least 30 days prior to a change of ownership,

- change in location, cessation of operations, or withdrawal from the WIC Program. Change of ownership, change in location of more than three miles from the vendor's previous location, cessation of operations, withdrawal from the WIC Program or disqualification from the WIC Program shall result in termination of the WIC Vendor Agreement by the state agency. Change of ownership, change in location, ceasing operations, withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement shall not stop a disqualification period applicable to the store;
- (35) Return the authorized WIC vendor stamp to the local WIC agency upon termination of this agreement or disqualification from the WIC Program;
 - (36) Offer WIC customers the same courtesies as offered to other customers;
 - (37) Not provide incentive items to WIC customers unless each incentive item is less than two dollars (\$2.00) in cost to the vendor in accordance with federal regulations. If incentive items are offered to WIC customers, no more than one incentive item per visit is permitted. This applies to authorized vendors for which more than 50% of the annual revenue from the sales of food items comes from WIC transactions. These vendors shall not provide to WIC customers transportation to or from the vendor's premises, delivery of supplemental foods, lottery tickets, nor cash gifts.
 - (38) Reapply to continue to be authorized beyond the period of its current WIC Vendor Agreement. Additionally, a store must reapply to become authorized following the expiration of a disqualification period or termination of the Agreement. In all cases, the vendor applicant shall be subject to the vendor selection criteria of Paragraph (b) of this Rule; and
 - (39) Comply with all the requirements for vendor applicants of Subparagraphs (b)(4) and (b)(7) through (b)(16) of this Rule throughout the term of authorization. The state agency may reassess a vendor at any time during the vendor's period of authorization to determine compliance with these requirements. The state agency shall terminate the WIC Vendor Agreement of any vendor that fails to comply with Subparagraphs (b)(4), (b)(8), (b)(9), (b)(12), (b)(13) or (b)(15) of this Rule during the vendor's period of authorization, and terminate the Agreement of or sanction or both any vendor that fails to comply with Subparagraphs (b)(7), (b)(11), (b)(14) or (b)(16) of this Rule during the vendor's period of authorization.
- (d) By signing the WIC Vendor Agreement, the local agency agrees to the following:
 - (1) Provide annual vendor training classes on WIC procedures and rules;
 - (2) Monitor the vendor's performance under this agreement to ensure compliance with the agreement, state and federal WIC program rules, regulations, and applicable law. A minimum of one-third of all authorized vendors shall be monitored within a contract year (October 1 through September 30) and all vendors shall be monitored at least once within three consecutive contract years. Any vendor shall be monitored within one week of written request by the state agency;
 - (3) Provide vendors with the North Carolina WIC Vendor Manual, all Vendor Manual amendments, blank WIC Price Lists, and the authorized WIC vendor stamp indicated on the signature page of the WIC Vendor Agreement;
 - (4) Assist the vendor with questions which may arise under this agreement or the vendor's participation in the WIC Program; and
 - (5) Keep records of the transactions between the parties under this agreement pursuant to 10A NCAC 43D .0206.
 - (e) In order for a food retailer or free-standing pharmacy to participate in the WIC Program a current WIC Vendor Agreement must be signed by the vendor, the local WIC agency, and the state agency.
 - (f) If an application for status as an authorized WIC vendor is denied, the applicant is entitled to an administrative appeal as described in Section .0800 of this Subchapter.
 - (g) Title 7 C.F.R. 246.12(l)(1)(i) through (vi) and (xii) are incorporated by reference with all subsequent amendments and editions.
 - (1) In accordance with 7 CFR 246.12(l)(1)(i), the state agency shall not allow imposition of a civil money penalty in lieu of disqualification for a vendor permanently disqualified.
 - (2) A pattern, as referenced in 7 C.F.R. 246.12(l)(1)(iii)(B) through (F) and 246.12(l)(1)(iv), shall be established as follows:
 - (A) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for six or more days within a 60-day period. The six or more days do not have to be consecutive days within the 60-day period. Failure or inability to provide records or providing false records

required under Subparagraph (c)(29) of this Rule for an inventory audit shall be deemed a violation of 7 C.F.R. 246.12(l)(1)(iii)(B) and Part (g)(2)(A) of this Rule;

- (B) two occurrences of vendor overcharging within a 12-month period;
- (C) two occurrences of receiving, transacting or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person within a 12-month period;
- (D) two occurrences of charging for supplemental food not received by the WIC customer within a 12-month period;
- (E) two occurrences of providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments within a 12-month period; or
- (F) three occurrences of providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument within a 12-month period.

(h) Title 7 C.F.R. Section 246.12(l)(2)(i) is incorporated by reference with all subsequent amendments and editions. Except as provided in 7 C.F.R. 246.12 (l)(1)(xii), a vendor shall be disqualified from the WIC Program for the following state-established violations in accordance with the sanction system below. The total period of disqualification shall not exceed one year for state-established violations investigated as part of a single investigation, as defined in Paragraph (i) of this Rule.

- (1) When a vendor commits any of the following violations, the state-established disqualification period shall be:
 - (A) 90 days for each occurrence of failure to properly transact a WIC food instrument by not completing the date or purchase price on the WIC food instrument before obtaining the countersignature, by not obtaining the countersignature in the presence of the cashier, or by accepting a WIC food instrument prior to the "Date of Issue" or after

the "Participant Must Use By" dates on the food instrument;

- (B) 60 days for each occurrence of requiring a cash purchase to transact a WIC food instrument;
- (C) 30 days for each occurrence of requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; and
- (D) 30 days for each occurrence of failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule.

(2) When a vendor commits any of the following violations, the vendor shall be assessed sanction points as follows for each occurrence:

- (A) 2.5 points for:
 - (i) stocking WIC supplemental foods outside of the manufacturer's expiration date; or
 - (ii) unauthorized use of the "WIC" acronym or the WIC logo in accordance with Paragraph (b)(10) of this Rule.
- (B) 5 points for:
 - (i) failure to attend annual vendor training;
 - (ii) failure to stock minimum inventory;
 - (iii) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
 - (iv) offering improper incentives, free merchandise, or services by a vendor for which more than 50% of annual food sales result from WIC sales in accordance with Subparagraph (c)(37) of this Rule.
- (C) 7.5 points for:
 - (i) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.); or
 - (ii) contacting a WIC customer in an attempt to recoup funds for food instrument(s) or

- contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments.
- (D) 15 points for:
- (i) failure to allow monitoring of a store by WIC staff when required;
 - (ii) failure to provide WIC food instrument(s) for review when requested;
 - (iii) failure to provide store inventory records when requested by WIC staff, except as provided in Subparagraph (c)(29) and Part (g)(2)(A) of this Rule for failure or inability to provide records for an inventory audit;
 - (iv) nonpayment of a claim made by the state agency;
 - (v) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms), except as provided in Subparagraph (c)(29) and Part (g)(2)(A) of this Rule for providing false records for an inventory audit; or
 - (vi) failure to purchase infant formula, exempt infant formula, and WIC-eligible medical food from an authorized supplier.
- (3) For the violations listed in Subparagraph (h)(2) of this Rule, all sanction points assessed against a vendor remain on the vendor's record for 12 months or until the vendor is disqualified as a result of those points. If a vendor accumulates 15 or more points, the vendor shall be disqualified. The nature of the violation(s) and the number of violations, as represented by the points assigned in Subparagraph (h)(2) of this Rule, are used to calculate the period of disqualification. The formula used to calculate the disqualification period is: the number of points assigned to the violation carrying the highest number of sanction points multiplied by 18 days. Additionally, if the vendor has accumulated more than 15 points, 18 days shall be added to the disqualification period for each point over 15 points.
- (i) For investigations pursuant to this Section, a single investigation is:
- (1) Compliance buy(s) conducted by undercover investigators within a 12-month period to detect the following violations:
 - (A) buying or selling food instruments for cash (trafficking);
 - (B) selling firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
 - (C) selling alcohol or alcoholic beverages or tobacco products in exchange for food instruments;
 - (D) vendor overcharging;
 - (E) receiving, transacting, or redeeming food instruments outside of authorized channels, including the use of an unauthorized vendor or an unauthorized person;
 - (F) charging for supplemental food not received by the WIC customer;
 - (G) providing credit or non-food items, other than alcohol, alcoholic beverages, tobacco products, cash, firearms, ammunition, explosives, or controlled substances as defined in 21 U.S.C. 802, in exchange for food instruments;
 - (H) providing unauthorized food items in exchange for food instruments, including charging for supplemental food provided in excess of those listed on the food instrument;
 - (I) failure to properly transact a WIC food instrument;
 - (J) requiring a cash purchase to transact a WIC food instrument;
 - (K) requiring the purchase of a specific brand when more than one WIC supplemental food brand is available; or
 - (2) Monitoring reviews of a vendor conducted by WIC staff within a 12-month period which detect the following violations:
 - (A) failure to stock minimum inventory;
 - (B) stocking WIC supplemental food outside of the manufacturer's expiration date;
 - (C) failure to allow monitoring of a store by WIC staff when required;
 - (D) failure to provide WIC food instrument(s) for review when requested;

- (E) failure to provide store inventory records when requested by WIC staff;
 - (F) failure to mark the current shelf prices of all WIC supplemental foods on the foods or have the prices posted on the shelf or display case; or
- (3) Any other method used by the state or local agency to detect the following violations by a vendor within a 12-month period:
- (A) failure to attend annual vendor training;
 - (B) failure to submit a WIC Price List as required by Subparagraph (c)(30) of this Rule;
 - (C) discrimination on the basis of WIC participation (separate WIC lines, denying trading stamps, etc.);
 - (D) contacting a WIC customer in an attempt to recoup funds or food instrument(s) or contacting a WIC customer outside the store regarding the transaction or redemption of WIC food instruments;
 - (E) nonpayment of a claim made by the state agency;
 - (F) providing false information on vendor records (application, vendor agreement, price list, WIC food instrument(s), monitoring forms); or
 - (G) claiming reimbursement for the sale of an amount of a specific supplemental food item which exceeds the store's documented inventory of that supplemental food item for a specific period of time, or failure or inability to provide records or providing false records required under Subparagraph (c)(29) of this Rule for an inventory audit.

(j) The Food Stamp Program disqualification provisions in 7 C.F.R. 246.12(l)(1)(vii) are incorporated by reference with all subsequent amendments and editions.

(k) The participant access provisions of 7 C.F.R. 246.12(l)(1)(ix) and 246.12(l)(8) are incorporated by reference with all subsequent amendments and editions. The existence of any of the factors listed in Parts (l)(3)(A), (l)(3)(B) or (l)(3)(C) of this Rule shall conclusively show lack of inadequate participant access provided there is no geographic barrier, such as an impassable mountain or river, to using the other authorized WIC vendors referenced in these Subparagraphs. The agency shall not consider other indicators of inadequate participant access when any of these factors exist.

- (l) The following provisions apply to civil money penalties assessed in lieu of disqualification of a vendor:
- (1) The civil money penalty formula in 7 C.F.R. 246.12(l)(1)(x) is incorporated by reference with all subsequent amendments and editions, provided that the vendor's average monthly redemptions shall be calculated by using the six-month period ending with the month immediately preceding the month during which the notice of administrative action is dated.
 - (2) The state agency may also impose civil money penalties in accordance with G.S. 130A-22(c1) in lieu of disqualification of a vendor for the state-established violations listed in Paragraph (h) of this Rule when the state agency determines that disqualification of a vendor would result in participant hardship in accordance with Subparagraph (l)(3) of this Rule.
 - (3) In determining whether to disqualify a WIC vendor for the state-established violations listed in Paragraph (h) of this Rule, the agency shall not consider other indicators of hardship if any of the following factors, which conclusively show lack of hardship, are found to exist:
 - (A) the noncomplying vendor is located outside of the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within seven miles of the noncomplying vendor;
 - (B) the noncomplying vendor is located within the limits of a city, as defined in G.S. 160A-2, and another WIC vendor is located within three miles of the noncomplying vendor; or
 - (C) a WIC vendor, other than the noncomplying vendor, is located within one mile of the local agency at which WIC participants pick up their food instruments.
 - (4) The provisions for failure to pay a civil money penalty in 7 C.F.R. 246.12(l)(6) are incorporated by reference with all subsequent amendments and editions.
 - (m) The provisions of 7 C.F.R. 246.12(l)(1)(viii) prohibiting voluntary withdrawal from the WIC Program or nonrenewal of the WIC Vendor Agreement as an alternative to disqualification are incorporated by reference with all subsequent amendments and editions.
 - (n) The provision in 7 C.F.R. 246.12(l)(3) regarding prior warning to vendors is incorporated by reference with all subsequent amendments and editions.
 - (o) The state agency may set off payments to an authorized vendor if the vendor fails to reimburse the state agency in accordance with Subparagraph (c)(31) of this Rule.

(p) In accordance with 7 C.F.R. 246.12(l)(7) or 246.12(u)(5) or both, North Carolina's procedures for dealing with abuse of the WIC program by authorized WIC vendors do not exclude or replace any criminal or civil sanctions or other remedies that may be applicable under any federal and state law.

(q) Notwithstanding other provisions of this Rule, for the purpose of providing a one-time payment to a non-authorized store for WIC food instruments accepted by the store, an agreement for a one-time payment need only be signed by the store manager and the state agency. The store may request such one-time payment directly from the state agency. The store manager shall sign an agreement indicating that the store has provided foods as prescribed on the food instrument, charged current shelf prices or less than current shelf prices, not charged sales tax, and verified the identity of the WIC customer. Any agreement entered into in this manner shall automatically terminate upon payment of the food instrument in question. After entering into an agreement for a one-time payment, a non-authorized store shall not be allowed to enter into any further one-time payment agreements for WIC food instruments accepted thereafter.

(r) Except as provided in 7 C.F.R. 246.18(a)(2), an authorized WIC vendor shall be given at least 15 days advance written notice of any adverse action which affects the vendor's participation in the WIC Program. The vendor appeal procedures shall be in accordance with 10A NCAC 43D .0800.

History Note: Authority G.S. 130A-361; 7 C.F.R. 246; 42 U.S.C. 1786; Eff. July 1, 1981; Amended Eff. August 1, 1995; October 1, 1993; May 1, 1991; December 1, 1990; Temporary Amendment Eff. June 23, 2000; May 17, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. September 1, 2002; July 1, 2002; Amended Eff. November 1, 2005; August 1, 2004.

10A NCAC 45B .0104 DECLARATORY RULINGS

(a) The Department shall in accordance with G.S. 150B-4 issue declaratory rulings concerning rules found in 15A NCAC 13, 15A NCAC 18, and 10A NCAC 39 through 47.

(b) All requests for declaratory rulings shall be by written petition and shall be submitted to: Division of Public Health, 1915 Mail Service Center, Raleigh, North Carolina 27699-1915.

(c) Every request for a declaratory ruling must include the following information:

- (1) the name and address of the petitioner,
- (2) the statute or rule to which the petition relates,
- (3) a concise statement of the manner in which the petitioner is aggrieved by the rule or statute or its potential application to him, and
- (4) the consequences of a failure to issue a declaratory ruling.

(d) The Department shall refuse to issue a declaratory ruling whenever the Department believes for good cause that the issuance of a declaratory ruling is undesirable. When good cause is deemed to exist, the Department shall notify the petitioner of the decision in writing, stating the reasons for the denial of a declaratory ruling. The Department shall issue a declaratory ruling under the following circumstances:

- (1) the petitioner shows that the circumstances are so changed since adoption of the rule that such a ruling would be warranted;
- (2) the rule making record evidences a failure by the agency to consider specified relevant factors.

(e) The Department shall not issue a declaratory ruling under the following circumstances:

- (1) if there has been a similar controlling factual determination in a contested case, or if the factual context being raised for a declaratory ruling was specifically considered upon adoption of the rule being questioned as evidenced by the rule making record; or
- (2) if circumstances stated in the request or otherwise known to the agency show that a contested case hearing would presently be appropriate.

(f) A declaratory ruling procedure may consist of written submissions, oral hearings, or such other procedure as may be deemed appropriate, in the discretion of the Department, in the particular case.

(g) The Department may issue notice to persons who might be affected by the ruling that written comments may be submitted or oral presentations received at a scheduled hearing.

History Note: Authority G.S. 150B-4; Eff. February 1, 1976; Amended Eff. March 1, 1987; December 22, 1980; Transferred and Recodified from 10 NCAC 4B .0108 Eff. April 4, 1990; Amended Eff. November 1, 2005; December 1, 1990.

TITLE 11 – DEPARTMENT OF INSURANCE

11 NCAC 01 .0103 LOCATION AND MAILING ADDRESS

(a) Location. The primary location of the North Carolina Department of Insurance is the Dobbs Building, 430 North Salisbury Street, Raleigh, North Carolina. The Eastern Regional Office is located at 233 Middle Street, O'Marks Building, New Bern, NC. The Western Regional Office is located at 537 College Street, Asheville, NC.

(b) Mailing Address. The mailing address for the North Carolina Department of Insurance is 1201 Mail Service Center, Raleigh, NC 27699-1201. The mailing address for the Eastern Regional Office is P.O. Box 1691, New Bern, NC 28563-1691. The mailing address for the Western Regional Office is P.O. Box 1688, Asheville, NC 28802-1688.

(c) The Department shall have normal working hours between 8:00 a.m. and 5:00 p.m., Monday through Friday. Legal

holidays shall be observed as recommended by the N.C. State Personnel Commission.

History Note: Authority G.S. 58-2-1; 58-2-40; Eff. February 1, 1976; Readopted Eff. May 12, 1978; Amended Eff. November 1, 2005; July 1, 1992; September 1, 1988.

TITLE 12 – DEPARTMENT OF JUSTICE

12 NCAC 09A .0103 DEFINITIONS

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

- (1) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(2).
- (2) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of Crime Control and Public Safety as authorized by G.S. 18B-500.
- (3) "Chief Court Counselor" means the person responsible for administration and supervision of juvenile intake, probation and post-release supervision in each judicial district, operating under the supervision of the Department of Juvenile Justice and Delinquency Prevention.
- (4) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified criminal offense.
- (5) "Convicted" or "Conviction" means and includes, for purposes of this Chapter, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (6) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(3) and excluding Correctional officers; Probation/parole officers, and Probation/parole officers intermediate. The term "Probation/parole officers intermediate," as used in this Chapter has the same meaning as "Probation/parole officers-surveillance" used in G.S. 17C-2(3).

- (7) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (1) of this Rule.
- (8) "Department Head" means the chief administrator of any criminal justice agency and specifically includes any chief of police or agency director. "Department Head" also includes a designee appointed in writing by the Department head.
- (9) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (10) "Educational Points" means points earned toward the Professional Certificate Programs for studies satisfactorily completed for semester hour or quarter hour credit at a regionally accredited institution of higher learning. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (11) "Enrolled" means that an individual is currently actively participating in an ongoing presentation of a Commission-certified basic training course that has not been concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
 - (a) for law enforcement officers, that the officer is then attending an approved course presentation averaging a minimum of 12 hours of instruction each week; and
 - (b) for Department of Juvenile Justice and Delinquency Prevention personnel, that the officer is then attending the last or final phase of the approved training course necessary for fully satisfying the total course completion requirements.
- (12) "High School" means graduation from a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- (13) "In-Service Training" means any and all training prescribed in 12 NCAC 09E .0102 that must be satisfactorily completed by all certified law enforcement officers during each full calendar year of certification.
- (14) "In-Service Training Coordinator" means the person designated by a law enforcement agency head to administer the agency's in-service training program.
- (15) "Lateral Transfer" means the employment of a criminal justice officer, at any rank, by a criminal justice agency, based upon the officer's special qualifications or experience,

- without following the usual selection process established by the agency for basic officer positions.
- (16) "Law Enforcement Code of Ethics" means that code adopted by the Commission on September 19, 1973, that reads:
 As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.
 I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.
 I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.
 I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts or corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.
 I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.
 I will constantly strive to achieve these objectives and ideals, dedicating myself before God to my chosen profession...law enforcement.
- (17) "Juvenile Court Counselor" means a person responsible for intake services and court supervision services to juveniles under the supervision of the chief court counselor.
- (18) "Juvenile Justice Officer" means persons designated by the Secretary of the Department of Juvenile Justice and Delinquency Prevention to provide for the care and supervision of juveniles placed in the physical custody of the Department.
- (19) "Law Enforcement Officer" means an appointee of a criminal justice agency or of the State or of any political subdivision of the State who, by virtue of his office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from this title are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of G.S. 17E.
- (20) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of Commission-approved law enforcement training courses. Twenty classroom hours of Commission-approved law enforcement training equals one law enforcement training point.
- (21) "LIDAR" means a speed-measuring instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle under observation.
- (22) "Local Confinement Personnel" means any officer, supervisor or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or, any officer, supervisor or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.
- (23) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:
 (a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state that is not classified as a Class B Misdemeanor pursuant to Sub-item (23)(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North

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

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

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

- (24) "Qualified Assistant" means an additional staff person designated as such by the School Director to assist in the administration of a course when a certified institution or agency assigns additional responsibilities to the certified School

- Director during the planning, development, and implementation of a certified course.
- (25) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band or transmits microwave energy in the 24,050 to 24,250 MHZ frequency (K) band and either of which operates in the stationary or moving mode. "Radar" further means a speed-measuring instrument that transmits microwave energy in the 33,400 to 36,000 MHZ (Ka) band and operates in either the stationary or moving mode.
- (26) "Resident" means any youth committed to a facility operated by the Department of Juvenile Justice and Delinquency Prevention.
- (27) "School" or "criminal justice school" means an institution, college, university, academy, or agency that offers criminal justice, law enforcement, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.
- (28) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- (29) "Speed-Measuring Instruments" (SMI) means those devices or systems, including radar time-distance, and LIDAR, approved under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all named devices or systems as specifically referenced in the approved list of 12 NCAC 09C .0601.
- (30) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (31) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.

Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998; January 1, 1995;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. August 1, 2002; April 1, 2001;
Temporary Amendment Eff. April 15, 2003;
Amended Eff. January 1, 2006; June 1, 2005; April 1, 2004.

12 NCAC 09B .0202 RESPONSIBILITIES OF THE SCHOOL DIRECTOR

(a) In planning, developing, coordinating, and delivering each Commission-certified criminal justice training course, the School Director shall:

- (1) Formalize and schedule the course curriculum in accordance with the curriculum standards established in this Subchapter. The "Criminal Justice Instructor Training Course" shall be presented with 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed;
- (2) Select and schedule instructors who are certified by the Commission;
- (3) Provide each instructor with a current Commission course outline and all necessary additional information concerning the instructor's duties and responsibilities;
- (4) Review each instructor's lesson plans and other instructional materials for conformance to Commission standards and to minimize repetition and duplication of subject matter;
- (5) Arrange for the timely availability of appropriate audiovisual aids and materials, publications, facilities, and equipment for training in all topic areas;
- (6) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements determined by the school to be necessary or appropriate for:
 - (A) effective course delivery;
 - (B) establishing responsibilities and obligations of agencies or departments employing or sponsoring course trainees; and
 - (C) regulating trainee participation and demeanor and ensuring trainee attendance and maintaining performance records.
- (7) If appropriate, recommend housing and dining facilities for trainees;
- (8) Administer the course delivery in accordance with Commission procedures and standards, give consideration to advisory guidelines issued by the Commission, and ensure that the training offered is safe and effective;
- (9) Maintain direct supervision, direction, and control over the performance of all persons to whom any portion of the planning,

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

development, presentation, or administration of a course has been delegated; and

- (10) Report the completion of each presentation of a Commission-certified criminal justice training course to the Commission.

(b) In addition to Paragraph (a) of this Rule, in planning developing, coordinating and delivering each Commission-certified Basic Law Enforcement Training Course, the School Director shall:

- (1) Schedule course presentation to include 12 hours of instruction each week during consecutive calendar weeks except that there may be as many as three one-week breaks until course requirements are completed; and
- (2) Schedule only those instructors certified by the Commission to teach those high liability areas as specified in 12 NCAC 09B .0304(a) as either the lead instructor or in any other capacity; and
- (3) With the exception of the First Responder, Physical Fitness, Electrical and Hazardous Materials, and topical areas as outlined in 12 NCAC 09B .0304(a) of this Subchapter, schedule one specialized certified instructor for each six trainees while actively engaged in a practical performance exercise; and
- (4) Schedule one specialized certified instructor for each eight trainees while actively engaged in a practical performance exercise in the topical area "Subject Control Arrest Techniques;" and
- (5) Not schedule any single individual to instruct more than 35 percent of the total hours of the curriculum during any one delivery of the Basic Law Enforcement Training Course presentation; and
- (6) Not less than 15 days before commencing delivery of the Basic Law Enforcement Training Course, submit to the Commission a Pre-Delivery Report of Training Course Presentation as set out in 12 NCAC 09C .0211 along with the following attachments:
 - (A) a course schedule showing arrangement of topical presentations and proposed instructional assignments.
 - (B) a copy of any rules, regulations, and requirements for the school. A copy of such rules shall also be given to each trainee and to the executive officer of each trainee's employing or sponsoring agency or department at the time the trainee enrolls in the course.

The Director of the Standards Division shall review the submitted Pre-Delivery Report together with all attachments and notify the School Director of any apparent deficiency.

- (7) Monitor, or designate a certified instructor to monitor, the presentations of all instructors during each course delivery and prepare written evaluations on their performance and suitability for subsequent instructional assignments. The observations shall be of sufficient duration to ensure the instructor is using the Instructional System Design model, and that the delivery is objective based, documented by and consistent with a Commission-approved lesson plan. For each topic area, the School Director's evaluation shall be based upon the course delivery observations, the instructor's use of the approved lesson plan, and the results of the student evaluation of the instructor. For probationary instructors, these evaluations shall be prepared on Commission forms and forwarded to the Commission. Based on this evaluation, the School Director shall recommend approval or denial of requests for General Instructor Certification. For all other instructors, these evaluations shall be prepared on Commission forms in accordance with Commission standards as set out in this Chapter. These evaluations shall be kept on file by the school for a period of three years and shall be made available for inspection by a representative of the Commission upon request. In the event the evaluation of an instructor indicates that his or her performance was less than acceptable, the School Director shall forward a copy of the evaluation to the Commission. Any designated certified instructor who is evaluating the instructional presentation of another instructor shall hold certification in the same instructional topic area as that for which the instructor is being evaluated.
- (8) Administer or designate a staff person to administer appropriate tests as determined necessary at various intervals during course delivery:
 - (A) to determine and record the level of trainee comprehension and retention of instructional subject-matter;
 - (B) to provide a basis for a final determination or recommendation regarding the minimum degree of knowledge and skill of each trainee to function as an inexperienced law enforcement officer; and
 - (C) to determine subject or topic areas of deficiency for the application of 12 NCAC 09B .0405(a)(3); and
- (9) During a delivery of Basic Law Enforcement Training, make available to the

Commission four hours of scheduled class time and classroom facilities for the administration of a written examination to those trainees who have satisfactorily completed all course work.

- (10) Not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, submit to the Commission a Post-Delivery Report of Training Course Presentation (Form F-10B) which shall include:
 - (A) a "Student Course Completion" form for each individual enrolled on the day of orientation.
 - (B) a "Certification and Test Score Release" form.

(c) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-certified "Criminal Justice Instructor Training Course" the School Director shall:

- (1) Schedule course presentation to include 40 hours of instruction each week during consecutive calendar weeks until course requirements are completed;
- (2) Schedule at least one evaluator for each six trainees:
 - (A) no evaluator shall be assigned more than six trainees during a course delivery.
 - (B) each evaluator, as well as the instructors, must have successfully completed a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
 - (C) each instructor and evaluator must document successful participation in a program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.
- (3) Not less than 30 days before commencing delivery of the course, submit to the Commission a Pre-Delivery Report of Training Course Presentation [Form F-10A(ITC)] with the following attachments:
 - (A) a course schedule showing arrangement of topical presentations and proposed instructional assignments;
 - (B) the names and social security numbers of all instructors and evaluators; and

- (C) a copy of any rules, regulations, and requirements for the school.

The Director of the Standards Division shall review the submitted Pre-Delivery Report together with all attachments and notify the School Director of any apparent deficiency.

- (4) Not more than 10 days after course completion the School Director shall submit to the Commission a Post-Delivery Report [Form F-10B(ITC)] containing the following:
 - (A) class enrollment roster;
 - (B) a course schedule with designation of instructors and evaluators utilized in delivery;
 - (C) scores recorded for each trainee on both the 80 minute skill presentation and the final written examination; and
 - (D) designation of trainees who successfully completed the course in its entirety and whom the School Director finds to be competent to instruct.

(d) In addition to Paragraph (a) of this Rule, in planning, developing, coordinating and delivering each Commission-certified radar, radar and time-distance, time-distance, or lidar speed measurement operator training course or re-certification course, the School Director shall:

- (1) select and schedule radar, time-distance, or lidar speed measurement instrument instructors who are certified by the Commission as instructors for the specific speed measurement instruments in which the trainees are to receive instruction. The following requirements apply to operator certification training:
 - (A) provide to the instructor the Commission form(s) for motor-skill examination on each trainee;
 - (B) require the instructor to complete the motor-skill examination form on each trainee indicating the level of proficiency obtained on each specific instrument; and
 - (C) require each instructor to sign each individual form and submit the original to the School Director.
- (2) not less than 30 days before the scheduled starting date submit to the Director of the Standards Division a Request for Training Course Presentation:
 - (A) the request shall contain a period of course delivery including the proposed starting date, course location and the number of trainees

- to be trained in each type of approved speed-measurement-instrument; and
- (B) the Director of the Standards Division shall review the request and notify the School Director of the accepted delivery period unless a conflict exists with previously scheduled programs.
- (3) during the delivery of the training course, make available to the Commission two hours of scheduled class time and classroom facilities for the administration of a written examination to the trainee; and
- (4) upon completing delivery of the Commission-certified course, and not more than 10 days after receiving from the Commission's representative the Report of Examination Scores, the School Director shall notify the Commission regarding the progress and achievements of each trainee by submitting a Post-Delivery Report of Training Course Presentation. This report shall include the original motor-skill

examination form(s) completed and signed by the certified instructor responsible for administering the motor-skill examination to the respective trainee.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. November 1, 1981; Readopted w/change Eff. July 1, 1982; Amended Eff. January 1, 2006; May 1, 2004; August 1, 2000; January 1, 1996; November 1, 1993; December 1, 1987; January 1, 1985.

12 NCAC 09B .0205 BASIC LAW ENFORCEMENT TRAINING

(a) The basic training course for law enforcement officers consists of instruction designed to provide the trainee with the skills and knowledge to perform those tasks essential to function in law enforcement.

(b) The course entitled "Basic Law Enforcement Training" shall consist of a minimum of 618 hours of instruction and shall include the following identified topical areas and minimum instructional hours for each:

- (1) LEGAL UNIT
 - (A) Motor Vehicle Laws 20 Hours
 - (B) Preparing for Court and Testifying in Court 12 Hours
 - (C) Elements of Criminal Law 24 Hours
 - (D) Juvenile Laws and Procedures 8 Hours
 - (E) Arrest, Search and Seizure/Constitutional Law 28 Hours
 - (F) ABC Laws and Procedures 4 Hours
 - UNIT TOTAL 96 Hours
- (2) PATROL DUTIES UNIT
 - (A) Techniques of Traffic Law Enforcement 24 Hours
 - (B) Explosives and Hazardous Materials Emergencies 12 Hours
 - (C) Traffic Crash Investigation 20 Hours
 - (D) In-Custody Transportation 8 Hours
 - (E) Crowd Management 12 Hours
 - (F) Patrol Techniques 20 Hours
 - (G) Law Enforcement Communication and Information Systems 8 Hours
 - (H) Anti-Terrorism 4 Hours
 - (I) Rapid Deployment 8 Hours
 - UNIT TOTAL 116 Hours
- (3) LAW ENFORCEMENT COMMUNICATION UNIT
 - (A) Dealing with Victims and the Public 10 Hours
 - (B) Domestic Violence Response 12 Hours
 - (C) Ethics for Professional Law Enforcement 4 Hours
 - (D) Individuals with Mental Illness and Mental Retardation 8 Hours
 - (E) Crime Prevention Techniques 6 Hours
 - (F) Communication Skills for Law Enforcement Officers 8 Hours
 - UNIT TOTAL 48 Hours
- (4) INVESTIGATION UNIT
 - (A) Fingerprinting and Photographing Arrestee 6 Hours
 - (B) Field Note-taking and Report Writing 12 Hours
 - (C) Criminal Investigation 34 Hours
 - (D) Interviews: Field and In-Custody 16 Hours
 - (E) Controlled Substances 12 Hours
 - UNIT TOTAL 80 Hours
- (5) PRACTICAL APPLICATION UNIT

| | | |
|-----|--|------------------|
| (A) | First Responder | 40 Hours |
| (B) | Firearms | 48 Hours |
| (C) | Law Enforcement Driver Training | 40 Hours |
| (D) | Physical Fitness | 8 Hours |
| | (i) Fitness Assessment and Testing | 12 Hours |
| | (ii) 1 hour - 3 days a week | 34 Hours |
| (E) | Subject Control Arrest Techniques | 40 Hours |
| | UNIT TOTAL | 222 Hours |
| (6) | SHERIFF-SPECIFIC UNIT | |
| (A) | Civil Process | 24 Hours |
| (B) | Sheriffs' Responsibilities: Detention Duties | 4 Hours |
| (C) | Sheriffs' Responsibilities: Court Duties | 6 Hours |
| | UNIT TOTAL | 34 Hours |
| (7) | COURSE ORIENTATION | 2 Hours |
| (8) | TESTING | 20 Hours |
| | TOTAL COURSE HOURS | 618 Hours |

(c) The "Basic Law Enforcement Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for this basic training course for law enforcement officers as administered by the Commission. Copies of this publication may be inspected at the office of 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 obtained from the Academy at the following address:

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

(d) The "Basic Law Enforcement Training Course Management Guide" as published by the North Carolina Justice Academy shall be used by School Directors in planning, implementing and delivering basic training courses. Each School Director shall be issued a copy of the guide at the time of certification at no cost to the certified school. The public may obtain copies of this guide from the Justice Academy.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984; Amended Eff. January 1, 2006; August 1, 2002; August 1, 2000; November 1, 1998; July 1, 1997; January 1, 1995; February 1, 1991; July 1, 1989.

12 NCAC 09B .0210 RADAR INSTRUCTOR TRAINING COURSE

(a) The radar instructor training course shall be designed to provide the trainee with the skills and knowledge to proficiently perform the function of a criminal justice radar instructor. This course shall be for a period not to exceed six consecutive weeks.

(b) The radar instructor training course required for radar instructor certification shall include the topic areas and

minimum number of hours as outlined in The Radar Instructor Training Course. To qualify for radar instructor certification, an applicant shall meet the requirements as outlined in The Radar Instructor Training Course and meet the requirements of 12 NCAC 09B .0408 and .0409.

(c) Each applicant for radar instructor training shall:

- (1) Present the endorsement of a commission-recognized school director or agency executive officer or his designee.
- (2) Possess full criminal justice general instructor certification as required in 12 NCAC 09B .0302.
- (3) Possess a current and valid radar operator certification.

(d) The "Radar Instructor Training Course" as published by the North Carolina Justice Academy shall be applied as basic curriculum for the radar instructor training course for radar instructors as administered by the Commission. Copies of this publication may be inspected at the office of 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 obtained at cost from the Academy at the following address:

North Carolina Justice Academy
 Post Office Box 99
 Salemburg, North Carolina 28385

(e) Commission-certified schools that are certified to offer the "Radar Instructor Training Course" are: The North Carolina Justice Academy.

History Note: Authority G.S. 17C-6; Eff. November 1, 1981; Readopted w/change Eff. July 1, 1982; Amended Eff. January 1, 2006; April 1, 1999; November 1, 1998; August 1, 1995; July 1, 1989; February 1, 1987; August 1, 1984.

12 NCAC 09B .0302 GENERAL INSTRUCTOR CERTIFICATION

(a) General Instructor Certification issued after December 31, 1984 shall be limited to those topics which are not expressly incorporated under the Specific Instructor Certification category. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in Rule 09B .0304, entitled "Specific Instructor Certification". To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process to the satisfaction of the Commission. The applicant shall meet the following requirements for General Instructor Certification:

- (1) Present documentary evidence showing that the applicant:
 - (A) is a high school graduate, or has passed the General Education Development Test (GED) indicating high school equivalency, and
 - (B) has acquired four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system.
- (2) Present evidence showing successful completion of a Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant successfully passed the state comprehensive examination administered at the conclusion of the Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission-certified instructor training course in its entirety.

(d) Applicants for Speed Measuring Instrument Instructor courses must possess full general instructor certification.

History Note: Authority G.S. 17C-6. Eff. January 1, 1981; Amended Eff. January 1, 2006; May 1, 2004; August 1, 2000; July 1, 1991; December 1, 1987; October 1, 1985; January 1, 1985.

12 NCAC 09B .0303 TERMS AND CONDITIONS OF

GENERAL INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for certification as a general instructor shall, for the first 12 months of certification, be in a probationary status. The General Instructor Certification, Probationary Status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor shall be eligible for full general instructor status, if the instructor through application at the end of the probationary period, submits to the Commission:

- (1) a favorable recommendation from a school director or in-service training coordinator accompanied by certification on a Commission Instructor Evaluation Form that the instructor successfully taught a minimum of eight hours in a Commission-certified course or a Commission-recognized in-service training course during the probationary year. The results of the student evaluation of the instructor must be considered by the school director or in-service training coordinator when determining recommendation; or
- (2) a favorable written evaluation by a Commission or staff member, based on an on-site classroom evaluation of the probationary instructor in a Commission-certified course or a Commission-recognized in-service training course. Such evaluation shall be certified on a Commission Instructor Evaluation Form. In addition, instructors evaluated by a Commission or staff member must also teach a minimum of eight hours in a Commission-certified training course or a Commission-recognized in-service training course.

(c) The term of certification as a general instructor is three years from the date the Commission issues the certification. The certification may subsequently be renewed by the Commission for three year periods. The application for renewal shall contain, in addition to the requirements listed in Rule .0302 of this Section, documentary evidence indicating that the applicant has remained active in the instructional process during the previous three year period. Such documentary evidence shall include proof that the applicant has, within the three year period preceding application for renewal, instructed a minimum of 12 hours in a Commission-certified training course or a Commission-recognized in-service training course; and either

- (1) a favorable written recommendation from a school director or in-service training coordinator accompanied by certification on a Commission Instructor Evaluation Form that the instructor successfully taught a minimum of 12 hours in a Commission-certified training course or a Commission-recognized in-service training course during the three year period of general certification; or

- (2) a favorable evaluation by a Commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-certified training course or a Commission-recognized in-service training course, during the three year period of General Instructor Certification. In addition, instructors evaluated by a Commission or staff member must also teach a minimum of 12 hours in a Commission-certified training course or a Commission-recognized in-service training course.

(d) For Speed Measuring Instrument Instructors, the General Instructor Certification shall run concurrent with the Speed Measuring Instrument Instructor's certification. For the initial issuance of Speed Measuring Instrument Instructor certifications, the terms for the instructor's General Instructor certification shall automatically be reissued for a three year period determined by the certification period of the Speed Measuring Instrument Instructor certification. The general instructors shall not be required to submit documentation of having taught the minimum 12 hours during the period preceding the initial certification as specified in Paragraph (c) of this Rule. For the first renewal of Speed Measuring Instrument instructor certifications occurring after January 2006, the terms for the instructor's General Instructor certification shall automatically be reissued for a three year period determined by the certification period of the Speed Measuring Instrument Instructor certification. The general instructors shall not be required to submit documentation of having taught the minimum 12 hours during the period preceding the initial certification as specified in Paragraph (c) of this Rule. Once the General Instructor's certification becomes concurrent with the Speed Measuring Instrument certification, all instructors must meet the requirements in Subparagraph (c)(1) or (c)(2) of this Rule to be eligible for re-certification.

(e) All instructors shall remain active during their period of certification. If an instructor does not teach a minimum of 12 hours during the period of certification, the certification shall not be renewed, and the instructor shall file application for General Instructor Certification, Probationary Status. Such applicants shall meet the minimum requirements of Rule .0302 of this Section.

(f) The use of guest participants in a delivery of the Basic Law Enforcement Training Course is permissible. However, such guest participants are subject to the direct on-site supervision of a Commission-certified instructor and must be authorized by the school director. A guest participant shall only be used to complement the primary certified instructor of the block of instruction and shall in no way replace the primary instructor.

(g) For purposes of this Section, "Commission-recognized in-service training" shall mean any training for which the instructor is evaluated by a certified school director or in-service training coordinator on a Commission Instructor Evaluation Form. Such training shall be objective based and documented by lesson plans designed consistent with the

Basic Law Enforcement Training format and documented by departmental training records to include required post-test and testing methodology. The signature of the school director on the Commission Instructor Evaluation Form shall verify compliance with this Rule.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. January 1, 2006; August 1, 2000; July 1, 1991; October 1, 1985; January 1, 1985; January 1, 1983.

12 NCAC 09B .0304 SPECIALIZED INSTRUCTOR CERTIFICATION

(a) The Commission may issue a Specialized Instructor Certification to an applicant who has developed specific motor-skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

- (1) Subject Control Arrest Techniques
- (2) First Responder
- (3) Firearms
- (4) Law Enforcement Driver Training
- (5) Physical Fitness
- (6) Restraint, Control and Defense Techniques (DJJDP)
- (7) Medical Emergencies (DJJDP)
- (8) Explosive and Hazardous Materials Emergencies

(b) To qualify for and maintain any Specialized Instructor Certification, an applicant must possess a valid CPR Certification that included cognitive and skills testing, through an organization whose curriculum meets the national standards set forth by the International Guidelines Conference on Cardiopulmonary Resuscitation and Emergency Cardiovascular Care.

(c) To qualify for Specialized Instructor Certification in the Subject Control Arrest Techniques topical area, an applicant must meet the following requirements:

- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
- (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
- (3) obtain the recommendation of a Commission-certified school director.

(d) To qualify for Specialized Instructor Certification in the First Responder topical area, an applicant must satisfy one of the following two options:

- (1) The first option is:
 - (A) hold current CPR instructor certification through an organization whose curriculum meets the national standard; and
 - (B) hold current basic Emergency Medical Technician certification; and

- (C) have successfully completed the Department of Transportation's 40 hour EMT Instructor Course or equivalent within the last three years or hold a current North Carolina teaching certificate; and
- (D) obtain the recommendation of a Commission-certified school director.

(2) The second option is:

- (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
- (B) hold current CPR instructor certification through either the American Red Cross or the American Heart Association; and
- (C) hold current basic EMT certification; and
- (D) obtain the recommendation of a Commission-certified school director.

(e) To qualify for Specialized Instructor Certification in the Firearms topical area, an applicant must meet the following requirements:

- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
- (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
- (3) obtain the recommendation of a Commission-certified school director.

(f) To qualify for Specialized Instructor Certification in the Law Enforcement Driver Training topical area, an applicant must meet the following requirements:

- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
- (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
- (3) obtain the recommendation of a Commission-certified school director.

(g) To qualify for Specialized Instructor Certification in the Physical Fitness topical area, an applicant shall become certified through one of the following two methods:

- (1) The first method is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and

- (B) successfully complete the pertinent Commission-approved specialized instructor training course; and
- (C) obtain the recommendation of a Commission-certified School Director.

(2) The second method is:

- (A) successfully complete the pertinent Commission-approved specialized instructor training course; and
- (B) obtain the recommendation of a Commission-certified School Director; and
- (C) meet one of the following qualifications:
 - (i) hold a current and valid North Carolina Teacher's Certificate and hold a minimum of a baccalaureate degree in physical education and be actively teaching in physical education topics; or
 - (ii) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education.

(h) To qualify for Specialized Instructor Certification in the Department of Juvenile Justice and Delinquency Prevention Restraint, Control and Defense Techniques topical area, an applicant must meet the following requirements:

- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in Rule .0303 of this Section; and
- (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
- (3) obtain the recommendation of a Commission-certified school director.

(i) To qualify for Specialized Instructor Certification in the Department of Juvenile Justice and Delinquency Prevention Medical Emergencies topical area, an applicant must meet the following requirements:

- (1) have successfully completed a Commission-certified basic instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, within the 12 month period preceding application; and
- (2) hold current instructor certification in CPR and First Aid by fulfillment of the American Red Cross Instructor requirements; and

- (3) obtain the recommendation of a Commission-certified school director.
- (j) To qualify for Specialized Instructor Certification in the Explosive and Hazardous Materials Emergencies topical area, an applicant must satisfy one of the following two options:
 - (1) The first option is:
 - (A) hold current instructor certification as a First Responder Awareness Level Hazardous Materials instructor; and
 - (B) have successfully completed the Fire Service Instructor Methodology Course or the equivalent utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise; and
 - (C) obtain the recommendation of a Commission-certified school director.
 - (2) The second option is:
 - (A) hold General Instructor Certification, either probationary status or full general instructor status, as specified in 12 NCAC 09B .0303 of this Section; and
 - (B) have successfully completed a First Responder Awareness Level Hazardous Materials course; and
 - (C) obtain the recommendation of a Commission-certified school director.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. August 1, 2000; July 1, 1991; March 1, 1990; July 1, 1989; December 1, 1987; Temporary Amendment Eff. January 1, 2001; Amended Eff. January 1, 2006; December 1, 2004; August 1, 2002.

12 NCAC 09B .0305 TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR CERTIFICATION

- (a) An applicant meeting the requirements for Specialized Instructor Certification shall be issued a certification to run concurrently with the existing General Instructor Certification, except as set out in (d). The applicant must apply for certification as a specialized instructor within 60 days from the date of completion of a specialized instructor course.
- (b) The terms of certification as a specialized instructor shall be determined by the expiration date of the existing General Instructor Certification. The following requirements shall apply during the initial period of certification:
 - (1) where certification for both general probationary instructor and Specialized Instructor Certification is issued on the same date, the instructor shall be required to satisfy the teaching requirement for only the

- general probationary instructor certification. The instructor may satisfy the teaching requirement for the general probationary instructor certification by teaching any specialized topic for which certification has been issued;
- (2) when Specialized Instructor Certification is issued during an existing period of General Instructor Certification, either probationary status or full general status, the specialized instructor may satisfy the teaching requirement for the general certification by teaching the specialized subject for which certification has been issued;
- (3) where Specialized Instructor Certification becomes concurrent with an existing 36 month period of General Instructor Certification, the instructor must teach 12 hours for each specialized topic for which certification has been issued.
- (c) The term of certification as a specialized instructor shall not exceed the 36 month period of full General Instructor Certification. The application for renewal shall contain, in addition to the requirements listed in Rule .0304 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three-year period. Such documentary evidence shall include the following:
 - (1) proof that the applicant has, within the three year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted and such instruction must be in a Commission-accredited training course or a Commission-recognized in-service training course. Acceptable documentary evidence shall include official Commission records submitted by School Directors or in-service training coordinators and written certification from a School Director or in-service training coordinator; and
 - (2) proof that the applicant has, within the three year period preceding application for renewal, attended and successfully completed any instructor updates that have been issued by the Commission. Acceptable documentary evidence shall include official Commission records submitted by School Directors or In-Service Training Coordinators, or copies of certificates of completion issued by the institution which provided the instructor updates; and
 - (3) either:
 - (A) a favorable written recommendation from a School Director or In-Service Training Coordinator accompanied by certification on a Commission

Instructor Evaluation Form that the instructor successfully taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching must have occurred in a Commission-certified training course or a Commission-recognized in-service training course during the three year period of Specialized Instructor Certification; or

- (B) a favorable evaluation by a Commission or staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-certified training course or a Commission-recognized in-service training course, during the three-year period of Specialized Instructor Certification. Such evaluation shall be certified on a Commission Instructor Evaluation Form. In addition, instructors evaluated by a Commission or staff member must also teach at least 12 hours in each of the topics for which Specialized Instructor Certification was granted.

Upon submission of the required documentation for renewal the Commission staff shall renew the certification as a Specialized Instructor. Such renewal shall occur at the time of renewal of the General Instructor certification.

(d) Certification as a specialized instructor in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas as outlined in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) of this Section, specifically those certifications not based upon General Instructor Certification, shall remain in effect for 36 months from the date of issuance. During the 36 month term all non-Commission certificates required in Rule .0304(d)(1), (g)(2), (i)(1), and (j)(1) for specialized instructor certification in the First Responder, Physical Fitness, Explosive and Hazardous Materials, and Juvenile Justice Medical Emergencies topical areas must be maintained.

(e) All instructors shall remain active during their period of certification. If an instructor does not teach at least 12 hours in each of the topic areas for which certification is granted, the certification shall not be renewed for those topics in which the instructor failed to teach. Any specialized instructor training courses previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not teach at least 12 hours in each of the specialized topics during the three year period for which certification was granted. Upon application for re-certification, such applicants shall be required to meet the requirements of Rule .0304 of this Section.

(f) The use of guest participants in a delivery of the "Basic Law Enforcement Training Course" is permissible. However, such guest participants are subject to the direct on-site supervision of a Commission-certified instructor and must be authorized by the School Director. A guest participant shall only be used to complement the primary certified instructor of the block of instruction and shall in no way replace the primary instructor.

History Note: Authority G.S. 17C-6; Eff. January 1, 1981; Amended Eff. January 1, 2006; December 1, 2004; August 1, 2004; August 1, 2000; July 1, 1991; July 1, 1989; December 1, 1987; February 1, 1987.

12 NCAC 09B .0308 RADAR INSTRUCTOR

To qualify for radar instructional assignments, an applicant shall demonstrate a combination of education and experience in criminal justice and proficiency in the instructional process satisfactory to the Commission. The applicant shall meet the following requirements for radar instructor certification:

- (1) Must hold general instructor certification as required in 12 NCAC 09B .0302; and
- (2) Must successfully complete the Commission-approved radar instructor training course as required in 12 NCAC 09B .0210; and
- (3) Obtain the recommendation of a Commission-recognized school director or agency executive officer or his designee.

History Note: Authority G.S. 17C-6; Eff. November 1, 1981; Readopted Eff. July 1, 1982; Amended Eff. January 1, 2006; April 1, 1984.

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

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

- (1) Firearms Training and Qualification (4);
- (2) Legal Update (4);
- (3) Methamphetamine Awareness or Methamphetamine Investigative Issues (4);
- (4) Juvenile Minority Sensitivity: Juvenile Gang Awareness (2);
- (5) Ethical Awareness (2); and
- (6) Department Topics of Choice (8).

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; Temporary Amendment Eff. January 1, 2005; Amended Eff. January 1, 2006.

12 NCAC 09E .0104 INSTRUCTORS: ANNUAL IN-SERVICE TRAINING

The following requirements and responsibilities are hereby established for instructors who conduct the law enforcement officers' annual in-service training program:

- (1) The instructor shall hold Instructor Certification issued by the Commission as outlined in 12 NCAC 09B .0302, 09B .0304, and 09B .0306. In addition, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his/her specific or specialty areas. Such competence includes remaining current in the instructor's area of expertise, which may be demonstrated by attending and successfully completing all instructor updates issued by the Commission.
- (2) The instructor shall deliver the training consistent with the specifications as established in Rules 09E .0105 and .0106.
- (3) The instructor shall report the successful or unsuccessful completion of training for each officer to the Department head. Such reporting shall be on a Commission form.
- (4) Where the officer fails to successfully qualify with a weapon, the instructor shall inform the officer that the officer did not qualify and the instructor shall deliver a Commission form to the officer which shall be signed by the officer. This form shall instruct the officer not to use the weapon and shall require the officer to notify the Department head or designated representative within 24 hours of the failure to qualify. The instructor shall personally deliver this form or send the form by certified mail to the Department head or designated representative within 72 hours of the failure to qualify.

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2006; January 1, 2005.

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

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

- (1) Firearms:
 - (a) Use of Force: review the authority to use deadly force [G.S. 15A-401(d)(2)] including the relevant case law and materials.
 - (b) Safety:
 - (i) range rules and regulations;
 - (ii) handling of a firearm;
 - (iii) malfunctions.
 - (c) Review of Basic Marksmanship Fundamentals:

- (i) grip, stance, breath control and trigger squeeze;
- (ii) sight and alignment/sight picture;
- (iii) nomenclature.
- (d) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms training program. Copies of this publication may be inspected at the office of the agency:

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

- (2) Legal Update;
- (3) Methamphetamine Awareness or Methamphetamine Investigative Issues;
- (4) Juvenile Minority Sensitivity: Juvenile Gang Awareness (2);
- (5) Ethical Awareness (2); and
- (6) Department Topics of Choice.
- (7) The In-Service Lesson Plans as published by the North Carolina Justice Academy shall be applied as a minimum curriculum for conducting the annual in-service training program. Copies of this publication may be inspected at the office of the agency:

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

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2005; November 1, 1998; Temporary Amendment Eff. January 1, 2005; Amended Eff. January 1, 2006.

12 NCAC 09E .0106 ANNUAL IN-SERVICE FIREARMS QUALIFICATION SPECIFICATIONS

- (a) All certified law enforcement officers shall qualify for both day and night use with their individual and department-approved service handgun(s) at least once each calendar year. For the purpose of this specification, service handgun shall include any semi-automatic pistol or revolver. In addition to the requirements specified in Rule 09E .0105 of this

Subchapter, the course of fire shall not be less stringent than the "Basic Training - Law Enforcement Officers" course requirements for firearms qualification.

(b) All certified law enforcement officers who are issued or authorized to use a shotgun, rifle or automatic weapon shall qualify with each weapon respectively at least once each calendar year.

(c) The qualifications required by Paragraphs (a) and (b) of this Rule shall be completed with duty equipment and duty ammunition or ballistic equivalent ammunition to include lead-free ammunition that meets the same point of aim, point of impact, and felt recoil of the duty ammunition, for all weapons.

(d) All certified law enforcement officers who are authorized to carry an off-duty handgun(s) shall qualify with each such handgun consistent with the specifications as outlined in Rules .0105(1) and .0106(a) and (g) of this Section.

(e) To satisfy the training requirements for all in-service firearms qualifications, an officer shall attain at least 70 percent accuracy with each weapon.

(f) The qualifications required by Paragraphs (a) and (b) of this Rule must be achieved at least once in a single day in no more than three attempts in a single day for each course of fire and for each weapon for which qualification is required. Individuals not qualifying in a single day for each course of fire or for a certain weapon for which qualification is required shall be deemed as having failed and 12 NCAC 09E .0103(4) and (5) shall apply.

(g) The In-Service Firearms Qualification Manual as published by the North Carolina Justice Academy shall be applied as a guide for conducting the annual in-service firearms qualification. Copies of this publication may be inspected at the office of 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 viewed and downloaded at no cost from the Academy's website at the following address:

<http://www.jus.state.nc.us/NCJA>

History Note: Authority G.S. 17C-6; 17C-10; Eff. July 1, 1989; Amended Eff. January 1, 2006; January 1, 2005; November 1, 1998; March 1, 1992.

12 NCAC 09E .0109 IN-SERVICE TRAINING COORDINATOR REQUIREMENTS

(a) Any person designated by his or her agency head to act as, or who performs the duties of, an In-Service Training Coordinator in the delivery or presentation of a Commission-mandated or Commission-recognized in-service training course shall have on file confirmation from the Commission acknowledging designation as In-Service Training Coordinator prior to acting in an official capacity as an In-Service Training Coordinator.

(b) To be eligible to serve as an In-Service Training Coordinator, an applicant shall:

- (1) have four years of practical experience as a criminal justice officer or as an administrator or specialist in a field directly related to the criminal justice system;
- (2) hold General Instructor certification;
- (3) have successfully participated in the "Coordinating In-Service Training" course presented by the North Carolina Justice Academy for the purpose of familiarization with trainee and instructor evaluation.

(c) The agency head shall submit to the Criminal Justice Standards Division a Commission In Service Training Coordinator Request form containing the name and other requested information for the person selected to act as In-Service Training Coordinator for the agency. The agency head shall ensure that the person selected meets the requirements set forth in Paragraphs (a) and (b) of this Rule.

History Note: Authority G.S. 17C-6; Eff. January 1, 2006.

12 NCAC 09E .0110 IN-SERVICE TRAINING COORDINATOR RESPONSIBILITIES

In planning, developing, coordinating, and delivering each Commission-mandated in-service training course, the In-Service Training Coordinator shall:

- (1) administer the delivery of the course curriculum in accordance with the curriculum standards established in this Subchapter;
- (2) select and schedule instructors who are certified by the Commission;
- (3) ensure that each instructor utilizes a current Commission-approved lesson plan;
- (4) monitor, or designate a certified instructor to monitor, the presentations of instructors during course deliveries and prepare written evaluations on their performance and suitability for subsequent instructional assignments. The observations shall be of sufficient duration to ensure the instructor is using the Instructional System Design model, and that the delivery is objective based, documented by and consistent with a Commission recognized lesson plan. For each topic area, the in-service training coordinator's evaluation shall be based upon the course delivery observations, the instructor's use of a Commission recognized lesson plan, and the results of the student evaluation of the instructor. For probationary instructors, these evaluations shall be prepared on Commission forms and forwarded to the Commission. Based on this evaluation, the In-Service Training Coordinator shall have the responsibility for recommending approval or denial of

requests for General Instructor Certification. For all other instructors, these evaluations shall be prepared on Commission forms in accordance with Commission standards as set out in this Chapter. These evaluations shall be kept on file by the agency for a period of three years and shall be made available for inspection by a representative of the Commission upon request. In the event the evaluation of an instructor indicates that his or her performance was less than acceptable, the In-Service Training Coordinator shall forward a copy of the evaluation to the Commission. Any designated certified instructor who is evaluating the instructional presentation of another instructor shall, at a minimum, hold certification in the same instructional topic area as that for which the instructor is being evaluated.

- (5) maintain records of all in-service training received by the agency's officers which include:
- (a) course title;
 - (b) delivery hours of course;
 - (c) course delivery dates;
 - (d) names and addresses of instructors utilized for each topic;
 - (e) a roster of enrolled trainees documenting class attendance; and
 - (f) test scores from in-service training.

History Note: Authority G.S. 17C-6; Eff. January 1, 2006.

12 NCAC 09G .0308 GENERAL INSTRUCTOR CERTIFICATION

(a) General Instructor Certification after December 31, 1984 shall be limited to those topics which are not expressly incorporated under the Specialized Instructor Certification category. Individuals certified under the general instructor category are not authorized to teach any of the subjects specified in 12 NCAC 09G .0310, entitled "Specialized Instructor Certification." To qualify for issuance of General Instructor Certification, an applicant shall demonstrate a combination of education and experience in corrections and proficiency in the instructional process to the satisfaction of the Commission. The applicant shall meet the following requirements for General Instructor Certification:

- (1) Present documentary evidence showing that the applicant:
 - (A) is a high school graduate, or has passed the General Education Development Test (GED) indicating high school equivalency;
 - (B) has acquired four years of practical experience as a criminal justice officer or as an administrator or

specialist in a field directly related to the criminal justice system.

- (2) Present evidence showing successful completion of a Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(b) Applications for General Instructor Certification shall be submitted to the Standards Division within 60 days of the date the applicant successfully passed the state comprehensive examination administered at the conclusion of the Commission-certified instructor training program or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise.

(c) Persons having completed a Commission-certified instructor training course or an equivalent instructor training course utilizing the Instructional Systems Design model, an international model with applications in education, military training, and private enterprise, and not having made application within 60 days of completion of the course shall complete a subsequent Commission-certified instructor training course in its entirety.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2006.

12 NCAC 09G .0309 TERMS AND CONDITIONS OF GENERAL INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for certification as a general instructor shall, for the first 12 months of certification, be in a probationary status. The General Instructor Certification, Probationary Status, shall automatically expire 12 months from the date of issuance.

(b) The probationary instructor shall be eligible for full general instructor status if the instructor, through application at the end of the probationary period, submits to the Commission:

- (1) a favorable recommendation from a School Director accompanied by certification on a Commission Instructor Evaluation Form that the instructor successfully taught a minimum of eight hours in a Commission-certified course or a Commission-recognized in-service training course during the probationary year. The results of the student evaluation of the instructor must be considered by the School Director when determining recommendation; or
- (2) a written evaluation by a staff member, based on an on-site classroom evaluation of the probationary instructor in a Commission-certified course or a

Commission-recognized in-service training course. Such evaluation shall be certified on a Commission Instructor Evaluation Form. In addition, instructors evaluated by a staff member must also teach a minimum of eight hours in a Commission-certified training course or a Commission-recognized in-service training course.

(c) The term of certification as a general instructor is three years from the date the Commission issues the certification. The certification may subsequently be renewed by the Commission for three year periods. The application for renewal shall contain, in addition to the requirements listed in 12 NCAC 09G .0308 of this Section, documentary evidence indicating that the applicant has remained active in the instructional process during the previous three year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three year period preceding application for renewal, instructed a minimum of 12 hours in a Commission-certified training course or a Commission-recognized in-service training course; and
- (2) either:
 - (A) a favorable written recommendation from a School Director accompanied by certification on a Commission Instructor Evaluation Form that the instructor successfully taught a minimum of 12 hours in a Commission-certified training course or a Commission-recognized in-service training course during the three year period of general certification; or
 - (B) a written evaluation by a staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-certified training course or a Commission-recognized in-service training course, during the three year period of General Instructor Certification.

(d) If an instructor does not teach a minimum of 12 hours during the period of certification, the certification shall not be renewed, and the instructor shall file application for General Instructor Certification, Probationary Status. Such applicants shall be required to meet the requirements of 12 NCAC 09G .0308 of this Section.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2006.

12 NCAC 09G .0310 SPECIALIZED INSTRUCTOR CERTIFICATION

(a) The Commission may issue a Specialized Instructor Certification to an applicant who has developed specific motor-skills and abilities by virtue of special training and demonstrated experience in one or more of the following topical areas:

- (1) Firearms (DOC);
- (2) Controls, Restraints, and Defensive Techniques (DOC).

(b) To qualify for Specialized Instructor Certification, an applicant must meet the following requirements:

- (1) hold General Instructor Certification, either probationary status or full general instructor status, as specified in 12 NCAC 09G .0309;
- (2) successfully complete the pertinent Commission-approved specialized instructor training course; and
- (3) obtain the recommendation of a Commission-certified School Director.

(c) To qualify for and maintain any Specialized Instructor Certification, an applicant must possess a valid CPR Certification that included cognitive and skills testing, through an organization whose curriculum meets the national standards set forth by the International Guidelines Conference on Cardiopulmonary Resuscitation and Emergency Cardiovascular Care.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. January 1, 2006; August 1, 2004.

12 NCAC 09G .0311 TERMS AND CONDITIONS OF SPECIALIZED INSTRUCTOR CERTIFICATION

(a) An applicant meeting the requirements for Specialized Instructor Certification shall be issued a certification to run concurrently with the existing General Instructor Certification. The applicant must apply for certification as a specialized instructor within 60 days from the date of completion of a specialized instructor course.

(b) The terms of certification as a specialized instructor shall be determined by the expiration date of the existing General Instructor Certification. The following requirements shall apply during the initial period of certification:

- (1) where certification for both general probationary instructor and Specialized Instructor Certification is issued on the same date, the instructor shall only be required to satisfy the teaching requirement for the general probationary instructor certification. The instructor may satisfy the teaching requirement for the general probationary instructor certification by teaching any specialized topic for which certification has been issued;
- (2) when Specialized Instructor Certification is issued during an existing period of General Instructor Certification, either probationary

status or full general status, the specialized instructor may satisfy the teaching requirement for the General Certification by teaching the specialized subject for which certification has been issued; and

- (3) where Specialized Instructor Certification becomes concurrent with an existing 36 month period of General Instructor Certification, the instructor must teach a minimum of 12 hours for each specialized topic for which certification has been issued.

(c) The term of certification as a specialized instructor shall not exceed the 36 month period of full General Instructor Certification. The certification may subsequently be renewed by the Commission at the time of renewal of the full General Instructor Certification. The application for renewal shall contain, in addition to the requirements listed in 12 NCAC 09G .0310 of this Section, documentary evidence that the applicant has remained active in the instructional process during the previous three year period. Such documentary evidence shall include the following:

- (1) proof that the applicant has, within the three year period preceding application for renewal, instructed at least 12 hours in each of the topics for which Specialized Instructor Certification was granted and such instruction must be in a Commission-certified training course or a Commission-recognized in-service training course. Acceptable documentary evidence shall include official Commission records submitted by School Directors and written certification from a School Director; and
- (2) either:
 - (A) a favorable written recommendation from a School Director accompanied by certification that the instructor successfully taught at least 12 hours in each of the topics for which Specialized Instructor Certification was granted. Such teaching must have occurred in a Commission-certified training course or a Commission-recognized in-service training course during the three year period of Specialized Instructor Certification; or
 - (B) a written evaluation by a staff member, based on an on-site classroom evaluation of a presentation by the instructor in a Commission-certified training course or a Commission-recognized in-service training course, during the three year period of Specialized Instructor Certification.

(d) If an instructor does not teach at least 12 hours in each of the topic areas for which certification is granted, the certification shall not be renewed for those topics in which the instructor failed to successfully teach. Any specialized instructor training courses previously accepted by the Commission for purposes of certification shall no longer be recognized if the instructor does not successfully teach at least eight hours in each of the specialized topics during the three year period for which certification was granted. Upon application for re-certification, such applicants shall be required to meet the requirements of 12 NCAC 09G .0310.

*History Note: Authority G.S. 17C-6;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2006.*

12 NCAC 09G .0405 CERTIFICATION OF SCHOOL DIRECTORS

(a) Any person designated to act as, or who performs the duties of, a School Director in the delivery or presentation of a Commission-certified corrections training course shall be and continuously remain certified by the Commission as a School Director.

(b) To qualify for initial certification as a corrections School Director, an applicant shall:

- (1) Attend and successfully complete a Commission-certified instructor training course or an equivalent instructor training program as determined by the Commission (if certified after January 1, 2006); and
- (2) present documentary evidence showing that the applicant:
 - (A) is a high school graduate or has passed the General Education Development Test (GED) indicating high school equivalency and has acquired five years of practical experience as a criminal justice officer, corrections officer, or as an administrator or specialist in a field directly related to the corrections system. At least one year of the required five years experience must have been while actively participating in corrections training as a Commission-certified instructor; or
 - (B) has been awarded an associate degree and has acquired four years of practical experience as a criminal justice officer, corrections officer, or as an administrator or specialist in a field directly related to the corrections system. At least one year of the required four years experience must have been while directly participating in corrections

- training as a Commission-certified instructor; or
 - (C) has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;
 - (3) attend or have attended the most current offering of the School Director's orientation as developed and presented by the Commission staff, otherwise an individual orientation with a staff member shall be required; and
 - (4) submit a written request to the Commission for the issuance of such certification. This request shall be executed by the executive officer of the North Carolina Department of Correction.
- (c) To qualify for certification as a School Director in the presentation of the "Criminal Justice Instructor Training Course" an applicant shall:
- (1) document that he/she has been awarded a baccalaureate degree from a regionally accredited institution of higher learning;
 - (2) present evidence showing successful completion of a Commission-certified instructor training course or an equivalent instructor training program as determined by the Commission;
 - (3) be currently certified as a criminal justice instructor by the Commission; and
 - (4) document successful participation in a special program presented by the Justice Academy for purposes of familiarization and supplementation relevant to delivery of the instructor training course and trainee evaluation.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Temporary Adoption Expired December 20, 2001; Temporary Adoption Eff. April 15, 2003; Eff. April 1, 2004; Amended Eff. January 1, 2006.

**12 NCAC 09G .0416 CORRECTIONS
SPECIALIZED INSTRUCTOR TRAINING –
CONTROLS, RESTRAINTS, AND DEFENSIVE
TECHNIQUES**

- (a) The instructor training course requirement for corrections specialized controls, restraints, and defensive techniques instructor certification shall consist of at least 80 hours of instruction presented during a continuous period of not more than two weeks.
- (b) Each corrections specialized controls, restraints, and defensive techniques instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a corrections controls, restraints, and defensive techniques instructor in the "Basic Training-Correctional Officer" course, "Basic Training-Probation/Parole Officer" course, "Basic

Training-Probation/Parole Officer-Intermediate" course, and in-service training courses for correctional officers, PERT teams, probation/parole officer-intermediate, and all Department of Juvenile Justice and Delinquency Prevention unarmed self-defense courses.

(c) Each corrections specialized controls, restraints, and defensive techniques instructor training course shall include the following topical areas:

- (1) Introduction to Controls, Restraints, and Defensive Techniques;
- (2) Patterns of Movement;
- (3) Response to Injury;
- (4) Basic Controls and Techniques;
- (5) Advanced Controls and Techniques;
- (6) Restraint Applications;
- (7) Program Evaluation; and
- (8) Advanced Instructional Techniques.

(d) Commission-certified schools that are certified to offer the "Corrections Specialized Instructor Training/Controls, Restraints, and Defensive Techniques" course are: The Office of Staff Development and Training of the North Carolina Department of Correction.

History Note: Authority G.S. 17C-6; Temporary Adoption Eff. January 1, 2001; Eff. August 1, 2002; Amended Eff. November 1, 2005; August 1, 2004.

**TITLE 15A – DEPARTMENT OF ENVIRONMENT AND
NATURAL RESOURCES**

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;
- (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 Part (C) of this

Subparagraph. Attendance 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 Part (C) of this Subparagraph. Attendance shall be required when used from one hour after sunrise through one hour before 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) through (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.

History Note: Authority G.S. 113-134; 113-173; Temporary Adoption Eff. August 9, 1994, for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. February 1, 1995; Temporary Amendment Eff. August 1, 1999; July 1, 1999; Amended Eff. August 1, 2000; Temporary Amendment Eff. August 1, 2000; Amended Eff. November 1, 2005; August 1, 2002.

15A NCAC 10B .0209 WILD TURKEY

(a) Open Seasons:

- (1) Winter Either-Sex Wild Turkey Season shall be from the Monday on or nearest to January 15 through the following Saturday on bearded or beardless turkeys in Alleghany, Ashe, Caswell, Granville, Person, Rockingham, Stokes, Surry, Watauga and Wilkes counties except on Game Lands
- (2) Spring Wild Turkey Season shall be from the Second Saturday in April through the Saturday of the fourth week thereafter on bearded turkeys only in all counties statewide.
- (3) Spring Youth Only Wild Turkey Season: the Spring Youth Only Wild Turkey Season shall be for one day on the first Saturday in April on bearded wild turkeys only. This Subparagraph shall not apply to Game Lands unless provided for, on certain Game Lands, by special permit issued pursuant to 15A NCAC 10D .0103. For purposes of this Subparagraph a youth hunter shall be less than 16 years of age. Each youth hunting during this season shall be accompanied by a properly licensed adult at least 21 years of age. An adult may accompany only one youth during any particular hunt and only one weapon is allowed per youth hunter.

(b) Bag Limits: The daily bag limit shall be one bird and the annual bag limit shall be two birds only one of which may be taken during the Winter Either-Sex Wild Turkey Season. Possession limit is two birds.

(c) Dogs: The use of dogs for hunting wild turkeys during the Spring Wild Turkey Season and the Spring Youth Only Wild Turkey Season shall be prohibited.

(d) Kill Reports. The kill shall be validated at the site of kill and the kill reported as provided by 15A NCAC 10B .0113.

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.2; 113-291.5; Eff. February 1, 1976; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; July 1, 1992; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003; Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003); Amended Eff. November 1, 2005.

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 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, 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 September 1 through February 29 and April 7 through 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 Paragraph applies shall be designated in the game land rules and map book. This Paragraph 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.

History Note: Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; Eff. February 1, 1976; Amended Eff. July 1, 1993; April 1, 1992; Temporary Amendment Eff. October 11, 1993; Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. August 31, 2001; Amended Eff. August 1, 2002; Amended Eff. June 1, 2004; (this amendment replaces the amendment approved by RRC on July 17, 2003);

Amended Eff. November 1, 2005.

15A NCAC 13A .0110 INTERIM STATUS STDS FOR OWNERS-OP OF HWTSD FACILITIES - PART 265

(a) 40 CFR 265.1 through 265.4 (Subpart A), "General", are incorporated by reference including subsequent amendments and editions.

(b) 40 CFR 265.10 through 265.19 (Subpart B), "General Facility Standards", are incorporated by reference including subsequent amendments and editions.

(c) 40 CFR 265.30 through 265.37 (Subpart C), "Preparedness and Prevention", are incorporated by reference including subsequent amendments and editions, except that 265.35 is not incorporated by reference.

The following shall be substituted for the provisions of 265.35.

Required aisle space: The owner or operator must maintain aisle space of at least two feet to allow the unobstructed movement of personnel, fire prevention equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency.

(d) 40 CFR 265.50 through 265.56 (Subpart D), "Contingency Plan and Emergency Procedures", are incorporated by reference including subsequent amendments and editions.

(e) 40 CFR 265.70 through 265.77 (Subpart E), "Manifest System, Recordkeeping, and Reporting", are incorporated by reference including subsequent amendments and editions.

(f) 40 CFR 265.90 through 265.94 (Subpart F), "Ground-Water Monitoring", are incorporated by reference including subsequent amendments and editions.

(g) 40 CFR 265.110 through 265.121 (Subpart G), "Closure and Post-Closure", are incorporated by reference including subsequent amendments and editions.

(h) 40 CFR 265.140 through 265.151 (Subpart H), "Financial Requirements", are incorporated by reference including subsequent amendments and editions, except that 40 CFR 265.143(a)(3), (a)(4), (a)(5), (a)(6), and 40 CFR 265.145(a)(3), (a)(4), (a)(5), are not incorporated by reference.

- (1) The following shall be substituted for the provisions of 40 CFR 265.143(a)(3) which were not incorporated by reference: The owner or operator shall deposit the full amount of the closure cost estimate at the time the fund is established. By November 19, 1981, an owner or operator using a closure trust fund established prior to November 19, 1980 shall deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or shall obtain other financial assurance as specified in this Section.
- (2) The following shall be substituted for the provisions of 40 CFR 265.143(a)(6) which were not incorporated by reference: After the trust fund is established, whenever the current closure cost estimate changes, the

owner or operator shall compare the new estimate with the trustee's most recent annual valuation of the trust fund. If the value of the fund is less than the amount of the new estimate, the owner or operator within 60 days after the change in the cost estimate, shall either deposit an amount into the fund so that its value after this deposit at least equals the amount of the current closure cost estimate, or obtain other financial assurance as specified in this Section to cover the difference; and

(3) The following shall be substituted for the provisions of 40 CFR 265.145(a)(3) which were not incorporated by reference:

(A) Except as otherwise provided in Part (h)(3)(B) of this Rule, the owner or operator shall deposit the full amount of the post-closure cost estimate at the time the fund is established.

(B) If the Department finds that the owner or operator of an inactive hazardous waste disposal unit cannot provide financial assurance for post-closure through any other option (e.g. surety bond, letter of credit, or corporate guarantee), a plan for annual payments to the trust fund during the interim status period shall be established by the Department by use of an Administrative Order.

(i) 40 CFR 265.170 through 265.178 (Subpart I), "Use and Management of Containers", are incorporated by reference including subsequent amendments and editions. Additionally, the owner or operator shall keep records and results of required inspections for at least three years from the date of the inspection.

(j) 40 CFR 265.190 through 265.202 (Subpart J), "Tank Systems", are incorporated by reference including subsequent amendments and editions.

(k) 40 CFR 265.220 through 265.231 (Subpart K), "Surface Impoundments", are incorporated by reference including subsequent amendments and editions.

(l) 40 CFR 265.250 through 265.260 (Subpart L), "Waste Piles", are incorporated by reference including subsequent amendments and editions.

(m) 40 CFR 265.270 through 265.282 (Subpart M), "Land Treatment", are incorporated by reference including subsequent amendments and editions.

(n) 40 CFR 265.300 through 265.316 (Subpart N), "Landfills", are incorporated by reference including subsequent amendments and editions.

(o) 40 CFR 265.340 through 265.352 (Subpart O), "Incinerators", are incorporated by reference including subsequent amendments and editions.

- (p) 40 CFR 265.370 through 265.383 (Subpart P), "Thermal Treatment", are incorporated by reference including subsequent amendments and editions.
- (q) 40 CFR 265.400 through 265.406 (Subpart Q), "Chemical, Physical, and Biological Treatment", are incorporated by reference including subsequent amendments and editions.
- (r) 40 CFR 265.440 through 265.445 (Subpart W), "Drip Pads", are incorporated by reference including subsequent amendments and editions.
- (s) 40 CFR 265.1030 through 265.1049 (Subpart AA), "Air Emission Standards for Process Vents", are incorporated by reference including subsequent amendments and editions.
- (t) 40 CFR 265.1050 through 265.1079 (Subpart BB), "Air Emission Standards for Equipment Leaks", are incorporated by reference including subsequent amendments and editions.
- (u) 40 CFR 265.1080 through 265.1091 (Subpart CC), "Air Emission Standards for Tanks, Surface Impoundments, and Containers", are incorporated by reference including subsequent amendments and editions.
- (v) 40 CFR 265.1100 through 265.1102 (Subpart DD), "Containment Buildings", are incorporated by reference including subsequent amendments and editions.
- (w) 40 CFR 265.1200 through 265.1202 (Subpart EE), "Hazardous Waste Munitions and Explosives Storage", are incorporated by reference including subsequent amendments and editions.
- (x) Appendices to 40 CFR Part 265 are incorporated by reference including subsequent amendments and editions.

History Note: Authority G.S. 130A-294(c); 150B-21.6; Eff. November 19, 1980; Amended Eff. June 1, 1989; December 1, 1988; June 1, 1988; February 1, 1988; Transferred and Recodified from 10 NCAC 10F .0033 Eff. April 4, 1990; Recodified from 15A NCAC 13A .0011 Eff. August 30, 1990; Amended Eff. July 1, 1995; April 1, 1993; October 1, 1992; February 1, 1992; Recodified from 15A NCAC 13A .0010 Eff. December 20, 1996; Amended Eff. November 1, 2005; August 1, 2000; April 1, 1999.

15A NCAC 18A .2801 DEFINITIONS

The following definitions shall apply in regards to child care centers throughout this Section:

- (1) "Adequate" means determined by the Department to be of sufficient size, volume, or technical specifications, to effectively accommodate and support the planned, current, or projected workloads for a specified operational area.
- (2) "Approved" means determined by the Department to be in compliance with this Section.

- (3) "Communicable Condition" means the state of being infected with a communicable agent but without symptoms.
- (4) "Communicable Disease" means any disease that can be transmitted from one person to another directly, by contact with excrement, other body fluids, or discharges from the body; or indirectly, via substances or inanimate objects, such as contaminated food, drinking glasses, toys or water; or via vectors, such as flies, mosquitoes, ticks, or other insects.
- (5) "Department" or "DENR" means the North Carolina Department of Environment and Natural Resources. The term also means the authorized representative of the Department.
- (6) "Designated Emergency Medication" means any medication used or needed for the immediate recovery from potentially a life-threatening event.
- (7) "Disinfecting Solution" means a solution containing 500 to 800 parts per million (ppm) of chlorine made by mixing a solution of one-quarter cup (2 fluid ounces) household liquid chlorine bleach with one gallon of tap water and prepared fresh daily. In addition, products registered with the U. S. Environmental Protection Agency as hospital grade germicides or disinfectants, disinfectants for safe use in schools, child care centers, institutions or restaurants are also approved disinfectants, provided the manufacturer's Material Safety Data Sheets are kept on file at the child care center and the instructions for use are followed.
- (8) "Division of Child Development" means the child care licensing agency in the N.C. Department of Health and Human Services.
- (9) "Food" means any raw, cooked, or processed edible substance, ice, beverage, or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (10) "Food Preparation" means the handling of foods or utensils in the preparation of meals, including opening and closing of baby bottles, baby food jars and cereal boxes, as well as the opening and closing of any other food items intended for the assembly of ingredients for human consumption.
- (11) "Food Service" means the distribution of prepared foods for consumption, including those food items prepared at the child care center; received by the center from approved food establishments; milk placed in a pitcher or other serving container; ice transported, stored and dispensed; bagged lunches sent from home; and the use of utensils to minimize direct food contact.

- | | |
|---|--|
| <p>(12) "Frying" means to cook over direct heat in hot oil or fat. This includes the oil or fat that is generated by the food or added to the cooking utensil.</p> <p>(13) "Hermetically Sealed" means a container designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing.</p> <p>(14) "Household bleach" means bleach sold in concentrations that are intended for household use, and not industrial applications. Household bleach is sold in retail stores at strengths of 5.25% hypochlorite (regular strength bleach) solution and 6.00% hypochlorite (ultra strength bleach) solution.</p> <p>(15) "Lavatory" means a sink that is equipped with hot and cold water under pressure for the primary purpose of handwashing.</p> <p>(16) "Multi-Service Articles" means tableware, including flatware and hollowware that are designed, fabricated, and intended by the manufacturer to be washed, rinsed, sanitized, and re-used.</p> <p>(17) "Multi-Use Articles" means bulk food containers and utensils designed, fabricated, and intended by the manufacturer to be washed, rinsed, sanitized, and re-used. The term includes food storage containers, beverage pitchers, serving spoons and bowls, tongs, and spatulas. The term does not include multi-service articles as defined in this Rule.</p> <p>(18) "Potable Water" means water from an approved source which is suitable for drinking.</p> <p>(19) "Potentially Hazardous Food" means any food or ingredient, natural or synthetic, in a form capable of supporting the growth of infectious or toxigenic microorganisms, including <i>Clostridium botulinum</i>. This term includes raw or heat-treated food of animal origin, raw seed sprouts, and heat-treated foods of plant origin. The term does not include foods which have a pH level of 4.6 or below or a water activity value of 0.85 or less.</p> <p>(20) "Putrescible Materials" means materials likely to rot or putrefy, such as fruit, vegetables, meats, and dairy products.</p> <p>(21) "Sanitary Sewage System" means a complete system of sewage collection, treatment, and disposal and includes septic tank systems, connection to a public or community sewage system, sewage reuse or recycle systems, or mechanical or biological treatment systems.</p> | <p>(22) "Sanitizing Solution" means a solution containing 50 to 200 parts per million (ppm) of chlorine made by mixing a tablespoon of liquid household chlorine bleach with one gallon of water and prepared fresh daily.</p> <p>(23) "School Age" means any child who is at least five years old on or before October 16 of the current school year and who is attending, or has attended, a public or private grade school or kindergarten; or any child who is not five years old and will not be five years old on or before October 16 of that school year, but has been attending school during that school year in another state in accordance with the laws or rules of that state before moving to and becoming a resident of North Carolina; or any child who is at least five years old on or before April 16 of the current school year, is determined by the principal of a school to be gifted and mature enough to justify admission to the school and is enrolled no later than the end of the first month of the school year.</p> <p>(24) "Single-Service Articles" means tableware, including flatware and hollowware, carry-out utensils and other items such as bags, containers, stirrers, straws, toothpicks, and wrappers that are designed, fabricated and intended by the manufacturer for one-time use.</p> <p>(25) "Single-Use Articles" means bulk food containers and utensils intended by the manufacturer to be used once and discarded. The term includes formed buckets, bread wrappers, pickle barrels, and No. 10 cans. The term does not include single-service articles as defined in this Rule.</p> <p>(26) "Tempered Water" means water that is between 80°F and 110°F.</p> <p>(27) "Utensils" means any kitchenware, tableware, glassware, cutlery, containers or other equipment that food or drink comes in contact with during storage, preparation or serving.</p> <p>(28) "Work Surfaces" means the following locations in the kitchen: food service areas; stove top surfaces; food preparation surfaces; utensil and dishwashing areas; surfaces used for air drying; drain boards; and counter top surfaces. In child care rooms, work surfaces include food preparation areas, diaper changing surfaces, counter top surfaces, children work tables, desks and easels.</p> |
|---|--|

*History Note: Authority G.S. 110-91;
 Eff. July 1, 1991;
 Amended Eff. March 1, 1995;
 Temporary Amendment Eff. April 15, 1998;*

Amended Eff. January 1, 2006; April 1, 1999.

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

(a) Plans drawn to scale and specifications for new child care centers shall be submitted to the local health department for review and approval prior to initiating construction. Plans drawn to scale and specifications for changes to building dimensions, kitchen specifications, or other modifications to existing child care centers shall also be submitted to the local health department for review and approval prior to construction. Plans drawn to scale and specifications for prototype "franchise" or "chain" child care centers shall be submitted to DENR, Division of Environmental Health, Environmental Health Services Section, Children's Environmental Health Branch. When requested by an operator of a center or by the Secretary of the Department of Health and Human Services, the local health department shall visit or inspect an existing or proposed center, within 30 days of the request, to determine compliance with this Section.

(b) Review of the plans by the local health department or the Environmental Health Services Section shall be based on the requirements of this Section.

(c) Construction and modifications shall comply with the approved plans.

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Temporary Amendment Eff. April 15, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. December 1, 1999; Amended Eff. January 1, 2006; April 1, 2001.

15A NCAC 18A .2803 HANDWASHING

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

(b) Children shall wash hands upon arrival at the child care center; after each diaper change or visit to the toilet; before eating meals or snacks; before and after water play; after outdoor activity; and after handling animals or animal cages. Hand sanitizing products may be used in lieu of handwashing while children are outdoors if hands are washed upon returning indoors.

(c) Handwashing procedures shall include:

- (1) using liquid soap and tempered water;

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

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

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. February 1, 1995; Temporary Amendment Eff. April 15, 1998; Amended Eff. January 1, 2006; April 1, 1999.

15A NCAC 18A .2804 FOOD SUPPLIES

(a) In child care centers, food shall be free from spoilage, filth, or other contamination and shall be safe for human consumption. Potentially hazardous foods, including foods packaged in hermetically sealed containers, shall only be obtained from sources that are permitted or inspected by a local health department, the North Carolina Department of Agriculture and Consumer Services or other government regulatory agency. The use of food packaged in hermetically sealed containers that was not prepared in a commercial food processing establishment is prohibited. Food prepared and sent from home to be shared with other children shall be limited to non-potentially hazardous baked goods.

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

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

(d) Formula, breast milk, and other bottled beverages, including beverages in sippy cups, sent from home shall be fully prepared, dated, and identified for the appropriate child at the child's home. All formula and other bottled beverages shall be returned to the child's home or discarded at the end of each day. Frozen breast milk shall be stored in a freezer for up to seven days. Frozen breast milk shall be labeled with the date received and date thawed for use. Microwaves shall not be used to thaw or warm breast milk, formula or other bottled beverages. Bottle warming equipment shall be inaccessible to children when in use and shall be emptied, cleaned and sanitized daily. Unused breast milk shall not be refrozen for

storage. Formula provided by the child care center shall be commercially pre-packaged, ready-to-feed, fully prepared, and packaged in single-use containers. However, formula that does not meet these requirements may be provided by the child care center as prescribed by the child's physician or instructed by parent or guardian in writing. Bottles and other drinking utensils provided by the child care center shall be sanitized in accordance with this Section. Formula and other beverages which require refrigeration, baby food after opening, and breast milk shall be identified for the appropriate child and shall be refrigerated at 45°F (7°C) or below. Commercially prepared baby foods shall be served from a serving dish rather than the food jar. Upon opening, jars of baby food shall be covered, dated, refrigerated, and used within two days. However, baby food may be served directly from the jar to one child if unused portions of the food are discarded after each feeding. After the completion of each feeding, leftover formula, breast milk, and other bottled beverages shall be discarded or returned to the child's home at the end of each day.

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

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

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

*History Note: Authority G.S. 110-91;
Eff. July 1, 1991;
Amended Eff. February 1, 1995; January 1, 1992;
Temporary Amendment Eff. April 15, 1998;
Amended Eff. January 1, 2006; April 1, 1999.*

15A NCAC 18A .2806 FOOD STORAGE AND PROTECTION

(a) In child care centers, food shall be stored in approved, clean, tightly covered, storage containers once the original package is opened. Approved containers include resealable bags and other containers made of plastic or glass. Reusable containers that come in direct contact with food must be easy to clean, in good repair and intended for food storage.

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

(c) Dry foods that are not readily identifiable and are stored in containers shall be labeled.

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

(e) Food and containers of food shall not be stored under exposed sewer lines. Food shall not be stored in toilet or laundry rooms. Child care centers licensed for fewer than 13 children and located in a residence may store food in laundry rooms if protected as required in Paragraph (f) of this Rule.

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

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

(h) Refrigerated storage:

(1) Refrigeration equipment shall be provided in such number and of such capacity to assure the maintenance of potentially hazardous food at required temperatures during storage. Each refrigerator shall be provided with a numerically scaled indicating thermometer, accurate to ±3°F (± 1.5°C) located to measure the air temperature in the warmest part of the refrigerator and located to be easily readable. Recording thermometers, accurate to ±3°F (±1.5°C), may be used in lieu of indicating thermometers.

(2) Potentially hazardous food requiring refrigeration after preparation shall be cooled to an internal temperature of 45°F (7°C), or below. Cooling of potentially hazardous foods shall be initiated upon completion of preparation or hot storage. Methods such as pouring into pans, agitation, chilling with ice or water circulation external to the food containers

shall be used to cool potentially hazardous food. Potentially hazardous food to be transported cold shall be prechilled and held at a temperature of 45°F (7°C) or below.

- (3) Ice used for cooling stored food and food containers shall not be used for human consumption.

(i) Hot storage:

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

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

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. February 1, 1995; Temporary Amendment Eff. December 1, 1999; Amended Eff. January 1, 2006; April 1, 2001.

15A NCAC 18A .2807 FOOD PREPARATION

- (a) In child care centers, the preparation of food shall take place only in the approved facilities or space equipped as required in Rule .2810 of this Section.
- (b) Food shall be prepared with the least possible manual contact, with utensils, and on surfaces that have been cleaned, rinsed, and sanitized prior to use in order to prevent cross-contamination.
- (c) Food contact surfaces and utensils shall be cleaned and sanitized after preparing raw foods, prior to preparing ready-to-eat foods and after any interruption of operations in which contamination may have occurred.

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

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

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

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

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

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

(i) Potentially hazardous foods shall be thawed:

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

History Note: Authority G.S. 110-91; Eff. July 1, 1991;

Amended Eff. January 1, 2006; February 1, 1995; October 1, 1993.

15A NCAC 18A .2808 FOOD SERVICE

(a) In child care centers, milk and milk products for drinking purposes shall be stored in the original commercially filled container. Serving containers may be used for food service provided the unused milk is discarded.

(b) Ice shall be made, handled, transported, stored and dispensed in such a manner as to be protected against contamination. Ice shall be dispensed with scoops, tongs, or other ice-dispensing utensils or through automatic ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice. Between uses, ice transfer receptacles shall be stored to protect them from dust, drip, splash and other contamination. Ice storage bins shall be drained through an air gap.

(c) Employees preparing or serving food shall wash their hands in accordance with the procedures in Rule .2803(c) of this Section. Employees shall either use antibacterial soap, dips, or hand sanitizers immediately prior to food preparation or service or use clean, disposable gloves during food preparation or service. Employees engaged in food preparation in the kitchen shall wear effective hair restraints, keep their fingernails trimmed, clean and shall not wear fingernail polish or artificial fingernails unless wearing intact gloves. Hair spray is not an effective hair restraint.

(d) Once served, portions of leftover food shall not be served again unless the package is intact and the food is not potentially hazardous. Foods, including milk, placed on the table for family style food service are considered served.

(e) Between uses during service, dispensing utensils shall be stored in the food with the dispensing utensil handle extended out of the food, in a container of water if the water is maintained at a temperature of at least 140°F (60°C), or stored clean and dry.

(f) Children attending child care centers shall not be in the kitchen except when participating in a supervised activity.

(g) Nothing in this Section shall be construed as prohibiting family style food service at child care centers so long as supervision of the children is maintained throughout each meal except that family style food service shall be prohibited during the outbreak and investigation of communicable diseases.

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. January 1, 2006; April 1, 1999; February 1, 1995.

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

In child care centers, material and construction of food service equipment and utensils shall meet the following requirements:

- (1) Materials used in the construction of utensils and equipment shall be durable; corrosion-resistant; nonabsorbent; non-toxic; finished to have a smooth, easily cleanable

- (2) Food-contact surfaces shall be smooth; free of breaks, open seams, cracks, chips, pits and other imperfections; free of sharp internal angles, corners and crevices; and accessible for cleaning and inspection without being disassembled or by easy disassembly.
- (3) Nonfood contact surfaces shall be nonabsorbent with no obstructions to cleaning.
- (4) Solder shall be comprised of approved, non-toxic; corrosion-resistant materials.
- (5) Wood and wicker shall not be used as food-contact surfaces, except hard maple or an equivalent nonabsorbent wood may be used for cutting boards, cutting blocks or bakers' tables.
- (6) Galvanized metal shall not be used for utensils or food-contact equipment.
- (7) Linens shall not be used as food-contact surfaces, except that clean linen may be used in contact with bread and rolls.
- (8) Single-use and single-service articles shall be clean.
- (9) Reuse of single-service articles is prohibited.
- (10) Single-use articles such as formed buckets, bread wrappers, aluminum pie plates and cans shall be used only once except that containers made of plastic, glass or other material intended for food storage, with smooth sides and constructed to be easily cleaned may be reused.
- (11) Equipment and utensils that impart odors, color or taste, or contribute to the contamination of food shall not be used.
- (12) Product thermometers and thermometer probes shall be of metal stem-type construction.
- (13) Water filters or any other water conditioning devices shall be cleaned and maintained in accordance with the manufacturer's instructions.
- (14) Filters and other grease extracting equipment shall be cleaned and maintained in accordance with the manufacturer's specifications.

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. January 1, 2006; February 1, 1995.

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

(a) Each center shall have at least a two-compartment sink, drainboards or countertop space of adequate size, adequate

refrigeration equipment and, when needed, adequate cooking equipment, except for centers located in a school that receives all food supplies prepared and ready to serve from a food service establishment permitted by a local health department, which is located at the same school campus and provides food during all hours of child care operation. Domestic or commercial kitchen equipment may be used. Child care centers using multi-service articles shall also provide a dishwasher. In lieu of a dishwasher and two-compartment sink, a three-compartment sink of sufficient size and depth to wash, rinse and sanitize utensils may be used.

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

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

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

- (1) except for thawing under refrigerated conditions, potentially hazardous foods shall not be prepared prior to the day that such foods are to be served;
- (2) potentially hazardous foods that have been heated shall not be reheated or placed in refrigeration to be used in whole or in part on another day; and
- (3) salads containing potentially hazardous food shall not be prepared on site. Prohibited salads include chicken salad, egg salad, tuna salad and crab salad.

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

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

- (1) all equipment shall be cleaned at least daily. Warming equipment shall be cleaned and sanitized as required in Rule .2812 of this Section;
- (2) after each use, all multi-service articles provided by the center shall be cleaned and sanitized in the child care center kitchen;
- (3) single-service articles shall be handled as required in Rule .2814 of this Section; and

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

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. March 1, 1995; Temporary Amendment Eff. April 15, 1998; Temporary Amendment Eff. December 1, 1999; Amended Eff. January 1, 2006; April 1, 2001.

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

(a) In child care centers, drainboards or countertop space of adequate size shall be provided for handling of soiled utensils prior to washing and cleaned utensils following sanitizing. For child care centers originally licensed on or after April 15, 1998, drainboards or countertop space shall be no less than 24 inches long. A domestic dishwasher may be used to provide the equivalent of 24 inches of drainboard space and other designated areas not contiguous with the sink may be utilized to meet drainboard or countertop space requirements. Upon change of ownership, or the closing of the operation and the issuance of a new license, or the remodeling of an existing kitchen, a child care center shall also comply with this Paragraph.

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

- (1) when necessary, equipment and utensils shall be scraped, flushed, or soaked to remove food particles;
- (2) sinks shall be cleaned and sanitized prior to use;
- (3) equipment and utensils shall be washed in the first compartment with a hot detergent solution that is changed once visibly soiled;
- (4) equipment and utensils shall be rinsed free of detergent and abrasives with clean water in the second compartment; and
- (5) the food-contact surfaces of equipment and utensils shall be sanitized in the third compartment in the following manner:
 - (A) immersion for at least one minute in clean, hot water at a temperature of at least 170°F (77°C) in dish baskets of such size and design to permit complete immersion of the tableware, kitchenware and equipment in the hot water;
 - (B) immersion for at least two minutes in a clean solution containing 50 to 200 parts per million (ppm) of chlorine at a temperature of at least 75°F (24°C);
 - (C) immersion for at least two minutes in a clean solution containing at least 12.5 ppm of iodine and having

- (D) a pH not higher than 5.0 and at a temperature of at least 75°F (24°C); immersion for at least two minutes in a clean solution containing 200 to 400 ppm of quaternary ammonium products and having a temperature of at least 75°F (24°C), provided that the product is labeled to show that it is effective in water having a hardness value at least equal to that of the water being used; or
- (E) other sanitizing products and procedures as effective as the ones mentioned above may be used if these products are nontoxic to children, used according to the manufacturer's instructions and approved by the Department.

(c) For mechanical cleaning and sanitizing, food-contact surfaces of equipment and utensils shall be sanitized according to the manufacturer's instructions. When a domestic dishwashing machine is used according to manufacturer's instructions, additional sanitizing is not required. When commercial dishwashing equipment is used, a temperature indicating device, accurate to 2°F (1°C), shall be provided.

(d) For utensils and equipment which are either too large or impractical to sanitize in a dishwashing machine or dishwashing sink, a spray-on or wipe-on sanitizer of sufficient chemical strength as indicated in Paragraph (b) of this Rule shall be used. Spray-on or wipe-on sanitizers shall be prepared daily and kept on hand for bactericidal treatment.

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

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

(g) A testing method or equipment, used in accordance with the product manufacturer's instructions, shall be made available, convenient, and regularly used to test the strengths of these chemical sanitizing solutions to ensure the prescribed concentrations are met.

(h) After sanitizing, all equipment and utensils shall be air dried.

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. February 1, 1995; July 1, 1993; Temporary Amendment Eff. December 1, 1999; April 15, 1998; Amended Eff. January 1, 2006; April 1, 2001.

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

(a) In child care centers, cleaned and sanitized equipment and utensils, including single-service articles, shall be handled in a way that protects the food-contact surfaces from contamination. Spoons, knives, and forks shall be handled with the least amount of contact necessary. Cups, glasses,

bowls, plates, and similar items shall be handled without contact with inside surfaces or surfaces that contact the user's mouth.

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

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. January 1, 2006; February 1, 1995.

15A NCAC 18A .2815 WATER SUPPLY

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

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

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

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

(e) Hot water used for cleaning and sanitizing food utensils and laundry shall be provided at a minimum temperature of 120°F (49°C) at the point of use. Water in areas accessible to children shall be tempered between 80°F (27°C) and 110°F (43°C). For handwash lavatories used exclusively by school-age children, the 80°F (27°C) minimum temperature requirement shall not apply. Hot water in an area accessible to any child, which is in excess of 120°F (49°C), shall be considered a burn hazard. Child care centers serving only school-age children are not required to provide hot water in areas accessible to children. In the event of the loss of hot

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

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

(g) Outdoor drinking fountains shall be constructed to protect the spout from contamination and shall be kept clean.

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. February 1, 1995; Temporary Amendment Eff. April 15, 1998; Amended Eff. April 1, 1999; Temporary Amendment Eff. December 1, 1999; Amended Eff. January 1, 2006; April 1, 2001.

15A NCAC 18A .2816 LEAD POISONING HAZARDS

In child care centers, areas accessible to children shall be free of identified lead poisoning hazards as defined under G.S. 130A-131.7(7).

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. January 1, 2006; February 1, 1995.

15A NCAC 18A .2817 TOILETS

(a) In child care centers, toilet tissue shall be provided and stored in a clean, dry place. The toilet room shall include or be adjacent to a handwash lavatory. Storage in toilet rooms shall be limited to toileting and diapering supplies. All toilet fixtures shall be easily cleanable, and in good repair. Toilet fixtures shall be child-sized, adapted adult toilets or potty chairs.

(b) Toilet fixtures shall be cleaned and disinfected at least daily and when visibly soiled. A disinfecting solution of one-quarter cup (two fluid ounces) liquid household bleach mixed in one gallon of water (or one tablespoon of liquid household bleach in one quart of water) containing 500 to 800 parts per million (ppm) of chlorine mixed daily shall be used for this purpose. A testing method shall be made available to ensure compliance with the prescribed bleach solution concentration. To achieve the maximum germ reduction with bleach, the cleaned surfaces shall be left glistening wet with the bleach solution and allowed to air dry or be dried only after a minimum contact time of at least two minutes. Products registered with the U.S. Environmental Protection Agency as hospital grade germicides or disinfectants, disinfectants for safe use in schools, child care centers, institutions or restaurants are also approved disinfectants, provided the manufacturer's Material Safety Data Sheets are kept on file at the child care center and the instructions for use are followed.

(c) If potty chairs are used, they shall be located and stored in a toilet room equipped with a spray-rinse toilet or utility sink. Potty chairs shall be emptied, rinsed, cleaned and disinfected

after each use with a disinfecting solution as described in Paragraph (b) of this Rule.

(d) When cloth diapers are used and emptied, the diaper changing area shall be located next to a toilet room..

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. January 1, 2006; April 1, 1999; February 1, 1995.

15A NCAC 18A .2818 LAVATORIES

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

(b) Lavatories shall be equipped with hot and cold water or tempered water provided through mixing faucets or pre-mixing devices which provide water in the temperature range specified in Rule .2815(e) of this Section.

(c) Lavatories shall be cleaned and disinfected with each change of use, as needed and at least daily. A disinfecting solution of one-quarter cup (two fluid ounces) liquid household bleach mixed in one gallon of water (or one tablespoon of liquid household bleach in one quart of water) containing 500 to 800 parts per million (ppm) of chlorine mixed daily shall be used for this purpose. A testing method shall be made available to ensure compliance with the prescribed bleach solution concentration. To achieve the maximum germ reduction with bleach, the cleaned surfaces shall be left glistening wet with the bleach solution and allowed to air dry or be dried only after a minimum contact time of at least two minutes.

Products registered with the U.S. Environmental Protection Agency as hospital grade germicides or disinfectants, disinfectants for safe use in schools, child care centers, institutions and restaurants are also approved disinfectants, provided the manufacturer's Material Safety Data Sheets are kept on file at the child care center and the instructions for use are followed.

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

(e) Handwash signs shall be posted at every handwash lavatory area.

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. January 1, 2006; February 1, 1995.

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

(a) In child care centers, children in diapers shall be changed at stations designated exclusively for diapering or toileting. Each diaper changing station shall include a handwash lavatory. For centers licensed for fewer than 13 children and located in a residence and for diaper changing areas

designated for school age children, a handwash lavatory shall be in or next to a diaper changing area.

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

(c) A disinfecting solution of one-quarter cup (two fluid ounces) liquid household bleach mixed in one gallon of water (or one tablespoon of liquid household bleach in one quart of water) containing 500 to 800 parts per million (ppm) of chlorine mixed daily shall be used for this purpose. A testing method shall be made available to ensure compliance with the prescribed bleach solution concentration. To achieve the maximum germ reduction with bleach, the cleaned surfaces shall be left glistening wet with the bleach solution and allowed to air dry or be dried only after a minimum contact time of at least two minutes. Products registered with the U. S. Environmental Protection Agency as hospital grade germicides or disinfectants, disinfectants for safe use in schools, child care centers, institutions or restaurants are also approved disinfectants, provided the manufacturer's Material Safety Data Sheets are kept on file at the child care center and the instructions for use are followed. Cleaning and disinfecting solutions shall be kept in separate and accurately labeled, hand pump spray bottles at each diaper changing station. No cloths or sponges shall be used on diapering surfaces.

(d) Diaper changing procedures shall include:

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

(11) washing hands in accordance with Rule .2803 of this Section even if disposable gloves are used by the caregiver.

(e) Vinyl or latex disposable gloves shall be used by caregivers during the diaper changing process if she or he has cuts or sores on her or his hands or has chapped hands.

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

(g) Receptacles containing soiled disposable diapers shall be emptied in an exterior garbage area at least daily.

(h) Instructions for caregivers on proper methods of diaper changing and handwashing shall be posted in each diaper changing area.

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. February 1, 1995; Temporary Amendment Eff. April 15, 1998; Amended Eff. January 1, 2006; April 1, 1999.

15A NCAC 18A .2820 STORAGE

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

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

(c) Non-aerosol sanitizing disinfecting, and detergent solutions, hand sanitizers, and hand lotions shall be kept out of reach of children when not in use, but are not required to be in locked storage. These solutions shall be labeled as sanitizing, disinfecting, or detergent (soapy water) solutions. Hand soap

is not required to be kept out of reach of children or in locked storage.

(d) Medications including prescription and non-prescription items shall be stored in a separate locked cabinet or other locked container and shall not be stored above food. Designated emergency medications shall be stored out of reach of children, but are not required to be in locked storage. Non-prescription diaper creams and sunscreen shall be kept out of reach of children when not in use, but are not required to be in locked storage.

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

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

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. January 1, 2006; April 1, 1999; February 1, 1995.

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

(a) In child care centers, all beds, cribs, cots, and mats shall be in good repair, stored to prevent contamination, cleaned and sanitized between users.

(b) Cribs and play pens used for sleeping shall be easily cleanable, and equipped with a firm, tight-fitting mattress made of waterproof, washable material at least two inches thick.

(c) All beds, cots or mats shall be assigned and labeled for each individual child, and equipped with individual linens.

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

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

(f) Linen shall be kept clean, in good repair, and stored with the individual mat or cot or stored individually for each child in a designated area. Linen shall be laundered between users, when soiled, and at least once per week. Linen used in rooms where children in care are less than 12 months old shall be changed and laundered when soiled and at least daily. Linens shall be large enough to cover the sleeping surface.

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

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. January 1, 2006; February 1, 1995.

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

(a) Toys, equipment and furniture provided by a child care center shall be kept clean and in good repair. In rooms designated for children who are not toilet trained, toys and other mouth-contact surfaces shall be cleaned and then sanitized at least daily when used and more frequently if visibly dirty, by the following methods:

- (1) scrubbed in warm, soapy water using a brush to reach into crevices;
- (2) rinsed in clean water;
- (3) submerged in a sanitizing solution prepared by combining one tablespoon of chlorine bleach with one gallon of water for at least two minutes or sanitized with another approved sanitizing solution; and
- (4) air dried.

A sanitizing solution of one tablespoon liquid bleach in one gallon of water containing 50 to 200 parts per million (ppm) of chlorine mixed daily shall be used for this purpose. A testing method or kit shall be available to ensure compliance with the prescribed concentration. To achieve the maximum germ reduction with bleach, the cleaned surfaces shall be left glistening wet with the bleach solution and allowed to air dry or be dried only after a minimum contact time of at least two minutes. Other sanitizing solutions that have been determined to be at least as effective as the chlorine bleach solution are acceptable as long as these products are nontoxic to children, used according to the manufacturer's instructions and approved by the Department. Toys, items and surfaces not designed to be submerged shall be washed and rinsed in place, sprayed with a sanitizing solution and allowed to air dry. Hard plastic toys shall be washed and rinsed in a dishwasher and cloth toys shall be laundered and mechanically dried without requiring sanitizing.

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

(c) Water play centers shall be filled just prior to each water play session. Water shall be emptied after each session or more often if visibly soiled. The water play centers including toys, shall be cleaned and sanitized at least daily or more often if visibly soiled. Water play is prohibited during the outbreak and investigation of communicable diseases at the site. Wading pools are not considered water play centers and are regulated under 15A NCAC 18A .2500.

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. February 1, 1995; July 23, 1992; Temporary Amendment Eff. April 15, 1998; Amended Eff. January 1, 2006; April 1, 1999.

15A NCAC 18A .2823 PERSONNEL

(a) In child care centers, employees and their clothing shall be clean. Employees shall keep their fingernails clean.

(b) Tobacco use in any form is prohibited in any part of a child care center except in a designated area either outdoors, separate from the outdoor learning environment, or indoors in

a room with a separate ventilation system approved by the building inspector.

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

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. February 1, 1995; Temporary Amendment Eff. April 15, 1998; Amended Eff. January 1, 2006; April 1, 1999.

15A NCAC 18A .2824 FLOORS

(a) In child care centers, floors and floor coverings of all food preparation, food storage, utensil-washing areas, toilet rooms, and laundry areas shall be constructed of nonabsorbent, easily cleanable material.

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

(c) Carpeting used as a floor covering shall be of closely woven construction, properly installed, and easily cleanable. Carpeted floors shall be vacuumed daily when children are not present in the room, except to clean up spills. Instead of waiting for children to leave the room, a High Efficiency Particulate Air (HEPA) filter vacuum cleaner may be used. If used for this purpose, a HEPA vacuum cleaner shall include a HEPA filter individually tested and rated as 99.97% efficient at 0.3 micron dust particle size and sealed to prevent leakage around connecting points. Vacuum bags shall be changed and vacuums shall be emptied when children are not present in the room. The vacuum cleaner shall be in good repair. Wall to wall carpets shall be cleaned using extraction methods at least once each six months. Cleaning materials including surfactants, solvents and water shall be removed from the carpet before the space is reoccupied. When hot water extraction is used, carpet shall be completely dry within 12 hours of cleaning.

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

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

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. January 1, 2006; April 1, 1999; February 1, 1995; July 23, 1992.

15A NCAC 18A .2825 WALLS AND CEILINGS

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

(b) Walls and ceilings in rooms in which food is stored, handled or prepared, utensil-washing rooms, and toilet rooms shall be nonabsorbent. Acoustic and other ceiling material may be used where ventilation precludes the possibility of grease and moisture absorption. For child care centers licensed for fewer than 13 children and located in a residence,

ceilings of residential construction are acceptable if kept clean and in good repair.

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. April 1, 1999; July 23, 1992; Temporary Amendment Eff. December 1, 1999; Amended Eff. January 1, 2006; April 1, 2001.

15A NCAC 18A .2826 LIGHTING AND THERMAL ENVIRONMENT

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

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

(c) Nothing in the rules of this Section requires that outdoor storage buildings be wired with electricity or provided with heating and air conditioning.

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. January 1, 2006; February 1, 1995.

15A NCAC 18A .2827 COMMUNICABLE DISEASES AND CONDITIONS

(a) In child care centers, children who become ill to the extent that they can no longer participate in routine group activities shall be separated from the other children until the child leaves the center.

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

(c) If the area is not a separate room, it shall be separated from space used by other children by a partition, screen or other means. The designated area shall be located so that health and sanitation measures can be carried out without interrupting activities of other children and staff.

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

*History Note: Authority G.S. 110-91;
Eff. July 1, 1991;
Amended Eff. February 1, 1995;
Temporary Amendment Eff. April 15, 1998;
Amended Eff. January 1, 2006; April 1, 1999.*

15A NCAC 18A .2829 WASTEWATER

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

*History Note: Authority G.S. 110-91;
Eff. July 1, 1991;
Amended Eff. January 1, 2006; April 1, 1999; February 1, 1995.*

15A NCAC 18A .2830 SOLID WASTES

(a) In child care centers, food scraps and other putrescible materials shall be placed in a plastic-lined, cleanable, covered container and removed to an exterior garbage area at least daily. Scrap paper, cardboard boxes and similar items shall be stored in containers or designated areas.

(b) Garbage containers, mops and other cleaning equipment shall be kept clean. Facilities shall be provided for the washing and storage of garbage containers and mops for child care centers, except for centers licensed for fewer than 13 children and located in a residence. Cleaning facilities shall include a faucet with a threaded nozzle and water of at least 80°F (27°C) in either a designated utility sink or above a curbed impervious pad sloped to drain into a publicly-owned wastewater treatment system or by an approved properly operating on-site wastewater system in accordance with 15A NCAC 18A .1900. Can cleaning facilities approved prior to July 1, 1991 shall be approved if in good repair.

(c) Dumpsters and other containerized systems shall be kept clean and covered. Facilities shall be provided for cleaning either on-site, or off-site through a contractual agreement.

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

*History Note: Authority G.S. 110-91;
Eff. July 1, 1991;
Amended Eff. February 1, 1995;
Temporary Amendment Eff. April 15, 1998;
Amended Eff. January 1, 2006; April 1, 1999.*

15A NCAC 18A .2831 ANIMAL AND VERMIN CONTROL

(a) Unrestrained animals, except those used in supervised activities or pet therapy programs, shall not be allowed in a child care center, including the outdoor learning environment. When pets are kept on the premises, copies of vaccination records required by North Carolina law and local ordinances shall be available for review. Turtles, iguanas, and other reptiles are not allowed to be kept as pets on the premises. Animals shall not be allowed in the food preparation areas. Animal cages shall be kept clean. Animals belonging to child care owners, employees, volunteers, and children shall not be allowed in child care centers or on the premises unless the above requirements are met.

(b) Effective measures shall be taken to keep uncontained insects, rodents, and other vermin out of the child care centers and to prevent their breeding or presence on the premises. Traps shall only be placed in areas inaccessible to children.

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

(d) Only those pesticides which have been registered with the U. S. Environmental Protection Agency and the North Carolina Department of Agriculture and Consumer Services shall be used. Pesticides shall be used in accordance with the directions on the label and shall be stored in a locked storage room or cabinet separate from foods and medications. Pesticides shall not be applied or used when children are present in the area.

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

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

(g) Pets kept outdoors shall be in a designated area that is maintained and separate from the outdoor area used by the children.

*History Note: Authority G.S. 110-91;
Eff. July 1, 1991;
Temporary Amendment Eff. April 15, 1998;
Amended Eff. January 1, 2006; April 1, 1999.*

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

(a) At child care centers, the premises, including the outdoor learning environment, shall be kept clean, drained to minimize standing water, free of litter and hazardous materials, and maintained in a manner which does not encourage the harborage of vermin. All debris, glass, dilapidated structures and broken play equipment shall be removed. Wells, grease

traps, cisterns and utility equipment shall be made inaccessible to children.

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

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

- (1) Equipment shall be kept in good repair, free of peeling, flaking, or chalking paint and free of rust and corrosion.
- (2) The sandbox used in outdoor play shall be constructed to allow for drainage and shall be covered when not in use and kept clean.

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

(e) If a daily air quality forecast is made by the Division of Air Quality or the regional air quality agency for the county where a center is located, outdoor activity for children shall be restricted as follows. On days with a code orange (unhealthy for sensitive groups) forecast, children shall not be outside participating in physical activity between noon and 8:00 p.m. for more than one hour. On days with a code red (unhealthy) forecast, children shall not be outside participating in physical activity between noon and 8:00 p.m. for more than 15 minutes. On days with a code purple (very unhealthy) forecast, children shall not be outside participating in physical activity between noon and 8:00 p.m. Provisions shall be made to allow children with diagnosed asthma or with coughing or wheezing symptoms to participate in physical activity indoors on days with a code orange, red or purple air quality forecast.

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

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

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

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

15A NCAC 18A .2833 SWIMMING AND WADING POOLS

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

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

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

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

(b) Unannounced inspections of child care centers shall be made by the Department at least once each six-month period. The evaluation shall be completed on the Sanitation Standards Evaluation Form for Child Care Centers provided by the Department. Other versions of the form, including electronic, are allowed but shall be duplicates of the Sanitation Standards Evaluation Form for Child Care Centers. An original and two copies of the form shall be completed by the Department. The original shall be submitted to the Division of Child Development. The child care center operator and the Department shall each retain a copy.

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

- (1) violation of Rules .2803 or .2836 of this Section related to handwashing when required shall be assessed five demerits;
- (2) violation of Rule .2803 of this Section related to proper handwashing procedures shall be assessed five demerits;
- (3) violation of Rule .2804 of this Section related to food from approved sources, no spoilage, or adulteration shall be assessed six demerits;
- (4) violation of Rules .2804, .2806, or .2807 of this Section related to potentially hazardous food meeting storage and holding temperatures; and refrigeration of bottles and lunches at 45° F or below shall be assessed six demerits;
- (5) violation of Rules .2806, .2807, .2808, or .2836 of this Section related to food properly stored, thawed, prepared, cooked, cooled, handled, served, transported, packaged, and identified shall be assessed five demerits;
- (6) violation of Rule .2808 of this Section related to food not re-served shall be assessed three demerits;

*History Note: Authority G.S. 110-91;
Eff. July 1, 1991;
Amended Eff. January 1, 2006; April 1, 1999; July 23, 1992.*

- | | |
|---|---|
| <p>(7) violation of Rule .2807 of this Section related to food thermometers provided and accurate shall be assessed two demerits;</p> <p>(8) violation of Rules .2809 or .2810 of this Section related to food service equipment and utensils meeting specifications for refrigeration, sinks, lavatories and dishwashing equipment shall be assessed six demerits;</p> <p>(9) violation of Rules .2809 or .2810 of this Section related to food service equipment and utensils meeting specifications for other equipment and utensils, approved material and construction shall be assessed four demerits;</p> <p>(10) violation of Rules .2809 or .2812 of this Section related to food contact surfaces properly washed, rinsed, sanitized and air dried; and single-service articles not re-used shall be assessed five demerits;</p> <p>(11) violation of Rule .2812 of this Section related to sanitizer provided and test kit available shall be assessed two demerits;</p> <p>(12) violation of Rule .2812 of this Section related to equipment and non-food contact surfaces clean and in good repair shall be assessed four demerits;</p> <p>(13) violation of Rule .2814 of this Section related to proper storage and handling of clean equipment, utensils, and single-service articles shall be assessed three demerits;</p> <p>(14) violation of Rule .2815 of this Section related to water supply and drinking water facilities meets 15A NCAC 18A .1700 or 15A NCAC 18C, whichever is applicable shall be assessed six demerits;</p> <p>(15) violation of Rule .2815 of this Section related to hot water supplied and maintained in the kitchen shall be assessed six demerits;</p> <p>(16) violation of Rule .2815 of this Section related to hot water supplied and tempered water maintained as required in all other areas shall be assessed four demerits;</p> <p>(17) violation of Rule .2815 of this Section related to hot water in excess of 120° F not allowed in areas accessible to children shall be assessed six demerits;</p> <p>(18) violation of Rule .2815 of this Section related to backflow prevention provided, no cross connections shall be assessed three demerits;</p> <p>(19) violation of Rules .2815 or .2836 of this Section related to drinking fountains of approved type, pressure regulated, clean shall be assessed two demerits;</p> <p>(20) violation of Rule .2816 of this Section related to identified lead poisoning hazards as defined under G.S. 130A-131.7(7) shall be assessed six demerits;</p> | <p>(21) violation of Rules .2817, .2818 or .2836 of this Section related to toilet and lavatory facilities properly sized, located and accessible, and in good repair; toilets and potty chairs cleaned and disinfected shall be assessed four demerits;</p> <p>(22) violation of Rules .2817 or .2818 of this Section related to soap, approved hand drying devices, and toilet tissue available shall be assessed three demerits;</p> <p>(23) violation of Rules .2817 or .2818 of this Section related to approved storage in toilet rooms, lavatories free of storage; and handwash signs posted shall be assessed two demerits;</p> <p>(24) violation of Rules .2817, .2819 or .2836 of this Section related to approved diaper changing facilities shall be assessed six demerits;</p> <p>(25) violation of Rule .2819 of this Section related to diapering surfaces cleaned and disinfected after each use shall be assessed six demerits;</p> <p>(26) violation of Rule .2819 of this Section related to cleaning and disinfecting solutions provided and test kit available when required shall be assessed two demerits;</p> <p>(27) violation of Rules .2818, .2819 or .2820 of this Section related to diaper changing facilities free of storage; cleaning and disinfecting solutions labeled; and diaper changing and handwash signs posted shall be assessed two demerits;</p> <p>(28) violation of Rule .2820 of this Section related to medications properly stored shall be assessed six demerits;</p> <p>(29) violation of Rule .2820 of this Section related to hazardous products properly stored and locked shall be assessed six demerits;</p> <p>(30) violation of Rule .2820 of this Section related to non-hazardous products properly stored shall be assessed three demerits;</p> <p>(31) violation of Rule .2820 of this Section related to facilities provided for proper storage and kept clean shall be assessed two demerits;</p> <p>(32) violation of Rules .2821 or .2836 of this Section related to individual linen provided; adequate beds, cots, or mats provided, properly stored, labeled, and spaced during use shall be assessed three demerits;</p> <p>(33) violation of Rule .2821 of this Section related to linen, bedding, wash cloths, bibs and burping cloths laundered and in good repair shall be assessed three demerits;</p> <p>(34) violation of Rules .2822 or .2836 of this Section related to toys, equipment and furniture clean and in good repair; water</p> |
|---|---|

- (35) play centers cleaned, sanitized and maintained shall be assessed four demerits; violation of Rules .2822 or .2836 of this Section related to mouth-contact surfaces cleaned and sanitized in rooms where children who are not toilet trained are cared for shall be assessed four demerits;
 - (36) violation of Rules .2808 or .2823 of this Section related to personnel using approved hygienic practices, clean clothes and hair restraints where required, shall be assessed two demerits;
 - (37) violation of Rules .2824, .2825 or .2836 of this Section related to floors, walls and ceilings easily cleanable, in good repair, clean, carpets vacuumed and extraction cleaned as required shall be assessed four demerits;
 - (38) violation of Rule .2826 of this Section related to the lighting and thermal environment and room temperature between 65°F and 85°F shall be assessed three demerits;
 - (39) violation of Rule .2826 of this Section related to equipment clean and in good repair and maintained as required shall be assessed two demerits;
 - (40) violation of Rule .2827 of this Section related to persons with a communicable disease or a condition excluded in accordance with 15A NCAC 19A .0200 shall be assessed six demerits;
 - (41) violation of Rules .2827 or .2836 of this Section related to persons caring for sick or mildly ill children excluded from situations in which transmission of communicable disease can be expected to occur shall be assessed four demerits;
 - (42) violation of Rule .2827 of this Section related to the designated area for sick children maintained as required shall be assessed two demerits;
 - (43) violation of Rule .2829 of this Section related to wastewater disposed of by approved methods in accordance with 15A NCAC 18A .1900 shall be assessed six demerits;
 - (44) violation of Rules .2830 or .2836 of this Section related to solid waste properly handled; containers and cleaning equipment kept clean, and can cleaning facilities adequate shall be assessed two demerits;
 - (45) violation of Rule .2831 of this Section related to animals in food preparation areas and no unrestrained or prohibited animals except as noted shall be assessed three demerits;
 - (46) violation of Rules .2831 or .2832 of this Section related to effective control of rodents, insects and other vermin; premises free of vermin harborage and breeding areas shall be assessed three demerits;
 - (47) violation of Rule .2832 of this Section related to premises clean and drained, equipment in good repair, and sandboxes properly constructed and clean shall be assessed two demerits; and
 - (48) violation of Rule .2833 of this Section related to swimming and wading pools designed, constructed, operated and maintained in accordance with 15A NCAC 18A .2500 shall be assessed six demerits.
- (d) The Department shall indicate on the Child Care Inspection Sanitation Form whether the center is superior, approved, provisional, or disapproved. A Sanitation Classification placard shall be posted in the center in a conspicuous place designated by the Department. The classification of a child care center is based on the center's compliance with the Rules of this Section. A summary classification of disapproved shall be issued and forwarded to the Division of Child Development when the right-of-entry to inspect is denied or when an inspection is discontinued at the request of the operator or administrator unless the decision to discontinue the inspection is mutual.
- (e) The child care center's compliance is indicated by the number of demerits on the Child Care Sanitation Inspection Form.
- (1) When an inspection is requested and conducted for the purpose of issuing a license to a new operator, a Child Care Sanitation Inspection Form shall be forwarded to the Division of Child Development only when the child care center can be granted a superior classification. If the center is not yet open and children are not in attendance when the initial inspection is conducted, a Child Care Sanitation Inspection Form shall be completed and forwarded to the Division of Child Development, but the Sanitation Classification placard shall not be posted. Another sanitation inspection shall be conducted when children are in attendance within 30 days of opening and the Sanitation Classification placard shall then be posted. When a temporary license is issued as a result of a change of ownership in a child care center that continues to operate, the operator shall request an inspection from the Department within fourteen days. A sanitation classification placard shall be posted after each inspection of a center operating under a temporary license.
 - (2) A child care center shall be classified as superior if the demerit score does not exceed 15 and no 6-point demerit item is violated.
 - (3) A child care center shall be classified as approved if the demerit score is more than

15 and does not exceed 0, and no 6-point demerit item is violated.

- (4) A child care center shall be classified as provisional if any 6-point demerit item is violated or if the total demerit score is more than 30 but does not exceed 45. The provisional classification period shall not exceed seven days unless construction or renovation is necessary to correct any violation, in which case the Department may specify a longer provisional classification period.
- (5) A child care center shall be classified as disapproved if the demerit score is more than 45, or if conditions which resulted in a provisional classification have not been corrected in the time period specified by the Department.
- (6) If the child care center receives a disapproved classification, the Department shall immediately notify the Division of Child Development by faxing a copy of the inspection form.
- (7) The Sanitation Classification placard shall not be removed except by or upon the instruction of the Department.

(f) If the Department determines that conditions found at the child care center at the time of any inspection or visit are dangerous to the health of the children, the Department shall immediately notify the Division of Child Development by verbal contact. The original inspection report or other documentation of the dangerous conditions shall be sent to the Division of Child Development within two working days following the inspection.

(g) The Department may conduct an inspection of any child care center as frequently as necessary in order to ensure compliance with the rules in this Section.

(h) The Department shall use the Child Care Sanitation Inspection Form to document demerits for violations of the rules. A written explanation and corrective action for each violation shall be documented on a comment addendum form.

(i) In filling out the inspection form, demerits may be assessed only once for a single occurrence or condition existing within or outside the child care center. Demerits shall be assessed based on actual violations of the rules of this Section observed during the inspection.

History Note: Authority G.S. 110-88; 110-91; Eff. July 1, 1991; Amended Eff. February 1, 1995; Temporary Amendment Eff. April 15, 1998; Amended Eff. January 1, 2006; April 1, 1999.

15A NCAC 18A .2835 APPEALS PROCEDURE

Appeals concerning the enforcement of the Child Care Sanitation Rules in this Section as adopted by the Commission for Health Services shall be governed by Section 110-94 and Chapter 150B of the North Carolina General Statutes.

History Note: Authority G.S. 110-91; Eff. July 1, 1991; Amended Eff. January 1, 2006.

15A NCAC 18A .2836 MILDLY ILL CHILDREN

Child care centers that are licensed to offer care to children pursuant to 10A NCAC 09 .2400, shall comply with all rules in this Section except as follows:

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

History Note: Authority G.S. 110-91; Eff. January 1, 2006.

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 – COSMETIC ART EXAMINERS

21 NCAC 14F .0108 INSPECTION OF COSMETIC ART SHOPS

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

(b) Each cosmetic art shop must pass inspection by the Board pursuant to 21 NCAC Subchapter 14H. Inspections shall be conducted at least annually and may be conducted without notice.

History Note: Authority G.S. 88B-4; 88B-21; 88B-14; Eff. February 1, 1976; Amended Eff. November 1, 2005; October 1, 1991; January 1, 1989; May 1, 1988.

21 NCAC 14G .0107 EQUIPMENT AND TEACHERS

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

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

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

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

History Note: Authority G.S. 88B-11; 88B-16; 88B-23 Eff. February 1, 1976; Amended Eff. November 1, 2005; August 1, 1998; May 1, 1991; January 1, 1989.

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

(a) The clinic area shall be kept clean.

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

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

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

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

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

- (1) They shall be soaked in a cleaning solution that shall not leave a residue and, if necessary, scrubbed.
- (2) They shall be disinfected in accordance with the following:
 - (A) EPA registered, hospital/pseudomonacidal (bactericidal, virucidal, and fungicidal) and tuberculocidal, that is mixed and used according to the manufacturer's directions;
 - (B) household bleach in a 10 percent solution for 10 minutes;
 - (C) 70% or higher isopropyl alcohol for 15 minutes; or
 - (D) 90% ethyl alcohol for 15 minutes.

The disinfectant shall not shorten the service life of the comb, brush, esthetics or manicuring instrument. In using a disinfectant, the user shall wear any personal protective equipment, such as gloves, recommended in the Material Safety Data Sheet prepared on the disinfectant by the manufacturer.
- (3) They shall be rinsed with hot tap water and dried with a clean towel before their next use. If they are not used immediately, they shall be stored in a clean, closed cabinet until they are needed.

History Note: Authority G.S. 88B-4; Eff. February 1, 1976; Amended Eff. June 1, 1994; April 1, 1991; January 1, 1989; April 1, 1988; Temporary Amendment Eff. January 20, 1999; Amended Eff. November 1, 2005; August 1, 2000.

21 NCAC 14H .0120 FOOTSPA SANITATION

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

- (1) Between each customer a manicurist or cosmetologist shall:

- (a) drain all water and remove all debris from the footspa;
 - (b) clean the surfaces and walls of the footspas with soap or detergent and rinse with clean, clear water; and
 - (c) disinfect with an EPA registered disinfectant with bactericidal, fungicidal, and virucidal activity used according to the manufacturer's instructions.
- (2) At the end of the day a manicurist or cosmetologist shall:
- (a) remove the screen. All debris trapped behind the screen of each footspa shall be removed, and the screen and the inlet shall be washed with soap or detergent and water;
 - (b) before replacing the screen:
 - (i) wash the screen with a chlorine bleach solution of one teaspoon of five per cent chlorine bleach to one gallon of water, or totally immerse the screen in an EPA registered disinfectant;
 - (ii) flush the system with low sudsing soap and warm water for 10 minutes; and
 - (iii) rinse and drain; and
 - (c) make a record of the date and time of this cleaning and disinfecting.

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

History Note: Authority G.S. 88B-4; Eff. February 1, 2004; Amended Eff. November 1, 2005.

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

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

| | 1200 Hours | | 1500 Hours | |
|--|------------|--------|------------|--------|
| | Live Model | Maniq. | Live Model | Maniq. |
| (1) scalp and hair treatments w/massage | 15 | | 15 | |
| (2) roller sets and styles | 50 | 25 | 75 | 25 |
| (3) fullhead fingerwave and style | 5 | OR 5 | 5 | OR 5 |
| (4) fullhead pincurl and style | 5 | OR 5 | 5 | OR 5 |
| (5) blowdry and marcel style | 50 | 25 | 75 | 25 |
| (6) blowdry and style with brush | 5 | OR 5 | 10 | OR 10 |
| (7) thermal press & curl | 3 | OR 3 | 5 | OR 5 |
| (8) artificial hair | 2 | OR 2 | 2 | OR 2 |
| (9) haircuts | 25 | 25 | 50 | 25 |
| (10) chemical reformation or permanent waving & relaxers | 20 | 5 | 30 | 5 |
| (11) temporary color | 5 | | 5 | |
| (12) semi-perm color | 5 | 5 | 15 | 5 |
| (13) permanent color | 10 | 5 | 15 | 5 |
| (14) hair lightening or highlighting | 5 | OR 5 | 10 | OR 10 |
| (15) lash & brow tinting | 2 | | 4 | |
| (16) manicure with arm & hand massage | 15 | | 15 | |
| (17) pedicure with leg & foot massage | 2 | | 2 | |
| (18) artificial nails (sets) | 2 | OR 2 | 2 | 2 |
| (19) facials with massage/makeup | 5 | | 10 | |
| (20) hair removal | 5 | | 5 | |

- (b) Certification of live model or mannequin performance completions shall be required along with the application for the examination.
- (c) A live model may be substituted for a mannequin for any mannequin service.

*History Note: Authority G.S. 88-23;
Eff. August 1, 1998;
Amended Eff. November 1, 2005.*

CHAPTER 26 – LICENSING BOARD OF LANDSCAPE ARCHITECTS

21 NCAC 26 .0209 UNPROFESSIONAL CONDUCT

Registrants shall not:

- (1) allow one's name to be associated with an undertaking in any professional capacity without having served specifically in that capacity;
- (2) accept compensation in whole or in part from fees, commissions, earnings, commercial or speculative profit emanating from sales of materials or services provided to a Landscape Architect's client by others;
- (3) make exaggerated or misleading statements or claims about any personal qualifications, experience or performance;
- (4) fail to disclose to a client or employer the existence of any financial interest which even remotely bears upon the Landscape Architectural services or project;
- (5) fail to respond within 30 calendar days to any inquiry from this Board;
- (6) fail to properly supervise his or her practice. Each office maintained for the preparation of drawings, specifications, reports or other professional work shall have a registered landscape architect employed in that office who shall have direct knowledge and supervisory control of such work, except field offices maintained only for the purpose of project construction administration shall have at least one employee present with the supervising landscape architect maintaining control and making periodic visits.

*History Note: Authority G.S. 89A-3.1; 89A-7;
Eff. August 1, 1993;
Amended Eff. November 1, 2005; March 1, 1994.*

21 NCAC 26 .0210 DISHONEST PRACTICE

(a) Registrants shall not:

- (1) knowingly make any deceptive or false statement about another's professional work or maliciously injure or attempt to injure the

- prospects, practice or employment position of those so engaged;
- (2) knowingly make any deceptive or false statements in an application for examination or in any other statements or representations to this Board, to any public agency, to a prospective or actual client, or to another Landscape Architect;
- (3) fail to notify this Board, if registered as a Landscape Architect in North Carolina, of disciplinary action by a Landscape Architectural Board in another jurisdiction.

(b) Because of the inherent conflict of interest with construction services, a landscape architect shall not provide contracting services [Combined Design and Construction (Design-Build) Practice] unless he does the following:

- (1) Uses the term "limited landscape architectural services" in all representations to the public and the client.
- (2) Affixes a notation on each construction drawing and the cover of technical specifications stating "These construction drawings and technical specifications represent the full extent of the limited landscape architectural services provided for this project".

*History Note: Authority G.S. 89A-3.1; 89A-7;
Eff. August 1, 1993;
Amended Eff. November 1, 2005; March 1, 1994.*

CHAPTER 32 – BOARD OF MEDICAL EXAMINERS

21 NCAC 32U .0101 ADMINISTRATION OF VACCINES BY PHARMACISTS

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

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

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
 - (A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
 - (B) the patient at the direction of a physician or pharmacist.
- (3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies

- against an antigen usually equate to immunity to that antigen.
- (4) "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.
- (5) "Board" means the North Carolina Board of Pharmacy.
- (6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.
- (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
- (8) "Medical Practice Act" means the North Carolina Medical Practice Act, G.S. 90-1, et. seq.
- (9) "Physician" means a currently licensed M.D. or D.O. with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.
- (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
- (11) "Vaccine" means a specially prepared antigen, which upon administration to a person may result in immunity.
- (12) Written Protocol--A physician's written order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
- (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;
 - (B) the name of the individual pharmacist authorized to administer vaccines;
 - (C) the immunizations or vaccinations that may be administered by the pharmacist;
 - (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
 - (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
 - (F) locations at which the pharmacist may administer immunizations or vaccinations; and
 - (G) the requirement for annual review of the protocols by the physician and pharmacist.
- (c) Policies and Procedures
- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of influenza and pneumococcal vaccines and the treatment of severe adverse events following administration.
 - (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
 - (3) The pharmacist or pharmacist's agent must give the appropriate, most current vaccine information regarding the purpose, risks, benefits and contraindications of the vaccine to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to him or her, the information provided and has had his or her questions answered prior to administering the vaccine.
 - (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
 - (5) The pharmacist shall not administer vaccines to patients under 18 years of age.
 - (6) The pharmacist shall not administer the pneumococcal vaccine to a patient unless the pharmacist first consults with the patient's primary care provider. In the event the patient does not have a primary care provider, the pharmacist shall not administer the pneumococcal vaccine to the patient.
 - (7) The pharmacist shall report all vaccines administered to the patient's primary care provider and report all vaccines administered to all entities as required by law, including any State registries which may be implemented in the future.
- (d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer vaccines shall:
- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
 - (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
 - (3) maintain documentation of:

- (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
- (B) three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
- (C) current certification specified in Subparagraph (1) of this Paragraph;
- (D) original written physician protocol;
- (E) annual review and revision of original written protocol with physician;
- (F) any problems or complications reported; and
- (G) items specified in Paragraph (g) of this Rule.

(e) Supervising Physician responsibilities. Physicians who enter into a written protocol with a pharmacist to administer vaccines shall:

- (1) be responsible for the formulation or approval and periodic review of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically review the order or protocol and the services provided to a patient under the order or protocol;
- (2) be easily accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide back-up coverage;
- (3) review written protocol with pharmacist at least annually and revise if necessary; and
- (4) receive a periodic status report on the patient, including any problem or complication encountered.

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

- (1) Drugs administered by a pharmacist under the provisions of this Rule shall be in the legal possession of:
 - (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
 - (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;
- (2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;
- (3) Pharmacists while engaged in the administration of vaccines under written

protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and

- (4) After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(g) Record Keeping and Reporting

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

- (A) The name, address, and date of birth of the patient;
- (B) The date of the administration;
- (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
- (D) route of administration of the vaccine;
- (E) The name, manufacturer, lot number, and expiration date of the vaccine;
- (F) Dose administered;
- (G) The name and address of the patient's primary health care provider, as identified by the patient; and
- (H) The name or identifiable initials of the administering pharmacist.

- (2) A pharmacist who administers vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.

(h) Confidentiality.

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

*History Note: Authority G.S. 90-85.3(r);
Emergency Adoption Eff. September 10, 2004;
Temporary Adoption Eff. December 29, 2004;
Eff. November 1, 2005.*

CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0228 CLINICAL NURSE SPECIALIST PRACTICE

(a) A registered nurse who meets the qualifications as outlined in Paragraph (b) of this Rule may be recognized by the Board as a clinical nurse specialist, and perform nursing activities at an advanced skill level as outlined in Paragraph (c) of this Rule.

(b) In order to be recognized as a Clinical Nurse Specialist, the individual shall have an unencumbered license to practice as a registered nurse in North Carolina and meet the following qualifications:

- (1) As of January 1, 2006 has completed a master's level or higher educational program in a clinical nursing specialty as defined in 21 NCAC 36 .0120(9) and consistent with G.S. 90-171.21(d)(4); and
(2) Maintains current certification from a national credentialing body in the clinical nursing specialty approved by the Board of Nursing, as defined in Paragraph (e) of this Rule and 21 NCAC 36. 0120(9).

(c) Clinical nurse specialist scope of practice incorporates the basic components of nursing practice as defined in Rule .0224 of this Section as well as the understanding and application of nursing principles at an advanced level in his/her area of clinical nursing specialization which includes:

- (1) assessing clients' health status, synthesizing and analyzing multiple sources of data, and identifying alternative possibilities as to the nature of a healthcare problem;
(2) diagnosing and managing clients' acute and chronic health problems within a nursing framework;
(3) formulating strategies to promote wellness and prevent illness;
(4) prescribing and implementing therapeutic and corrective nursing measures;
(5) planning for situations beyond the clinical nurse specialist's expertise, and consulting with or referring clients to other health care providers as appropriate;
(6) promoting and practicing in collegial and collaborative relationships with clients, families, other health care professionals and individuals whose decisions influence the health of individual clients, families and communities;
(7) initiating, establishing and utilizing measures to evaluate health care outcomes and modify nursing practice decisions;
(8) assuming leadership for the application of research findings for the improvement of health care outcomes; and
(9) integrating education, consultation, management, leadership and research into the advanced clinical nursing specialist role.

(d) The registered nurse who seeks recognition by the Board as a clinical nurse specialist shall:

- (1) complete the appropriate application, which shall include:
(A) evidence of the appropriate masters, post-master's certificate or doctoral degree as set out in Subparagraph (b)(1) of this Rule; and
(B) evidence of current certification in a clinical nursing specialty from a national credentialing body as set out in Subparagraph (b)(2) of this Rule;
(2) submit a processing fee of twenty-five dollars (\$25.00) to cover the costs of duplicating and distributing the application materials; and
(3) submit evidence of initial certification and re-certification at the time such occurs in order to maintain Board of Nursing recognition consistent with Paragraphs (b) and (e) of this Rule.

(e) The Board of Nursing may approve those national credentialing bodies offering certification and recertification in a clinical nursing specialty which have established the following minimum requirements:

- (1) an unencumbered registered nurse license;
(2) certification as a clinical nurse specialist is limited to masters, post-master's certificate or doctoral prepared applicant effective January 1, 2010; and
(3) 500 hours of clinical experience as a registered nurse in a graduate program in the clinical nursing specialty. For a dual track graduate program, if less than 500 hours per track, a requirement that there must be documentation of any crossover which would justify less than an additional 500 hours for the second track.

History Note: Authority G.S. 90-171.20(4); 90-171.20(7); 90-171.21(d)(4); 90-171.23(b); 90-171.27(b); 90-171.42(b); Eff. April 1, 1996; Amended Eff. November 1, 2005; August 1, 2005; April 1, 2003.

CHAPTER 46 - BOARD OF PHARMACY

21 NCAC 46 .2507 ADMINISTRATION OF VACCINES BY PHARMACISTS

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

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

- (1) "ACPE" means Accreditation Council for Pharmacy Education.
- (2) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion, or other means by:
 - (A) a pharmacist, an authorized agent under his/her supervision, or other person authorized by law; or
 - (B) the patient at the direction of a physician or pharmacist.
- (3) "Antibody" means a protein in the blood that is produced in response to stimulation by a specific antigen. Antibodies help destroy the antigen that produced them. Antibodies against an antigen usually equate to immunity to that antigen.
- (4) "Antigen" means a substance recognized by the body as being foreign; it results in the production of specific antibodies directed against it.
- (5) "Board" means the North Carolina Board of Pharmacy.
- (6) "Confidential record" means any health-related record that contains information that identifies an individual and that is maintained by a pharmacy or pharmacist such as a patient medication record, prescription drug order, or medication order.
- (7) "Immunization" means the act of inducing antibody formation, thus leading to immunity.
- (8) "Medical Practice Act" means G.S. 90-1, et seq.
- (9) "Physician" means a currently licensed M.D. or D.O. with the North Carolina Medical Board who is responsible for the on-going, continuous supervision of the pharmacist pursuant to written protocols between the pharmacist and the physician.
- (10) "Vaccination" means the act of administering any antigen in order to induce immunity; is not synonymous with immunization since vaccination does not imply success.
- (11) "Vaccine" means a specially prepared antigen, which upon administration to a person may result in immunity.
- (12) Written Protocol—A physician's written order, standing medical order, or other order or protocol. A written protocol must be prepared, signed and dated by the physician and pharmacist and contain the following:
 - (A) the name of the individual physician authorized to prescribe drugs and responsible for authorizing the written protocol;

- (B) the name of the individual pharmacist authorized to administer vaccines;
- (C) the immunizations or vaccinations that may be administered by the pharmacist;
- (D) procedures to follow, including any drugs required by the pharmacist for treatment of the patient, in the event of an emergency or severe adverse reaction following vaccine administration;
- (E) the reporting requirements by the pharmacist to the physician issuing the written protocol, including content and time frame;
- (F) locations at which the pharmacist may administer immunizations or vaccinations; and
- (G) the requirement for annual review of the protocols by the physician and pharmacist.

(c) Policies and Procedures.

- (1) Pharmacists must follow a written protocol as specified in Subparagraph (b)(12) of this Rule for administration of influenza and pneumococcal vaccines and the treatment of severe adverse events following administration.
- (2) The pharmacist administering vaccines must maintain written policies and procedures for handling and disposal of used or contaminated equipment and supplies.
- (3) The pharmacist or pharmacist's agent must give the appropriate, most current vaccine information regarding the purpose, risks, benefits, and contraindications of the vaccine to the patient or legal representative with each dose of vaccine. The pharmacist must ensure that the patient or legal representative is available and has read, or has had read to him or her, the information provided and has had his or her questions answered prior to administering the vaccine.
- (4) The pharmacist must report adverse events to the primary care provider as identified by the patient.
- (5) The pharmacist shall not administer vaccines to patients under 18 years of age.
- (6) The pharmacist shall not administer the pneumococcal vaccine to a patient unless the pharmacist first consults with the patient's primary care provider. In the event the patient does not have a primary care provider, the pharmacist shall not administer the pneumococcal vaccine to the patient.
- (7) The pharmacist shall report all vaccines administered to the patient's primary care provider and report all vaccines

administered to all entities as required by law, including any State registries which may be implemented in the future.

(d) Pharmacist requirements. Pharmacists who enter into a written protocol with a physician to administer vaccines shall:

- (1) hold a current provider level cardiopulmonary resuscitation (CPR) certification issued by the American Heart Association or the American Red Cross or equivalent;
- (2) successfully complete a certificate program in the administration of vaccines accredited by the Centers for Disease Control, the ACPE or a similar health authority or professional body approved by the Board;
- (3) maintain documentation of:
 - (A) completion of the initial course specified in Subparagraph (2) of this Paragraph;
 - (B) three hours of continuing education every two years beginning January 1, 2006, which are designed to maintain competency in the disease states, drugs, and administration of vaccines;
 - (C) current certification specified in Subparagraph (1) of this Paragraph;
 - (D) original written physician protocol;
 - (E) annual review and revision of original written protocol with physician;
 - (F) any problems or complications reported; and
 - (G) items specified in Paragraph (g) of this Rule.

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

- (1) be responsible for the formulation or approval and periodic review of the physician's order, standing medical order, standing delegation order, or other order or written protocol and periodically review the order or protocol and the services provided to a patient under the order or protocol;
- (2) be accessible to the pharmacist administering the vaccines or be available through direct telecommunication for consultation, assistance, direction, and provide back-up coverage;
- (3) review written protocol with pharmacist at least annually and revise if necessary; and
- (4) receive a periodic status report on the patient, including any problem or complication encountered.

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

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

- (A) a pharmacy, which shall be the pharmacy responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination; or
- (B) a physician, who shall be responsible for drug accountability, including the maintenance of records of administration of the immunization or vaccination;

(2) Drugs shall be transported and stored at the proper temperatures indicated for each drug;

(3) Pharmacists while engaged in the administration of vaccines under written protocol, may have in their custody and control the vaccines identified in the written protocol and any other drugs listed in the written protocol to treat adverse reactions; and

(4) After administering vaccines at a location other than a pharmacy, the pharmacist shall return all unused prescription medications to the pharmacy or physician responsible for the drugs.

(g) Record Keeping and Reporting.

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

- (A) The name, address, and date of birth of the patient;
- (B) The date of the administration;
- (C) The administration site of injection (e.g., right arm, left leg, right upper arm);
- (D) Route of administration of the vaccine;
- (E) The name, manufacturer, lot number, and expiration date of the vaccine;
- (F) Dose administered;
- (G) The name and address of the patient's primary health care provider, as identified by the patient; and
- (H) The name or identifiable initials of the administering pharmacist.

(2) A pharmacist who administers vaccines shall document annual review with physician of written protocol in the records of the pharmacy that is in possession of the vaccines administered.

(h) Confidentiality.

(1) The pharmacist shall comply with the privacy provisions of the federal Health

Insurance Portability and Accountability Act of 1996 and any rules adopted pursuant to this act.

- (2) The pharmacist shall comply with any other confidentiality provisions of federal or state laws.
- (3) Violations of this Rule by a pharmacist shall constitute grounds by the Board to initiate disciplinary action against the pharmacist.

History Note: Authority G.S. 90-85.3; 90-85.6;
Eff. April 1, 2003;
Emergency Amendment Eff. May 11, 2004;
Temporary Amendment approved by RRC October 21, 2004;
Amended Eff. November 1, 2005; November 1, 2004.

enforcement officers or persons sponsored by law enforcement agencies and may require a student to maintain sponsorship by a law enforcement agency until completion of the program. Policies adopted pursuant to this Paragraph shall be published and made available to students and prospective students.

(c) Any college suspending or expelling a student for non-academic disciplinary purposes shall record the suspension or expulsion in the student's educational record. Upon receipt of a written request signed by the student and subject to all applicable privacy laws, each college shall, in accordance with the student's request, inform other colleges and universities of the term and circumstances of the student's non-academic disciplinary suspension or expulsion, if any. Boards of trustees may adopt policies refusing admission to any applicant during any period of time that the student is suspended or expelled from any other educational entity.

History Note: Authority G.S. 115D-1; 115D-5; 115D-20;
Eff. February 1, 1976;
Amended Eff. January 1, 2006; January 1, 1996; September 1, 1993; January 1, 1987; May 1, 1982.

TITLE 23 – COMMUNITY COLLEGES

23 NCAC 02C .0301 ADMISSION TO COLLEGES

(a) Each college shall maintain an open-door admission policy to all applicants who are high school graduates or who are at least 18 years of age. Student admission processing and placement determination shall be performed by the officials of each college. Admission requirements for an emancipated minor shall be the same as for an applicant 18 years old or older. Provisions with respect to admission of minors are set forth in Rule .0305 of this Section.

(b) Boards of trustees may adopt policies regulating admission and graduation of students enrolled in courses mandated under G.S. 17C, North Carolina Criminal Justice Education and Training Standards Commission, or G.S. 17E, North Carolina Sheriffs' Education and Training Standards Commission. These policies may limit enrollment to law

23 NCAC 02E .0306 HUMAN RESOURCES DEVELOPMENT PROGRAM CONTINUATION

Each college shall operate a Human Resources Development (HRD) program to provide assessment services, employability training, and career development counseling to unemployed and underemployed individuals. FTE shall be generated from HRD programs. Each college shall provide HRD instruction and support necessary for unemployed and dislocated workers to be served within the college service areas.

History Note: Authority G.S. 115D-5;
Eff. November 1, 2005.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday December 15, 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 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
John Tart

RULES REVIEW COMMISSION MEETING DATES

December 15, 2005
February 16, 2006

January 19, 2006
March 16, 2006

RULES REVIEW COMMISSION NOVEMBER 17, 2005 MINUTES

The Rules Review Commission met on Thursday, November 17, 2005, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Graham Bell, Jim Funderburk, Jeffrey Gray, Jennie Hayman; Robert Saunders; Dana Simpson, Lee Settle, John Tart and David Twiddy.

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

The following people attended:

| | |
|---------------------|--|
| Kevin O'Barr | NC Department of Labor |
| Robert Privott | NC Home Builders Association |
| Amy Pickle | Southern Environmental Law Center |
| Christine Wunsche | NCPIRG |
| Diane Miller | NC Department of Justice |
| Cassie Garner | NC Department of Justice |
| Doug Jeremiah | NC Department of Justice |
| Kim Dove | NC Board of Dietetics Nutrition |
| Jon Carr | NC Board of Dietetics Nutrition |
| Grady McCallie | NC Conservation Network |
| James Gulick | NC Department of Justice |
| Andy Ellen | NC Retail Merchants Association |
| George Givens | NC General Assembly |
| Jeff Hudson | NC General Assembly |
| Craig Bromby | Hunton & Williams/NC BASE |
| Rick Zechini | NC Association of Realtors |
| Lisa Martin | NC Home Builders Association |
| Barry Gupton | NC Department of Insurance/Building Code Council |
| Mary Penny Thompson | DENR |
| Joe Moore | NC General Assembly |
| Charles Raynal | Parker Poe Adams & Bernstein LLP |
| Linda Smith | DENR |
| Cindy Rintoul | DENR |
| Herbert Neily | NC State Construction Office |

| | |
|-------------------|--|
| David Cobb | NC Wildlife Resources Commission |
| Jean Stanley | NC Board of Nursing |
| David Kalbackon | NC Board of Nursing |
| Kelly Douglass | NC Wildlife Resources Commission |
| Julie Brincefield | OAH |
| Dana Sholes | OAH |
| Don Laton | NC Department of Justice |
| Thom Allen | DENR/DAQ |
| Nancy Pate | DENR |
| Norman Young | NC Department of Justice/Wildlife Resources Commission |
| Jack Nichols | Allen & Pinnix/Board of Nursing |
| John Hoomani | NC Department of Labor |
| Erin Gould | Department of Labor |
| Ray West | NC BRTL |
| Becky Garrett | NC BRTL |

APPROVAL OF MINUTES

The meeting was called to order at 10:04 a.m. with Chairman Hayman presiding.

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

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the October 20, 2005 meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

10A NCAC 27G .1301; .1701-.1708: Commission for Mental Health – No action was since there has been no official response from the agency. The agency subsequently filed an email confirming their decision and action to republish the rules for comment and hearing.

12 NCAC 9B .0306: Criminal Justice Education & Training Standards – The Commission approved the rewritten rule submitted by the agency.

15A NCAC 2G .0601; .0602: Environmental Management Commission – These rules were returned to the agency upon their request.

15A NCAC 2H .0126; .0150-.0156; .1014-.1019: Environmental Management Commission – These rules were placed at the end of the meeting.

21 NCAC 26 .0211; .0306; .0510: Board of Landscape Architects – The Commission approved the rewritten rules submitted by the agency. Commissioner Gray recused himself from any participation in the discussion or vote on this matter.

LOG OF FILINGS

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

15A NCAC 2D .0101; .0103; .1201; .1404; .1902-1906; .2001; .2301-.2311: Environmental Management Commission - The Commission approved these rules with Commissioner Bell opposed.

15A NCAC 2L .0115: Environmental Management Commission – The Commission approved this rule as rules 15A NCAC 2L .0401-.0417. It was broken down into separate rules based on a technical change request by the Rules Review Commission staff.

21 NCAC 36 .0303: NC Board of Nursing – The Commission objected to the rule due to failure to comply with the Administrative Procedure Act. Paragraph (a) of this rule requires all nursing programs to obtain national accreditation by December 31, 2015.

Among currently non- accredited institutions with nursing programs are many of North Carolina's Community Colleges. There obviously will be a cost in either state or local funds to pay for the effort to achieve accreditation, yet the only fiscal note prepared by the Board indicates no fiscal impact without any explanation. At least one community college estimates a \$12 million impact. It does not appear that the Board has in good faith prepared a fiscal note as required by G.S. 150B-21.4.

21 NCAC 36 .0317: NC Board of Nursing – The Commission objected to the rule due to failure to comply with the Administrative Procedure Act. Paragraph (a) of this rule requires controlling institutions of nursing programs to "provide those...financial

resources... essential to... maintain compliance with Section .0300..." Because of the requirement in .0303 that the programs obtain national accreditation by December 31, 2015, this rule will have an impact on state or local funds. The only fiscal note prepared says the rule will have no impact. This does not appear to be a fiscal note prepared in good faith as required by G.S. 150B-21.4.

21 NCAC 36 .0320: NC Board of Nursing – The Commission objected to the rule due to ambiguity. It is not clear what the final sentence in (b) is attempting to require. It is not clear what the distinction is between “provisional” and “full” admission. In (d) and (f), it is not clear what it means to “publish” policies.

101.2: Building Code Council (Building Code) – The Commission objected to 101.2 due to lack of statutory authority and ambiguity. Exception 3 of this rule is not consistent with G.S. 143-138(b) which exempts farm buildings located outside the building rules jurisdiction of any municipality from the Building Code requirements. Farm buildings are exempt by statute, even if they involve the health and safety of the public. They are also exempt even if they could be considered a business endeavor, although it is not really clear what would constitute a “business endeavor”. For instance, a tobacco farm would surely be considered a farm building and therefore exempt. One would assume that the operation of that tobacco farm would be considered a business endeavor. There is no authority for the Building Code Council to require compliance with technical codes. Because the State Electrical Code is part of the State Building Code, there is also no authority to require farm buildings to comply with it.

1704.1: Building Code Council (Building Code) – The Commission objected to 1704.1 because the provision was not adopted in accordance with Part 2 of Article 2A of the Administrative Procedure Act. The notice of rule-making proceedings notifying the public that the Building Code Council intended to amend the North Carolina Building Code stated that the Council would accept comments until September 12, 2005. On September 12, 2005, Jack L. Cozort, on behalf of the American Council of Engineering Companies of North Carolina submitted written comments to the Council by facsimile transmission. The Secretary to the Council, Barry Gupton, admitted in a letter dated October 3, 2005 to Mr. Cozort that the comments were not considered by the Council. G.S. 150B-21.2(f) states that “[a]n agency must consider fully all written and oral comments received.” The Building Code Council did not comply with this provision. In addition, the Commission determined that the provision adopted by the Council differs substantially from the rule that was originally proposed. G.S. 150B-21.2(g) requires an agency to republish a substantially different rule and accept comments on it for at least 60 days before adopting the rule. The Council did not republish and accept comments on the changed provision.

1805.4.6: Building Code Council (Building Code) – The Commission objected to 1805.4.6 due to lack of statutory authority and ambiguity. There is no authority cited for Item 5. There is no authority for the Building Code Council to set occupational qualifications for who can design wood foundations. They have authority to set the design requirements, but not who can perform the design. In Item 6, it is neither clear what standards the Building Code Council will use in approving a third party inspection agency nor is there any authority cited for the Council to set such standards and determine who can do an inspection.

1806.2: Building Code Council (Building Code) - The Commission objected to 1806.2 due to lack of statutory authority. There is no authority cited for the Council to mandate who can design and construct retaining systems. The authority to set construction requirements does not extend to authority to say who can do it.

1808.2.8.3: Building Code Council (Building Code) – The Commission objected to 1808.2.8.3 due to lack of statutory authority. There is no authority cited for the Council to set occupational requirements for who is able to determine load capacity.

1810.3.7: Building Code Council (Building Code) – The Commission objected to 1810.3.7 due to lack of statutory authority. There is no authority cited for the Council to set occupational requirements for who can certify that pilings are properly installed.

102.10: Building Code Council (Fire Code) – The Commission objected to 102.10 due to lack of statutory authority. Item 2 within 102.10 provides that this code does not apply to “[b]uildings for the use of any farmer or his immediate family” It then goes on, in the last sentence, to remove that exception “[i]f the operation of such can be considered a business endeavor, it shall meet the provisions of the technical codes.” There is no authority for this latter part. N.C.G.S. 143-138(b)(third and fourth paragraphs) expressly states that nothing in the building code article of the General Statutes applies to farm buildings --which would certainly constitute a “business endeavor”: (b) Contents of the Code ... The Code may contain provisions regulating every type of building or structure, wherever it might be situated in the State. Provided further, that nothing in this Article shall be construed to make any building rules applicable to farm buildings located outside the building-rules jurisdiction of any municipality. ...

1001.1: Building Code Council (Mechanical Code) – The Commission objected to 1001.1 due to ambiguity. This rule starts out specifying that this chapter governs boilers, water heaters, and pressure vessels. Then it lists exceptions, presumably meaning that the seven listed exceptions are not subject to these rules. Number 7, while it does appear to exempt the listed (A – C) boilers, is more of an alert that these particular boilers, while not subject to this chapter, is subject to the N.C.G.S. and the Department of Labor Article 7A laws. However, it is not abundantly clear that those boilers are not subject to this chapter as well as not subject to the General Statutes. Then there is a parenthetical exception to the exception in number 7. This is where a further ambiguity arises. It is not clear whether this exception to the exception merely means, i.e. alerts the reader, that one and two family dwellings and apartment houses are not subject to the specified General Statutes even if their boilers fit into (A – C) but are still exempted from the application of this chapter. Or whether it means that any boiler in the specified dwellings or houses are not subject to the General Statutes but are subject to the application of this chapter.

803.5: Building Code Council (Plumbing Code) – The Commission objected to 803.5 due to lack of statutory authority. There is no authority cited for the provision in the first sentence requiring a professional engineer, as opposed to any other person, to select the type of pipe.

TEMPORARY RULES

Chairman Hayman presided over the review of the log of temporary rules. All rules were approved unanimously. The meeting adjourned for a short break at 11:38 a.m.

The meeting reconvened at 11:52 a.m.

STORMWATER RULES

Commissioners Simpson and Saunders recused themselves from any participation in the discussion or votes on the stormwater rules and excused themselves from the meeting.

15A NCAC 2H .0126; .0150-.0156; .1014-.1019 (Stormwater management rules): Environmental Management Commission – Mr. DeLuca reviewed the revisions made by the agency to satisfy the previous objections and recommended approving the rules. Because of a discrepancy between the language in the agency’s letter describing the proposed changes to certain rules and the actual language inserted in the rule, he stated that he did need to determine which term, either “public entity” or “regulated entity” the agency meant. However either term would satisfy the objection and either term would be acceptable. Subsequently Ms. Thompson confirmed that the agency desired to retain the language submitted. Presentations were made by Lisa Martin, Craig Bromby and Rick Zechini in opposition to the rules. Jim Gulick presented the agency’s defense of the revised rules. After questions from the Commissioners and discussion among the Commissioners, Commissioner Funderburk made a motion to accept staff’s recommendation. It was seconded by more than one commissioner. The motion was passed on a 5-2 vote. Commissioners Funderburk, Settle, Tart, Twiddy, and Chairman Hayman voted to approve the rules with Commissioners Bell and Gray opposed.

To the extent that there may be any discrepancy or questions about these minutes, the tape of the meeting is the best record of the meeting.

COMMISSION PROCEDURES AND OTHER BUSINESS

Mr. DeLuca informed the Commission of the Court of Appeals decision in favor of the RRC in the Pharmacy Board lawsuit. He stated he did not know if the Pharmacy Board would appeal.

The meeting adjourned at 1:37 p.m.

The next scheduled meeting of the Commission is Thursday, December 15, 2005 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

LIST OF APPROVED PERMANENT RULES
November 17, 2005 Meeting

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

Professional Lecturer Certification 12 NCAC 09B .0306

LABOR, DEPARTMENT OF

Life Safety Code 13 NCAC 07F .0102

ENVIRONMENTAL MANAGEMENT COMMISSION

Definitions 15A NCAC 02D .0101

Copies of Referenced Federal Regulations 15A NCAC 02D .0103

Purpose and Scope 15A NCAC 02D .1201

Recordkeeping: Reporting: Monitoring 15A NCAC 02D .1404

Definitions 15A NCAC 02D .1902

Permissible Open Burning Without an Air Quality Permit 15A NCAC 02D .1903

Air Curtain Burners 15A NCAC 02D .1904

| | |
|---|--------------------|
| <u>Regional Office Locations</u> | 15A NCAC 02D .1905 |
| <u>Delegation to County Governments</u> | 15A NCAC 02D .1906 |
| <u>Purpose, Scope, and Applicability</u> | 15A NCAC 02D .2001 |
| <u>Purpose</u> | 15A NCAC 02D .2301 |
| <u>Definitions</u> | 15A NCAC 02D .2302 |
| <u>Applicability and Eligibility</u> | 15A NCAC 02D .2303 |
| <u>Qualification of Emission Reduction Credits</u> | 15A NCAC 02D .2304 |
| <u>Creating and Banking Emission Reduction</u> | 15A NCAC 02D .2305 |
| <u>Duration of Emission Reduction Credits</u> | 15A NCAC 02D .2306 |
| <u>Use of Emission Reduction Credits</u> | 15A NCAC 02D .2307 |
| <u>Certificates and Registry</u> | 15A NCAC 02D .2308 |
| <u>Transferring Emission Reduction Credits</u> | 15A NCAC 02D .2309 |
| <u>Revocation and Changes of Emission</u> | 15A NCAC 02D .2310 |
| <u>Monitoring</u> | 15A NCAC 02D .2311 |
| <u>Stormwater Discharges</u> | 15A NCAC 02H .0126 |
| <u>Definitions</u> | 15A NCAC 02H .0150 |
| <u>Public Entity Designations</u> | 15A NCAC 02H .0151 |
| <u>Petitions</u> | 15A NCAC 02H .0152 |
| <u>Application Schedule and Required Contents</u> | 15A NCAC 02H .0153 |
| <u>Implementation Schedule</u> | 15A NCAC 02H .0154 |
| <u>Post-construction Model Practices</u> | 15A NCAC 02H .0155 |
| <u>Exceptions</u> | 15A NCAC 02H .0156 |
| <u>Stormwater Management for Urbanized Areas</u> | 15A NCAC 02H .1014 |
| <u>Urbanizing Area Definitions</u> | 15A NCAC 02H .1015 |
| <u>Urbanizing County Designations</u> | 15A NCAC 02H .1016 |
| <u>Application Schedule and Required Contents</u> | 15A NCAC 02H .1017 |
| <u>Post-Construction Model Practices</u> | 15A NCAC 02H .1018 |
| <u>Exceptions</u> | 15A NCAC 02H .1019 |
| <u>Purpose and Scope</u> | 15A NCAC 02L .0401 |
| <u>Definitions</u> | 15A NCAC 02L .0402 |
| <u>Rule Application</u> | 15A NCAC 02L .0403 |
| <u>Required Initial Abatement Actions By Responsible Party</u> | 15A NCAC 02L .0404 |
| <u>Requirements for Limited Site Assessment</u> | 15A NCAC 02L .0405 |
| <u>Discharge or Release Classifications</u> | 15A NCAC 02L .0406 |
| <u>Reclassification of Risk Levels</u> | 15A NCAC 02L .0407 |
| <u>Assessment and Remediation</u> | 15A NCAC 02L .0408 |
| <u>Notification Requirements</u> | 15A NCAC 02L .0409 |
| <u>Departmental Listing of Discharges or Releases</u> | 15A NCAC 02L .0410 |
| <u>Establishing Maximum Soil</u> | 15A NCAC 02L .0411 |
| <u>Analytical Procedures for Soil Samples</u> | 15A NCAC 02L .0412 |
| <u>Analytical Procedures for Ground Water Samples</u> | 15A NCAC 02L .0413 |
| <u>Required Laboratory Certification</u> | 15A NCAC 02L .0414 |
| <u>Discharges or Releases from Other Sources</u> | 15A NCAC 02L .0415 |
| <u>Eligibility of Sites to Continue Remediation Under Rules ...</u> | 15A NCAC 02L .0416 |
| <u>Establishing Cleanup Requirements for Sites Eligible to C...</u> | 15A NCAC 02L .0417 |
| <u>Required Air Quality Permits</u> | 15A NCAC 02Q .0101 |
| <u>Definitions</u> | 15A NCAC 02Q .0103 |

| | |
|---|--------------------|
| <u>Copies of Referenced Documents</u> | 15A NCAC 02Q .0105 |
| <u>Applicability</u> | 15A NCAC 02Q .0301 |
| <u>Applications</u> | 15A NCAC 02Q .0304 |
| <u>Application Submittal Content</u> | 15A NCAC 02Q .0305 |
| <u>Permit Content</u> | 15A NCAC 02Q .0508 |
| <u>Changes Not Requiring Permit Revisions</u> | 15A NCAC 02Q .0523 |
| <u>Modifications</u> | 15A NCAC 02Q .0706 |
| <u>Peak Shaving Generators</u> | 15A NCAC 02Q .0808 |
| <u>Air Curtain Burners</u> | 15A NCAC 02Q .0810 |

WILDLIFE RESOURCES COMMISSION

| | |
|-----------------------------|--------------------|
| <u>General Requirements</u> | 15A NCAC 10H .0301 |
| <u>Minimum Standards</u> | 15A NCAC 10H .0302 |

HEALTH SERVICES, COMMISSION FOR

| | |
|---------------------------------|--------------------|
| <u>Spas and Hot Tubs</u> | 15A NCAC 18A .2532 |
| <u>Suction Hazard Reduction</u> | 15A NCAC 18A .2539 |
| <u>Grading</u> | 15A NCAC 18A .2606 |
| <u>Shellfish</u> | 15A NCAC 18A .2612 |

DIETETICS/NUTRITION, BOARD OF

| | |
|----------------------------|------------------|
| <u>Electronic Practice</u> | 21 NCAC 17 .0403 |
|----------------------------|------------------|

LANDSCAPE ARCHITECTS, BOARD OF

| | |
|---------------------------------------|------------------|
| <u>Incompetence</u> | 21 NCAC 26 .0211 |
| <u>Reinstatement After Revocation</u> | 21 NCAC 26 .0306 |
| <u>Disciplinary Review</u> | 21 NCAC 26 .0510 |

NURSING, BOARD OF

| | |
|--|------------------|
| <u>Definitions</u> | 21 NCAC 36 .0120 |
| <u>Licensure Without Examination (By Endorsement)</u> | 21 NCAC 36 .0218 |
| <u>Establishment of a Nursing Program Initial Approval</u> | 21 NCAC 36 .0302 |
| <u>Process for Closure of a Program</u> | 21 NCAC 36 .0309 |
| <u>Curriculum</u> | 21 NCAC 36 .0321 |
| <u>Records and Reports</u> | 21 NCAC 36 .0323 |
| <u>Experimental Approaches</u> | 21 NCAC 36 .0324 |

BUILDING CODE COUNCIL

| | | |
|----------------------------|--------|------------|
| <u>2006 NC Energy Code</u> | 041214 | Item B-2 C |
| Adopt/* | | |
| <u>2006 NC Gas Code</u> | 041214 | Item B-2 E |
| Adopt/* | | |

**AGENDA
RULES REVIEW COMMISSION
December 15, 2005, 10:00 A.M.**

- I. Review of minutes of last meeting
 - II. Follow-Up Matters
 - A. Commission for Mental Health – 10A NCAC 27G .1301; .1701-.1708; (DeLuca)
 - B. Board of Nursing – 21 NCAC 36 .0303; .0317; .0320 (Bryan)
 - C. Building Code Council – Building Code Sections: 101.2; 1704.1; 1805.4.6; 1806.2; 1808.2.8.3; 1810.3.7 (Bryan)
 - D. Building Code Council – Fire Code Sections: 102.10 (DeLuca)
 - E. Building Code Council – Mechanical Code Section: 1001.1 (DeLuca)
 - F. Building Code Council – Plumbing Code Section: 803.5 (DeLuca)
 - III. Review of Rules (Log Report #228)
 - IV. Review of Temporary Rules (If any)
 - V. Commission Business
 - VI. Next meeting: January 19, 2005
-

**Commission Review/Permanent Rules
Log of Filings
October 21, 2005 through November 21, 2005**

* Approval Recommended, ** Objection Recommended, *** Other

GOVERNOR/COUNCIL OF STATE/STATE PROPERTY OFFICE

The rules in Chapter 6 are rules dealing with state property and construction.

The rules in Subchapter 6B rules relate to real property including general provisions (.0100); acquisition of real property (.0200); disposition of real property (.0300); easements to fill (.0500); other easements over water (.0600); assessments against lands owned by the state (.0700); and relocation and financial assistance (.0800).

Leases at State Fairgrounds and WNC AG Center
Amend/*

01 NCAC 06B .0307

COMMERCE, DEPARTMENT OF

The rules in Chapter 1 are departmental rules including rulemaking, personnel, revenue bonds, loan programs, and tax credit programs provisions.

The rules in Subchapter 1N establish the Hurricane Recovery Act of 2005 business recovery programs.

Scope
Adopt/*

04 NCAC 01N .0101

| | |
|---|-------------------|
| <u>Eligibility</u> Adopt/* | 04 NCAC 01N .0102 |
| <u>Benefits Under the Interest Rebate Program</u> Adopt/* | 04 NCAC 01N .0103 |
| <u>Benefits Under the Business Recovery Loan Program</u> Adopt/* | 04 NCAC 01N .0104 |
| <u>Procedures for Interest Rebate for SBA Borrowers</u> Adopt/* | 04 NCAC 01N .0105 |
| <u>Procedures for the Business Recovery Loan Program</u> Adopt/* | 04 NCAC 01N .0106 |
| <u>Appeal</u> Adopt/* | 04 NCAC 01N .0107 |

CHILD CARE COMMISSION

The Rules in Chapter 9 are child care rules including definitions (.0100); general provision relating to licensing (.0200); procedures for obtaining a license (.0300); issuance of provisional and temporary licenses (.0400); age appropriate activities for centers (.0500); safety requirements for child care centers (.0600); health and other standards for center staff (.0700); health standards for children; (.0800); nutrition standards (.0900); transportation standards (.1000); building code requirements for child care centers (.1300); space requirements (.1400); temporary care requirements (.1500); requirements for voluntary enhanced program standards (.1600); family child care home requirements (.1700); discipline (.1800); special procedures concerning abuse/neglect in child care (.1900); rulemaking and contested case procedures (.0200); religious sponsored child care center requirements (.2100); administrative actions and penalties (.2200); forms (.2300); child care for mildly ill children (.2700); child care for school age children (.2500); criminal records checks (.2700) and voluntary rated licenses (.2800).

| | |
|--|-------------------|
| <u>Pre-Licensing Requirements</u> Amend/* | 10A NCAC 09 .0301 |
| <u>In-Service Training Requirements</u> Amend/* | 10A NCAC 09 .0707 |
| <u>Staff/Child Ratios for Centers With A Licensed Capacity o...</u> Amend/* | 10A NCAC 09 .0712 |
| <u>Staff/Child Ratios for Centers With A Licensed Capacity o...</u> Amend/* | 10A NCAC 09 .0713 |
| <u>Staff/Child Ratios</u> Amend/* | 10A NCAC 09 .1606 |
| <u>General Provisions Related to Licensure of Homes</u> Amend/* | 10A NCAC 09 .1701 |
| <u>Requirements for Daily Operations</u> Amend/* | 10A NCAC 09 .1718 |
| <u>Administrative Penalties General Provision</u> Amend/* | 10A NCAC 09 .2201 |
| <u>Program Standards for a Rated License for Child Care Centers</u> Amend/* | 10A NCAC 09 .2803 |

SOCIAL SERVICES COMMISSION

The rules in Chapter 67 are procedural rules from the Social Services Commission.

The rules in Subchapter 67B are contract services rules including rules about identifying information (.0100); application (repealed)(.0200); fees (repealed)(.0300); contact requirements (repealed)(.0400); and reimbursement for purchased services (repealed)(.0500).

| | |
|---|--------------------|
| <u>Application Requirements</u> Repeal/* | 10A NCAC 67B .0201 |
|---|--------------------|

| | |
|---|--------------------|
| <u>Guidelines for Application</u> Repeal/* | 10A NCAC 67B .0202 |
| <u>Approval by County</u> Repeal/* | 10A NCAC 67B .0203 |
| <u>Processing Applications</u> Repeal/* | 10A NCAC 67B .0204 |
| <u>Administrative Fees</u> Repeal/* | 10A NCAC 67B .0301 |
| <u>Certification Fee</u> Repeal/* | 10A NCAC 67B .0302 |
| <u>Private Organizations</u> Repeal/* | 10A NCAC 67B .0401 |
| <u>Contribution of Matching Funds</u> Repeal/* | 10A NCAC 67B .0402 |
| <u>Monitoring</u> Repeal/* | 10A NCAC 67B .0403 |
| <u>Monitoring Forms</u> Repeal/* | 10A NCAC 67B .0404 |
| <u>Purchase Contracts</u> Repeal/* | 10A NCAC 67B .0501 |
| <u>Vendor Agreement</u> Repeal/* | 10A NCAC 67B .0502 |
| <u>Budgets</u> Repeal/* | 10A NCAC 67B .0503 |
| <u>Internal Budget Revisions</u> Repeal/* | 10A NCAC 67B .0504 |
| <u>Reimbursement Methods</u> Repeal/* | 10A NCAC 67B .0505 |

SHERIFFS EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 10 are from the N.C. Sheriffs' Education and Training Standards Commission.

The rules in Subchapter 10B govern the commission organization and procedure (.0100); enforcement rules (.0200); minimum standards for employment as a justice officer (deputy or jailer) (.0300); certification of justice officers (.0400); standards and accreditation for justice officers schools, training programs, and the instructors (.0500-.0900); certificate and awards programs for sheriffs, deputies, justice officers, jailers, reserve officers, and telecommunicators (.1000-.1700); in-service training (.2000); and firearms in-service training and re-qualification (.2100).

| | |
|---|-------------------|
| <u>Definitions</u> Amend/* | 12 NCAC 10B .0103 |
| <u>Suspension: Revocation: or Denial of Certification</u> Amend/* | 12 NCAC 10B .0204 |
| <u>Period of Suspension: Revocation: or Denial</u> Amend/* | 12 NCAC 10B .0205 |
| <u>Minimum Standards for Justice Officers</u> Amend/* | 12 NCAC 10B .0301 |
| <u>Basic Law Enforcement Training Course for Deputies</u> Amend/* | 12 NCAC 10B .0502 |
| <u>Time Req/Completion/Basic Law Enforcement Training Course</u> Amend/* | 12 NCAC 10B .0503 |
| <u>Waiver of Completion of Training</u> Amend/* | 12 NCAC 10B .0504 |

| | | | | |
|--|----|------|-----|-------|
| <u>Detention Officer Certification Course</u> Amend/* | 12 | NCAC | 10B | .0601 |
| <u>Evaluation for Training Waiver</u> Amend/* | 12 | NCAC | 10B | .0603 |
| <u>Administration of Detention Officer Certification Course</u> Amend/* | 12 | NCAC | 10B | .0703 |
| <u>Responsibilities: School Directors</u> Amend/* | 12 | NCAC | 10B | .0704 |
| <u>Responsibilities: School Directors, Telecommunicator Cert...</u> Amend/* | 12 | NCAC | 10B | .0709 |
| <u>Terms and Conditions of Detention Officer Instructor Cert...</u> Amend/* | 12 | NCAC | 10B | .0905 |
| <u>Terms and Conditions of Professional Lecturer Cert</u> Amend/* | 12 | NCAC | 10B | .0907 |
| <u>Limited Lecturer Certification</u> Amend/* | 12 | NCAC | 10B | .0908 |
| <u>Terms and Conditions of a Limited Lecturer Certification</u> Amend/* | 12 | NCAC | 10B | .0909 |
| <u>Terms and Conditions of Telecommunicator Instructor Certi...</u> Amend/* | 12 | NCAC | 10B | .0915 |
| <u>Terms and Conditions of Professional Lecturer Cert. Telec...</u> Adopt/* | 12 | NCAC | 10B | .0917 |
| <u>General Provisions</u> Amend/* | 12 | NCAC | 10B | .1002 |
| <u>General Provisions</u> Amend/* | 12 | NCAC | 10B | .1102 |
| <u>General Provisions</u> Amend/* | 12 | NCAC | 10B | .1202 |
| <u>General Provisions</u> Amend/* | 12 | NCAC | 10B | .1402 |
| <u>General Provisions</u> Amend/* | 12 | NCAC | 10B | .1502 |
| <u>Sheriff Responsibilities</u> Amend/* | 12 | NCAC | 10B | .1701 |
| <u>Domestic Violence In-Service Training Program Specifications</u> Amend/* | 12 | NCAC | 10B | .1704 |
| <u>Failure to Complete in-Service Domestic Violence Training...</u> Amend/* | 12 | NCAC | 10B | .1705 |
| <u>Sheriff Responsibilities</u> Adopt/* | 12 | NCAC | 10B | .1801 |
| <u>Instructors</u> Adopt/* | 12 | NCAC | 10B | .1802 |
| <u>Minimum Training Requirements</u> Adopt/* | 12 | NCAC | 10B | .1803 |
| <u>Law Enforcement In-Service Training Program Specifications</u> Adopt/* | 12 | NCAC | 10B | .1804 |
| <u>Failure to Complete Law Enforcement Training Program</u> Adopt/* | 12 | NCAC | 10B | .1805 |
| <u>In-Service Training Coordinator</u> Adopt/* | 12 | NCAC | 10B | .1806 |
| <u>Topical Areas</u> Amend/* | 12 | NCAC | 10B | .2002 |

In-Service Firearms Requalification Specifications 12 NCAC 10B .2104
Amend/*

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 1 are general rules covering the department, its organization, and certain specific programs.

The Subchapter 1R rules concern the North Carolina aquariums including fees (.0100).

Fee Schedule 15A NCAC 01R .0101
Amend/*

EDUCATION, STATE BOARD OF

The rules in Chapter 6 cover elementary and secondary education including transportation, personnel, curriculum, textbooks, testing, students, public relations, and federal programs.

The rules in Subchapter 6C are personnel rules including general provisions (.0100); teacher education (.0200); certification (.0300); leave (.0400); performance appraisal (.0500); and code of professional practice and conduct (.0600).

License Patterns 16 NCAC 06C .0304
Amend/*

Licenses for Non-Teacher Education Graduates 16 NCAC 06C .0305
Amend/*

License Renewal 16 NCAC 06C .0307
Amend/*

The rules in Subchapter 6D cover instruction including curriculum (.0100), textbooks (.0200), testing programs (.0300), and accountability standards and graduation requirements (.0500).

Testing Requirements and Opportunities 16 NCAC 06D .0301
Amend/*

End-of-Course Assessments 16 NCAC 06D .0305
Amend/*

Definitions 16 NCAC 06D .0501
Amend/*

Student Accountability Standards 16 NCAC 06D .0502
Amend/*

State Graduation Requirements 16 NCAC 06D .0503
Amend/*

The rules in Subchapter 6G relate to education agency relations including rules about the school-based management and accountability program (.0300) and charter schools (.0500).

Definitions 16 NCAC 06G .0305
Amend/*

Annual Performance Standards 16 NCAC 06G .0312
Amend/*

CERTIFIED PUBLIC ACCOUNTANT EXAMINERS, BOARD OF

The rules in Chapter 8 are from the N C State Board of Certified Public Accountant Examiners.

The rules in Subchapter 8A are departmental rules including organizational rules (.0100), board procedures (.0200), and definitions (.0300).

| | | | | |
|---|----|------|-----|-------|
| <u>Definitions</u> | 21 | NCAC | 08A | .0301 |
| Amend/* | | | | |
| <u>Holding Out to the Public</u> | 21 | NCAC | 08A | .0308 |
| Amend/* | | | | |
| <u>Emphasis in Taxation or Accounting</u> | 21 | NCAC | 08A | .0311 |
| Repeal/* | | | | |

The rules in Subchapter 8F are the requirements for CPA examination and certificate applicants including general provisions (.0100), fees and refunds (.0200), educational requirements (.0300), experience (.0400), and applications (.0500).

| | | | | |
|---|----|------|-----|-------|
| <u>Filing of Examination Applications and Fees</u> | 21 | NCAC | 08F | .0103 |
| Amend/* | | | | |
| <u>Conditioning Requirements</u> | 21 | NCAC | 08F | .0105 |
| Amend/* | | | | |
| <u>Granting Examination Credit From Other Jurisdictions</u> | 21 | NCAC | 08F | .0106 |
| Amend/* | | | | |
| <u>Communication of Results of CPA Examinations</u> | 21 | NCAC | 08F | .0107 |
| Amend/* | | | | |
| <u>Proctoring Other Jurisdictions' Candidates</u> | 21 | NCAC | 08F | .0110 |
| Repeal/* | | | | |
| <u>Candidate's Request To Sit In Another Jurisdiction</u> | 21 | NCAC | 08F | .0112 |
| Repeal/* | | | | |
| <u>Waiver of Education Required Prior to Examination</u> | 21 | NCAC | 08F | .0304 |
| Amend/* | | | | |
| <u>Work Experience Required of Candidates for CPA Certification</u> | 21 | NCAC | 08F | .0401 |
| Amend/* | | | | |
| <u>Satisfaction of Experience Requirement by Teaching</u> | 21 | NCAC | 08F | .0409 |
| Amend/* | | | | |
| <u>Education Required of Candidates for CPA Certification</u> | 21 | NCAC | 08F | .0410 |
| Amend/* | | | | |

The rules in Subchapter 8G are the continuing professional education requirements including general provisions (.0100); responsibilities to clients and colleagues (.0200); and other responsibilities and requirements (.0300 and .0400).

| | | | | |
|--|----|------|-----|-------|
| <u>Professional Ethics and Conduct CPE</u> | 21 | NCAC | 08G | .0410 |
| Amend/* | | | | |

The rules in Subchapter 8H are reciprocity rules.

| | | | | |
|--------------------------------|----|------|-----|-------|
| <u>Reciprocal Certificates</u> | 21 | NCAC | 08H | .0101 |
| Amend/* | | | | |
| <u>Use of CPA Title</u> | 21 | NCAC | 08H | .0105 |
| Amend/* | | | | |

The rules in Subchapter 8M relate to the State Quality Review program including general requirements (.0100), duties of the reviewed firm (.0200), review team qualifications and duties (.0300), and advisory committee (.0400).

| | | | | |
|---------------------------------|----|------|-----|-------|
| <u>Peer Review Requirements</u> | 21 | NCAC | 08M | .0105 |
| Amend/* | | | | |

| | | | | |
|--|----|------|-----|-------|
| <u>Compliance</u> Amend/* | 21 | NCAC | 08M | .0106 |
| <p>The rules in Subchapter 8N are professional ethics and conduct rules including scope and applicability (.0100), rules applicable to all CPAs (.0200), rules applicable to CPAs who use the CPA title in offering or rendering products or services to clients (.0300), and rules applicable to CPAs performing attest services (.0400).</p> | | | | |
| <u>Responsibility For Compliance By Others</u> Amend/* | 21 | NCAC | 08N | .0103 |
| <u>Discipline By Federal And State Authorities</u> Amend/* | 21 | NCAC | 08N | .0204 |
| <u>Reporting Convictions Judgments and Disciplinary Actions</u> Amend/* | 21 | NCAC | 08N | .0208 |
| <u>Other Rules</u> Amend/* | 21 | NCAC | 08N | .0213 |
| <u>Outsourcing To Third-Party Service Providers</u> Adopt/* | 21 | NCAC | 08N | .0214 |
| <u>Forms of Practice</u> Amend/* | 21 | NCAC | 08N | .0302 |
| <u>Objectivity and Conflicts of Interest</u> Amend/* | 21 | NCAC | 08N | .0303 |
| <u>Consulting Services Standards</u> Amend/* | 21 | NCAC | 08N | .0304 |
| <u>Retention of Client Records</u> Amend/* | 21 | NCAC | 08N | .0305 |
| <u>CPA Firm Names</u> Amend/* | 21 | NCAC | 08N | .0307 |
| <u>Valuation Services Standards</u> Adopt/* | 21 | NCAC | 08N | .0308 |
| <u>Public Reliance</u> Amend/* | 21 | NCAC | 08N | .0401 |
| <u>Peer Review Standards</u> Amend/* | 21 | NCAC | 08N | .0408 |

COSMETIC ART EXAMINERS, BOARD OF

The rules in Chapter 14 are from the Cosmetic Art Examiners.

The rules being repealed in Subchapter 14M all relate to forms.

| | | | | |
|---------------------------------|----|------|-----|-------|
| <u>Designations</u> Repeal/* | 21 | NCAC | 14M | .0101 |
| <u>Form COS-1</u> Repeal/* | 21 | NCAC | 14M | .0102 |
| <u>Form COS-2</u> Repeal/* | 21 | NCAC | 14M | .0103 |
| <u>Form COS-3</u> Repeal/* | 21 | NCAC | 14M | .0104 |
| <u>Form COS-4</u> Repeal/* | 21 | NCAC | 14M | .0105 |
| <u>Form COS-5</u> Repeal/* | 21 | NCAC | 14M | .0106 |
| <u>Form COS-6</u> | 21 | NCAC | 14M | .0107 |

| | | | | | |
|------------------------|----|------|-----|-------|--|
| Repeal/* | | | | | |
| <u>Form COS-7</u> | 21 | NCAC | 14M | .0108 | |
| Repeal/* | | | | | |
| <u>Form COS-8</u> | 21 | NCAC | 14M | .0109 | |
| Repeal/* | | | | | |
| <u>Form COS-9</u> | 21 | NCAC | 14M | .0110 | |
| Repeal/* | | | | | |
| <u>Form COS-10</u> | 21 | NCAC | 14M | .0111 | |
| Repeal/* | | | | | |
| <u>Form COS-11</u> | 21 | NCAC | 14M | .0112 | |
| Repeal/* | | | | | |
| <u>Form COS-12</u> | 21 | NCAC | 14M | .0113 | |
| Repeal/* | | | | | |
| <u>Copies</u> | 21 | NCAC | 14M | .0114 | |
| Repeal/* | | | | | |
| <u>Access to Forms</u> | 21 | NCAC | 14M | .0115 | |
| Repeal/* | | | | | |
| <u>Form COS-13</u> | 21 | NCAC | 14M | .0116 | |
| Repeal/* | | | | | |
| <u>Form COS-14</u> | 21 | NCAC | 14M | .0117 | |
| Repeal/* | | | | | |
| <u>Form COS-15</u> | 21 | NCAC | 14M | .0118 | |
| Repeal/* | | | | | |
| <u>Form COS-16</u> | 21 | NCAC | 14M | .0119 | |
| Repeal/* | | | | | |
| <u>Form COS-17</u> | 21 | NCAC | 14M | .0120 | |
| Repeal/* | | | | | |
| <u>Form COS-18</u> | 21 | NCAC | 14M | .0121 | |
| Repeal/* | | | | | |
| <u>Form COS-19</u> | 21 | NCAC | 14M | .0122 | |
| Repeal/* | | | | | |
| <u>Form COS-20</u> | 21 | NCAC | 14M | .0123 | |
| Repeal/* | | | | | |
| <u>Form COS-21</u> | 21 | NCAC | 14M | .0124 | |
| Repeal/* | | | | | |
| <u>Form COS-22</u> | 21 | NCAC | 14M | .0125 | |
| Repeal/* | | | | | |
| <u>Form COS-23</u> | 21 | NCAC | 14M | .0126 | |
| Repeal/* | | | | | |
| <u>Form COS-24</u> | 21 | NCAC | 14M | .0127 | |
| Repeal/* | | | | | |
| <u>Form COS-25</u> | 21 | NCAC | 14M | .0128 | |
| Repeal/* | | | | | |
| <u>Form COS-26</u> | 21 | NCAC | 14M | .0129 | |
| Repeal/* | | | | | |
| <u>Form COS-27</u> | 21 | NCAC | 14M | .0130 | |
| Repeal/* | | | | | |
| <u>Form COS-28</u> | 21 | NCAC | 14M | .0131 | |
| Repeal/* | | | | | |
| <u>Form COS-29</u> | 21 | NCAC | 14M | .0132 | |
| Repeal/* | | | | | |
| <u>Form COS-30</u> | 21 | NCAC | 14M | .0133 | |

Repeal/*
Form COS-31 21 NCAC 14M .0134
 Repeal/*

The rules in Subchapter 14N deal with examinations including general provisions (.0100), cosmetologist exam (.0200), manicurist exam (.0300), cosmetologist teacher exam (.0400), and manicurist teach examination (.0500), esthetician examination (.0600), and esthetician teacher examination (.0700).

Time and Place of Examinations 21 NCAC 14N .0101
 Repeal/*
Initial Application and Fees 21 NCAC 14N .0102
 Amend/*
General Examination Instructions 21 NCAC 14N .0103
 Amend/*
Live Model Requirements 21 NCAC 14N .0104
 Repeal/*
Mannequin Requirements 21 NCAC 14N .0105
 Repeal/*
Failure to Appear for Examination 21 NCAC 14N .0108
 Repeal/*
Observation of Examination by Third Parties 21 NCAC 14N .0109
 Repeal/*
Notification of Examination Results 21 NCAC 14N .0111
 Amend/*
Review of Examination 21 NCAC 14N .0112
 Repeal/*
Re-examination 21 NCAC 14N .0113
 Amend/*
Failure to Comply with Chapter 21 NCAC 14N .0114
 Repeal/*
Examination-Theory Section 21 NCAC 14N .0201
 Repeal/*
Examination-Practical Section 21 NCAC 14N .0202
 Repeal/*
Examination-Theory Section 21 NCAC 14N .0301
 Repeal/*
Examination-Practical Section 21 NCAC 14N .0302
 Repeal/*
Examination-Theory Section 21 NCAC 14N .0401
 Repeal/*
Examination-Practical Section 21 NCAC 14N .0402
 Repeal/*
Examination-Theory Section 21 NCAC 14N .0501
 Repeal/*
Examination-Practical Section 21 NCAC 14N .0502
 Repeal/*
Examination-Theory Section 21 NCAC 14N .0601
 Repeal/*
Examination-Practical Section 21 NCAC 14N .0602
 Repeal/*
Examination-Theory Section 21 NCAC 14N .0701
 Repeal/*

Examination-Practical Section 21 NCAC 14N .0702
 Repeal/*

The rules in Subchapter 14O are esthetician curriculum rules.

Uniforms 21 NCAC 14O .0101
 Amend/*

The rules in Subchapter 14P are civil penalty rules.

Renewals Expired Licenses Required 21 NCAC 14P .0105
 Amend/*

Revocation of Licenses and Other Disciplinary Measures 21 NCAC 14P .0108
 Amend/*

Sanitary Ratings and Posting of Ratings 21 NCAC 14P .0112
 Amend/*

The rules in Subchapter 14R are continuing education rules.

Continuing Education Requirements 21 NCAC 14R .0101
 Amend/*

Criteria for Continuing Education Courses 21 NCAC 14R .0103
 Amend/*

ELECTRICAL CONTRACTORS, BOARD OF EXAMINERS OF

The rules in Chapter 18 are from the State Board of Examiners of Electrical Contractors. The rules in Chapter 18B are from the Board of Electrical Contractors including general provisions (.0100); examinations and qualifications (.0200); terms and definitions applicable to licensing (.0300); licensing requirements (.0400); reciprocal licensing agreements with other states (.0700); special restricted licenses (.0800); violations and contested case hearings (.0900); forms, certificates, and publications of the board (.1000); and continuing education courses and requirements (.1100).

Principal Office Mailing Address 21 NCAC 18B .0101
 Amend/*

Authorized Legal Action by Staff 21 NCAC 18B .0104
 Amend/*

Examinations 21 NCAC 18B .0204
 Amend/*

Waiting Period Between Examinations 21 NCAC 18B .0211
 Amend/*

Continuing Education Requirements Listed Qualified Indivi... 21 NCAC 18B .1101
 Amend/*

Minimum Requirements for Course Sponsor Approval 21 NCAC 18B .1102
 Amend/*

Minimum Requirements for Course Instructor Approval 21 NCAC 18B .1103
 Amend/*

Contact Hours 21 NCAC 18B .1104
 Amend/*

Computation of Continuing Education Hours 21 NCAC 18B .1105
 Amend/*

List of Approved Course Sponsors and Instructors 21 NCAC 18B .1106
 Amend/*

VETERINARY MEDICAL BOARD

The rules in Chapter 66 are from the Veterinary Medical Board and include rules about statutory and administrative provisions (.0100); practice of veterinary medicine (.0200); examination and licensing procedures (.0300); and administrative hearings (.0600 and .0700).

Name and Location of Board 21 NCAC 66 .0101
Amend/*

ADMINISTRATIVE HEARINGS, OFFICE OF

The rules in Chapter 2 are from the rules division and cover publication of The North Carolina Administrative Code (NCAC) and the North Carolina Register (NCR).

The rules in Subchapter 2C are the submission procedures for rules and other documents to be published in the North Carolina Register and the North Carolina Administrative Code including general provisions (.0100), codification of rules (.0200), the Register (.0300), the Administrative Code (.0400), and temporary rules (.0500).

Electronic Version 26 NCAC 02C .0105
Amend/*

General Format Instructions 26 NCAC 02C .0108
Amend/*

Electronic Filing 26 NCAC 02C .0308
Adopt/*

Body of the Rule 26 NCAC 02C .0405
Amend/*

The rules in Chapter 3 are from the Hearings Division and cover procedure (.0100), mediated settlement conferences (.0200), and expedited hearing procedures for complex contested cases (.0300).

General 26 NCAC 03 .0101
Amend/*

CONTESTED CASE DECISIONS

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

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

*Sammie Chess Jr.
Beecher R. Gray
Melissa Owens Lassiter*

*James L. Conner, II
Beryl E. Wade
A. B. Elkins II*

| <u>AGENCY</u> | <u>CASE NUMBER</u> | <u>ALJ</u> | <u>DATE OF DECISION</u> | <u>PUBLISHED DECISION REGISTER CITATION</u> |
|---|--------------------------|------------|-------------------------|---|
| <u>ALCOHOL AND BEVERAGE COMMISSION</u> | | | | |
| Richard S Blazak, Park View Lounge v. ABC | 96 ABC 0053 | Gray | 07/06/05 | |
| ABC Comm. & City of Asheville v. Elijah Ulysses Jones T/A Jones Convenience Store | 98 ABC 0962 | Gray | 07/12/05 | |
| ABC Comm v. Rudean Robinson Harris T/A Rudean's Diner & Lounge 3 | 03 ABC 1214 | Conner | 06/28/05 | |
| ABC Comm v. Desperado's Inc T/A Desperado's | 04 ABC 1192 | Wade | 07/20/05 | |
| ABC Comm. v Nuntia Ester Davis T/A N and R Grocery 2 | 05 ABC 0209 | Lassiter | 09/13/05 | |
| Cameron's One Stop, Sank Cameron v. ALE Agent B Haynes, Ann H. Johnson, Permit Comm Mgr | 05 ABC 0799 | Elkins | 07/28/05 | |
| <u>BOARD OF LICENSING OF GEOLOGISTS</u> | | | | |
| James W King, PG v Board of Licensing of Geologists | 05 BOG 0149 | Morrison | 08/10/05 | |
| <u>ACUTIONEERS LICENSING BOARD</u> | | | | |
| Robert H. Rankin, Jr., NCAL #6727 v. Auctioneers Licensing Board | 04 CFA 1497 | Mann | 05/13/05 | |
| <u>COMMERCE, DEPARTMENT OF</u> | | | | |
| Land-of-Sky Regional Council v. Dept of Commerce, Div of Emp. & Trning | 96 COM 1921 | Gray | 07/05/05 | |
| <u>CRIME VICTIMS COMPENSATION</u> | | | | |
| Dwight D Hoover Sr. v. Victims Compensation Commission | 04 CPS 0988 | Conner | 07/07/05 | |
| Moreno Edoardo Lovejoy v. Crime Control & Public Safety, Victime Comp. Services Division, Crime Victims Compensation Commission | 04 CPS 1176 | Wade | 09/22/05 | |
| Myrtle Perry v. Crime Victims Compensation Commission | 04 CPS 1190 | Chess | 06/21/05 | |
| Marion A Liles v Dept. of Crime Control & Public Safety, Victims Compensation Service Division | 05 CPS 0150 | DeLuca | 07/29/05 | |
| Cecelia Reid v DCCPS, Div of Vic Comp Svcs, Crime Vic Comp Comm | 05 CPS 0220 | Lassiter | 08/08/05 | |
| Rhonda Lynnette Rhodes v. Crime Victims Compensation Program | 05 CPS 0484 | Gray | 06/23/05 | |
| Brenda Edwards, d/b/a B&H Wrecker Service v. Dept. of Crime Control & Public Safety, Div. of State Highway Patrol | 05 CPS 0510 | Lassiter | 10/19/05 | |
| Terry Ramey, d/b/a Ramey Wrecker Service v. Dept. of Crime Control & Public Safety, Division Of State Highway Patrol | 05 CPS 0511 | Lassiter | 10/18/05 | |
| Curtis Glenn Davis v. Crime Control and Public Safety Crime Victims Compensation Commission | 05 CPS 0529 | Bryan | 10/10/05 | |
| Jamaal O Staten v. Crime Victims Compensation Commission | 05 CPS 0711 | Elkins | 07/28/05 | |
| <u>BOARD OF ELECTIONS</u> | | | | |
| Republican Governors Association & Holly Lynn Koerber v. State Board of Elections | 04 BOE 2051 | Morrison | 06/30/05 | 20:02 NCR 100 |
| <u>HEALTH AND HUMAN SERVICES</u> | | | | |
| MedVisit, Inc. v. Div. of Medical Assistance (DHR) | 94 DHR 0012 | Gray | 07/12/05 | |
| Patsy Norris v. Department of Human Resources | 94 DHR 0895 | Gray | 07/06/05 | |
| Small World DC II, Trena McDaniel v DHHS, Div of Child Dev. | 00 DHR 2202 ² | Gray | 08/08/05 | |
| Trena S McDaniel & Small World DC II v. DHHS, Div of Child Dev. | 01 DHR 0321 ² | Gray | 08/08/05 | |

CONTESTED CASE DECISIONS

| | | | | |
|---|--------------------------|----------|----------|---------------|
| Richard McKinley Whited v. DHHS | 02 DHR 0024 | Gray | 08/04/05 | |
| Jeffrey D. Cannon v. DHHS, Walter B Jones ADACT | 03 DHR 0488 | Conner | 06/29/05 | |
| Aundria Shante Edwards v DHHS, Division of Facility Services | 03 DHR 0806 | Gray | 08/10/05 | |
| Jamie Kearney v. DHHS | 03 DHR 0924 | Gray | 10/04/05 | |
| Thomas Reiter, a minor, by his mother & legal guardian, Kathryn Reiter | 03 DHR 1253 | Gray | 06/27/05 | 20:03 NCR 144 |
| Teresa South and Michael South v. DHHS, DMA, Third Party Recovery Section | 03 DHR 1515 | Gray | 10/04/05 | |
| Nina Sherean Hughes v. DHHS, Div of Facility Services | 03 DHR 1595 | Gray | 10/03/05 | |
| Louise Li Lai Fong v. DHHS, Division of Facility Services | 03 DHR 1714 | Wade | 06/27/05 | |
| Lenwood E Hargrove, Wilma Hargrove v. Div. of Medical Assistance | 03 DHR 1737 | Conner | 07/27/05 | |
| Geana E. Anderson v. DHHS, Division of Facility Services | 03 DHR 2063 | Gray | 06/24/05 | |
| | | | | |
| Gaile Thomas v. DHHS, Division of Facility Services | 04 DHR 0110 | Lassiter | 06/21/05 | |
| Mecca L Stewart v DHHS, Division of Facility Services | 04 DHR 0213 | Elkins | 08/15/05 | |
| Fatmata Gbondo v. DHHS, DFS | 04 DHR 0241 | Elkins | 10/05/05 | |
| Otis D. Wyche, Jr., v. DHHS, Div. of Facility Services | 04 DHR 0294 | Chess | 05/16/05 | |
| North Brook Rest Home, Inc v. DHHS, Adult Licensure Section | 04 DHR 0407 | Conner | 07/26/05 | |
| Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development | 04 DHR 0539 ¹ | Mann | 06/03/05 | |
| Jamie Lynn Hensley v. DHHS, Div. of Facility Services | 04 DHR 0917 | Wade | 05/16/05 | |
| Aaron Anderson v. DHHS, Div. of Medical Assistance (DMA) | 04 DHR 0929 | Gray | 08/10/05 | |
| Carla Jean Summers v. DHHS, DFS | 04 DHR 1020 | Lassiter | 09/21/05 | |
| Patricia A. Reece v. DHHS, Division of Facility Services | 04 DHR 1062 | Mann | 07/27/05 | 20:05 NCR 266 |
| Mario Flores v. DHHS, Division of Facility Services | 04 DHR 1110 | Mann | 08/01/05 | |
| Kid's Day Out Child Care and Learning Cneter, Inc, ID #76000079 v. DHHS, Division of Child Development | 04 DHR 1119 | Conner | 10/27/05 | |
| Charleese K Garrison, mother of Jasmine C Garrison v. DHHS, Division of Medical Assistance | 04 DHR 1168 | Gray | 08/03/05 | |
| Carla Jean Summers v. DHHS, DFS | 04 DHR 1222 | Lassiter | 09/19/05 | |
| Betty Louise Bridges v. DHHS, DFS | 04 DHR 1300 | Conner | 09/22/05 | 20:09 NCR |
| Starr Meadows v. DHHS, Div. of Medical Assistance | 04 DHR 1334 | Wade | 10/18/05 | |
| Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development | 04 DHR 1413 ¹ | Mann | 06/03/05 | |
| Wake Forest University Health Sciences (Lessor) and Huntersville Dialysis Center of Wake Forest University d/b/a Huntersville Dialysis Center (Lessee) v. DHHS, Div. of Facility Services, CON Section and Bio-Medical Applications of NC, Inc. and Total Renal Care of North Carolina, LLC | 04 DHR 1406 | Conner | 05/18/05 | |
| Dawn Allison v. Div. of Medical Assistance | 04 DHR 1444 | Mann | 05/27/05 | |
| Stanlina Williams v. DHHS, DFS | 04 DHR 1473 | Conner | 10/31/05 | |
| Julia Carver Thompson v DHHS | 04 DHR 1498 | Conner | 09/13/05 | |
| Rosa E. Arias v. Patricia M. Epps – HCPR Nurse Investigator, Health Care Personnel Registry | 04 DHR 1505 | DeLuca | 10/07/05 | |
| Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS | 04 DHR 1526 | Gray | 10/03/05 | |
| Filippo Porco v. DHHS, Health Care Personnel Registry Investigations | 04 DHR 1647 | Elkins | 09/29/05 | |
| Dorothy S Coleman v DHHS | 04 DHR 2247 | Elkins | 07/28/05 | |
| Maxine L Fronerberger v DHHS, Division of Facility Services, Health Care Personnel Registry Section | 04 DHR 2286 | Chess | 08/25/05 | |
| | | | | |
| LaKenya S. Perry v Division of Child Development | 05 DHR 0112 | Gray | 08/24/05 | |
| Katherine Lewis (guardian) in lieu of Francis Curran Lewis (son) v. Wilson-Greene Mental Health Center, CAP Program | 05 DHR 0117 | Wade | 10/06/05 | |
| Keith's Kids, Inc, Keith Richardson v DHHS, Div. of Facility Services | 05 DHR 0196 | Wade | 08/31/05 | |
| Tara Sue Clark-Grubb v. Guilford County Dept. of Social Services, Laura Blackwell, Tonya Dupree Freeman, Stacy Taylor-Greene | 05 DHR 0243 | Conner | 06/10/05 | |
| Vicky Richardson v DHHS | 05 DHR 0262 | Wade | 08/10/05 | |
| Teresa Sharon Pyles v. Mecklenburg Co. DSS, Kuralt Centre | 05 DHR 0264 | Wade | 06/20/05 | |
| Belinda Darnell Hawkins v. DHHS, Div of Facility Services | 05 DHR 0265 | Elkins | 06/09/05 | |
| LaQuasha K Massey v. DHHS, Division of Social Services | 05 DHR 0294 | Lassiter | 07/11/05 | |
| Wade R Kearney II v. DHHS, Office of Emer Medical Services | 05 DHR 0325 | Lassiter | 07/25/05 | |
| Agnes Williams v. DHHS, DFS | 05 DHR 0366 | Lassiter | 10/24/05 | |
| Cherry Bruce Kearney, Operator 7 th Heaven Day Care v. DHHS, Division of Facility Services | 05 DHR 0382 | Wade | 06/20/05 | |
| DSS, Deloise Bryant v Halifax County Adoption Agency | 05 DHR 0388 | Lassiter | 07/14/05 | |
| Janet Stovall v DHHS | 05 DHR 0403 | Chess | 08/08/05 | |
| Tammy Trejo v. Office of Administrative Hearings | 05 DHR 0452 | Gray | 06/15/05 | |
| Maria Shante Holley v DHHS, DFS | 05 DHR 0461 | Wade | 07/18/05 | |
| Albert Ansah Amoatey v. DHHS | 05 DHR 0459 | Mann | 07/20/05 | |
| Erdem Narter v. DHHS, Division of Facility Services | 05 DHR 0463 | Mann | 06/16/05 | |
| Eric & Carolyn Blue v DHHS | 05 DHR 0476 | Chess | 08/23/05 | |
| Jerry Lemar Pettus v Off. Of Emergency Medical Services | 05 DHR 0496 | Mann | 07/19/05 | |
| Veronica M Black v. DHHS, Division of Facility Services | 05 DHR 0533 | Gray | 08/10/05 | |
| Valerie R McGahee ID #26001205 Elite Land Child Care & Learning Center v. DHHS, Division of Child Development | 05 DHR 0534 | Lassiter | 09/12/05 | |
| D'Jetta D Miley for Jordana Correa v. Wake Co. Dept. of Human Services | 05 DHR 0570 | Lassiter | 06/02/05 | |
| William Henry Lane v. DHHS, Div. of Medical Assistance | 05 DHR 0571 | Chess | 05/31/05 | |
| Bennie Frederick, Jr., v. DHHS, Div of Social Services | 05 DHR 0572 | Wade | 09/22/05 | |
| Stephanie Marie Mabe v DHHS | 05 DHR 0590 | Elkins | 08/11/05 | |
| Estate of Alma M Merrill, Kelly Merrill Dozier-heir v. Medicaid, Third Party Recovery Section | 05 DHR 0628 | Wade | 10/17/05 | |

CONTESTED CASE DECISIONS

| | | | |
|---|-------------|----------|----------|
| Denise Warren v Cumberland Co. Department of Social Services | 05 DHR 0630 | Morrison | 08/19/05 |
| PJ's Child Care Learning Center #2 v DHHS, Div of Child Development | 05 DHR 0633 | Lassiter | 08/10/05 |
| Candace L Wood on behalf of Caitlyn A Wood v. OPC Men Hlth Area Prog | 05 DHR 0649 | Conner | 08/01/05 |
| Candace L Wood on behalf of Waylon S Keeter v. OPC Men Hlth Area Prog | 05 DHR 0650 | Conner | 08/01/05 |
| Candace L Wood on behalf of Caitlyn A Wood v Alamance Caswell MHDDSA | 05 DHR 0651 | Conner | 07/12/05 |
| Candace L Wood on behalf of Caitlyn A Wood v Alamance Caswell MHDDSA | 05 DHR 0652 | Conner | 07/12/05 |
| Rose McRae v. DHHS, Division of Health Services | 05 DHR 0662 | Elkins | 07/18/05 |
| Charles Edward Shaw, Jr v Dorothea Dix Hospital | 05 DHR 0675 | Elkins | 09/15/05 |
| Walter G Dunston v. DHHS, Division of Facility Services | 05 DHR 0688 | Elkins | 07/11/05 |
| Pinebrook Residential Facility #1 v DHHS, DFS, Adult Care Licensure Sec. | 05 DHR 0704 | Conner | 07/26/05 |
| Cheryl Delk v John Umstead Hospital | 05 DHR 0716 | Elkins | 08/11/05 |
| Barbara Munch v. DHHS | 05 DHR 0725 | Morrison | 07/22/05 |
| Gwendolyn Bain v. Hoke Co Dept of Social Svcs, Ms Christin Basil | 05 DHR 0749 | Lassiter | 07/22/05 |
| Amy Hallisey, Pharmacist, Target Pharmacy-Lawndale, Greensboro v. DHHS Accounts Receivable, Division of Medical Assistance | 05 DHR 0762 | Elkins | 08/11/05 |
| Lindsey L Shumacher v DHHS, John Umstead Hospital | 05 DHR 0772 | Elkins | 08/11/05 |
| Amanda M Walters v. DHHS | 05 DHR 0779 | Elkins | 07/28/05 |
| Lisa Shull v. DHHS | 05 DHR 0782 | Mann | 09/14/05 |
| Vernie Ross v. DHHS | 05 DHR 0814 | Mann | 09/14/05 |
| Aralyn F Pressley v DHHS, Div. of Facility Services | 05 DHR 0800 | Morrison | 08/17/05 |
| Julie Torain v. DHHS | 05 DHR 0831 | Chess | 11/07/05 |
| Tamesha Taft v. DHHS | 05 DHR 0836 | Gray | 08/04/05 |
| Linda M Currie v. Medicaid | 05 DHR 0854 | Gray | 07/07/05 |
| Geneva Walton v DHHS, Division of Facility Services | 05 DHR 0861 | Chess | 07/21/05 |
| Claire Diggs v. Moore County, Program Integrity Unit | 05 DHR 0915 | Gray | 08/10/05 |
| Franchesca L Camp v Nurse Aide I & Health Care Registry | 05 DHR 0919 | Lassiter | 07/27/05 |
| Benny Brown v. DHHS, Division of Facility Services | 05 DHR 0949 | Elkins | 07/28/05 |
| Clarissa Bailey v DHHS | 05 DHR 0961 | Conner | 08/30/05 |
| LaYvonne Diaz Evans v DHHS, Division of Facility Services | 05 DHR 0994 | Lassiter | 08/16/05 |
| Narell C. Joyner Scholars, Inc v. DHHS | 05 DHR 1013 | Gray | 10/20/05 |
| Michelle A. Galloway v. DHHS, DFS | 05 DHR 1042 | Gray | 10/03/05 |
| Sandra Gregory v. DHHS, Div. of Child Development | 05 DHR 1043 | Lassiter | 10/26/05 |
| Valinda Streater v. DHHS, DFS | 05 DHR 1047 | Gray | 10/06/05 |
| Wakilat Oloko v. DHHS, DFS | 05 DHR 1058 | Elkins | 09/29/05 |
| Priscilla Vann v. Laura Peterson and Dept. of Social Services | 05 DHR 1063 | Conner | 10/26/05 |
| Tracy Anderson v DHHS, Division of Facility Services | 05 DHR 1095 | Elkins | 09/09/05 |
| Roy L. Simpson Jr v. DHHS, DFS, Health Care Personnel Registry Section | 05 DHR 1102 | Gray | 10/25/05 |
| Tiffany Charles v Office of Administrative Hearings | 05 DHR 1105 | Gray | 09/07/05 |
| Brookside Montessori School v. DHHS, Div of Child Development | 05 DHR 1119 | Wade | 10/12/05 |
| Esther Thompson v. Vance County Dept. of Social Services, Marchita Vann, DHHS, Santana Deberry | 05 DHR 1132 | Chess | 10/03/05 |
| Tammy R. Sykes v. Dare County Social Services, Margaret Scott | 05 DHR 1139 | Elkins | 09/22/05 |
| Patricia Collins v. OAH | 05 DHR 1174 | Elkins | 11/01/05 |
| Juanita Williamson, Wee Ones Child Care 67000753 v. Satana T.Deberry DHHS | 05 DHR 1218 | Lassiter | 10/24/05 |
| Shirley Michelle Reinhardt v. DHHS, DFS | 05 DHR 1224 | Lassiter | 09/29/05 |
| Rosetta Starks v. DHHS, DFS, Health Care Personnel Registry Section | 05 DHR 1232 | Elkins | 10/31/05 |
| Earnie B. Walker v. DHHS, DMA | 05 DHR 1332 | Elkins | 11/01/05 |
| Diversicare Assisted Living of New Port HAL-016-004 v. DFS, DHHS Carteret County DSS | 05 DHR 1422 | Lassiter | 11/02/05 |
| Angel Chandler v. DHHS | 05 DHR 1446 | Conner | 11/03/05 |
| Virginia L. Richmond v. John Umstead Hospital | 05 DHR 1454 | Morrison | 11/02/05 |

A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

DEPARTMENT OF JUSTICE

| | | | |
|--|-------------|----------|----------|
| Andrew Arnold Powell, Jr. v. Crim Just Educ & Trng Stds Comm. | 01 DOJ 1771 | Chess | 07/19/05 |
| Carlos Orellana v. Private Protective Services Board | 04 DOJ 0813 | Conner | 08/01/05 |
| David Upchurch v. Criminal Justice Education and Training Stds. Comm. | 04 DOJ 1157 | Lassiter | 05/13/05 |
| Phillip William Engle v Sheriffs' Education and Training Stds. Comm. | 04 DOJ 1283 | Mann | 06/28/05 |
| Edward Keith Royal v. Criminal Justice Education & Training Stds. Comm. | 04 DOJ 2194 | Gray | 06/28/05 |
| Richard Michael Ashley v. Criminal Justice Education & Stds. Comm | 04 DOJ 2256 | Wade | 10/17/05 |
| Tabitha Ann Boyland v. Sheriffs' Educ. & Training Standards Comm. | 05 DOJ 0156 | Elkins | 07/08/05 |
| Shuntaneka Brooks v State Bureau of Investigation | 05 DOJ 0296 | Lassiter | 09/07/05 |
| Ralph Robert Hines, II v. Criminal Justice Educ. & Training Standards Comm. | 05 DOS 0482 | Elkins | 08/24/05 |
| George Augustus Pyecha v. Criminal Justice Education & Training Stds Commission | 05 DOJ 0483 | Chess | 09/09/05 |
| Teddy Lynn Warren v. Criminal Justice Education & Training Stds. Comm. | 05 DOJ 0505 | Conner | 06/23/05 |
| Amanda Gayle Talbert v. Criminal Justice Educ. and Training Stds. Comm. | 05 DOJ 0648 | Lassiter | 06/15/05 |
| Amanda Gale Hughes v Sheriffs' Educ Trng Stds. Comm. | 05 DOJ 0666 | Wade | 07/18/05 |
| Jeremy Westbrook v. Alarm Systems Licensing Board | 05 DOJ 0693 | Lassiter | 07/19/05 |
| Gary Lee King v Private Protective Services Board | 05 DOJ 0830 | Lassiter | 09/12/05 |
| Kevin Jon Kern v. Criminal Justice Education & Training Stds. Comm. | 05 DOJ 0928 | Lassiter | 10/10/05 |
| Donald Lee Newton v Criminal Justice Educ. & Training Standards Comm. | 05 DOJ 0929 | Gray | 09/12/05 |
| Robert Baxter Wilkerson III v Private Protective Services Board | 05 DOJ 1074 | Bryan | 08/22/05 |

20:03 NCR 148

CONTESTED CASE DECISIONS

| | | | | |
|--|--------------------------|----------|----------|---------------|
| Steven William Neu v Sheriffs' Education & Training Standards Comm. | 05 DOJ 1169 | Lassiter | 09/08/05 | |
| Sybil Yvonne Murrill v. Sheriffs' Education & Training Stds. Comm. | 05 DOJ 1188 | Lassiter | 09/19/05 | |
| <u>DEPARTMENT OF TRANSPORTATION</u> | | | | |
| Vernon Park Exxon, Inc., Station No. 14184, and Danny Spence v. DOT, DMV | 05 DOT 1054 | Chess | 09/06/05 | |
| <u>DEPARTMENT OF STATE TREASURER</u> | | | | |
| Roy Kevin Tripp v. Dept of St Treasurer, St Retirement Agency | 04 DST 1422 | Conner | 07/27/05 | |
| George L Brown v Dept of St. Treasurer, Retirement Systems Division | 05 DST 0147 | Morrison | 07/22/05 | |
| Tony M Martin v Dept. of State Treasurer, Retirement Systems Division | 05 DST 0253 | Lassiter | 08/31/05 | |
| Robert A. Gabriel , Sr., v. Dept. of State Treasurer | 05 DST 0586 | Gray | 10/21/05 | |
| Cynthia Lee Williams v. DST, Retirement Systems Division | 05 DST 0964 | Lassiter | 11/10/05 | |
| Robert A. Gabriel v. Dept. of State Treasurer | 05 DST 1358 | Gray | 09/23/05 | |
| <u>EDUCATION, STATE BOARD OF</u> | | | | |
| East Winston Primary School Corporation v. State Board of Education | 03 EDC 0029 | Chess | 09/02/05 | 20:11 NCR |
| Susan Hebach v. Dept. of Public Instruction | 05 EDC 0140 | Lassiter | 09/27/05 | |
| James H. Ballard v State Board of Education | 05 EDC 0948 | Conner | 09/15/05 | |
| Michael L. McIntosh v. DPI | 05 EDC 1097 | Elkins | 11/07/05 | |
| <u>ENVIRONMENT AND NATURAL RESOURCES</u> | | | | |
| Webster Environmental, Inc v. DENR, Asbestos Hazard Mgmt Branch | 94 EHR 0225 | Gray | 07/06/05 | |
| Webster Environmental, Inc v. DENR, Asbestos Hazard Mgmt Branch | 94 EHR 0774 | Gray | 07/06/05 | |
| JFG, Inc, Mr. Wayne Pierce, Pres. v. Onslow Co Health Dept & DEH&NR, Division of Environmental Health | 95 EHR 0110 | Gray | 07/06/05 | |
| Southwinds Homeowners Association v. DEHNR, Div. of Env. Health | 95 EHR 0271 | Gray | 07/06/05 | |
| Sandy Mitchell & E Ward Norris v. Mecklenburg Co Health Dept and DEHNR | 95 EHR 0306 | Gray | 07/06/05 | |
| Ralph K & Carolyn Emery v. Montgomery Co Health & Env. Section | 95 EHR 0317 | Gray | 07/06/05 | |
| Deerfield Shores Utility Co v. Carteret Co Environmental Health Dept. | 95 EHR 0354 | Gray | 07/05/05 | |
| Ron Launder v. Vance Co. Health Department | 95 EHR 0515 | Gray | 07/05/05 | |
| Tall Pines Plantation Property Owners Assoc. Inc. v. DENR | 01 EHR 1638 | Gray | 08/17/05 | |
| Heater Utilities, Inc v. NCDENR, Division of Water Quality | 02 EHR 0009 | Gray | 07/06/05 | |
| Tera B Slaughter v DENR | 02 EHR 1286 | Conner | 08/01/05 | |
| Charles C. Barker, Kenneth W. Frazier v. DENR | 02 EHR 1714 | Wade | 11/01/05 | |
| John & Elizabeth Kaylor v. DENR | 03 EHR 0046 | Conner | 06/29/05 | |
| Colonial Pipeline Co. v DENR, Division of Water Quality | 03 EHR 0112 ³ | Connor | 09/12/05 | |
| Colonial Pipeline Co. v DENR, Division of Water Quality | 03 EHR 0815 ³ | Connor | 09/12/05 | |
| Federal Land & Timer Corp v. DENR | 03 EHR 1718 | Gray | 07/28/05 | |
| Terry D. Gregory and wife, Pennie Gregory v. DENR, Div. of Coastal Management and Michael D. Swearingen, Jr. | 03 EHR 2201 | Gray | 09/30/05 | 20:10 NCR |
| Cynthia Williamson Putnam v DENR | 03 EHR 2383 | Conner | 09/12/05 | |
| Brenda Severt, David and Nancie Wilson v. DENR | 04 EHR 0383 | Gray | 10/25/05 | |
| Rebecca Page v. DENR | 04 EHR 0458 | Bryan | 09/20/05 | |
| Milton T. Gibson v. Cumberland County Health Dept., Environmental Health | 04 EHR 0990 | Lassiter | 10/11/05 | |
| Robert L. Grissett v. DENR | 04 EHR 1237 | Chess | 05/16/05 | |
| Ellen Darrigrand & husband Charles Darrigrand v. DENR, Div/Coastal Mgmt | 04 EHR 1469 | Mann | 06/30/05 | 20:05 NCR 270 |
| Glenda Daniel v. Halifax Co Health Dept, Env Health Division | 04 EHR 1583 | Conner | 07/27/05 | |
| Mathew and Kathy Johnson v. DENR | 04 EHR 2163 | Conner | 06/01/05 | |
| Affordable Appliance, Jack Steale v. DENR | 04 EHR 2164 | Conner | 05/31/05 | |
| William Nelms v. DENR, Div. of Air Quality | 04 EHR 2264 | Conner | 10/13/05 | |
| Rebecca Page v. DENR | 05 EHR 0458 | Bryan | 09/20/05 | |
| Don R McGee, McGee's Brother's Co. v. DENR, Div. of Air Quality | 05 EHR 0509 | Mann | 09/07/05 | |
| Lynn E. Graham v. Co. of Durham, Engineering Dept. | 05 EHR 0878 | Gray | 10/06/05 | |
| Robert W Hudson v. Division of Marine Fisheries | 05 EHR 0886 | Morrison | 07/05/05 | |
| Daniel J Smith v State of NC Environmental Health | 05 EHR 0925 | Lassiter | 08/08/05 | |
| John C Gallop, Jane Gallop Newbern v. DENR/Div of Coastal Mgmt | 05 EHR 0941 | Gray | 07/29/05 | |
| Robert B. Montouri GC v. New Hanover Co. Health Dept. | 05 EHR 1001 | Morrison | 10/03/05 | |
| Rosalind Nixon, All Good Detail Inc, v. DENR | 05 EHR 1215 | Lassiter | 10/13/05 | |
| George R. Gelsinger Jr. v. DENR, Land Quality Section | 05 EHR 1253 | Elkins | 10/31/05 | |
| <u>DEPARTMENT OF INSURANCE</u> | | | | |
| Pentech Infusions, Inc., AS/Assignee of Betty W. Green and Ava Cathey v. Teachers' and State Employees' Comprehensive Major Medical Plan | 03 INS 1518 | Elkins | 10/07/05 | |
| Rachael Elizabeth Ragin v. Teachers' and State Employees' Comprehensive Major Medical Plan | 04 INS 1299 | Conner | 09/26/05 | |
| <u>OFFICE OF STATE PERSONNEL</u> | | | | |
| Charles D Bailey v Department of Cultural Resources | 02 OSP 0002 ⁴ | Conner | 09/12/05 | |

CONTESTED CASE DECISIONS

| | | | |
|---|--------------------------|----------|----------|
| Leavander J. Cheeks v Department of Cultural Resources | 02 OSP 0002 ⁴ | Conner | 09/12/05 |
| Vicki B Tamer v. Department of Public Instruction | 03 OSP 0243 | Gray | 08/15/05 |
| Arlene R Burwell v Department of Corrections | 03 OSP 0621 | Conner | 09/12/05 |
| Eddie Ray Creech v. Department of Corrections | 03 OSP 0831 | Wade | 05/17/05 |
| Arlene Burwell v. DOC, Division of Prisons, Polk Youth Institution | 03 OSP 0851 ⁵ | Conner | 11/07/05 |
| Kathy Sledge v. Department of Corrections | 03 OSP 1092 | Conner | 06/27/05 |
| Arlene Burwell v. DOC, Division of Prisons, Polk Youth Institution | 03 OSP 1141 ⁵ | Conner | 11/07/05 |
| Michael B. Carraway v. Wildlife Resources Commission, Div. of Wildlife Management | 03 OSP 1545 | Gray | 09/07/05 |
| Jack Mason v. Wildlife Resources Commission, Div. of Wildlife Mgt. | 03 OSP 1555 | Gray | 09/07/05 |
| David Thomas Sawyer v. Wildlife Resources Commission, Div. of Wildlife Mgt. | 03 OSP 1556 | Gray | 09/07/05 |
| Arlene Burwell v. DOC, Division of Prisons, Polk Youth Institution | 03 OSP 1743 ⁵ | Conner | 11/07/05 |
| Robert Earl Regan, Jr v DCCPS, State Highway Patrol | 03 OSP 2321 | Conner | 09/12/05 |
| James A Ray v. UNC at Greensboro, Facility Services | 04 OSP 0751 | Elkins | 06/28/05 |
| Willie Steve Tellado v Dept. of Transportation | 04 OSP 0858 | Wade | 07/18/05 |
| Mona Dale Batten v Columbus Co Department of Social Services | 04 OSP 1194 | Gray | 09/07/05 |
| Loretta G Hooks v. Department of Corrections | 04 OSP 1266 | Wade | 07/11/05 |
| Wayne Pettit v Department of Correction | 04 OSP 1458 | Gray | 08/04/05 |
| Carroll (ED) Swain v. UNC-Chapel Hill | 04 OSP 1476 | Gray | 09/20/05 |
| Daisy L. Smith v. Cumberland Co Mental Health Center | 04 OSP 1558 | Elkins | 07/28/05 |
| Jacqueline Hightower v Wayne Co Dept of Social Services | 04 OSP 1563 | Lassiter | 09/09/05 |
| Shelli Henderson Rice v. ESC of NC | 04 OSP 1574 | Gray | 06/27/05 |
| V Wayne Johnson v Department of Transportation | 04 OSP 1716 | Elkins | 07/06/05 |
| Beverly R Lee v. Employment Security Commission of NC | 04 OSP 1742 | Conner | 08/03/05 |
| Robert D Jones v Hendenose County Dept. of Public Health | 04 OSP 2081 | Gray | 08/01/05 |
| Mary Cogdell v. Wayne Co. Dept. of Social Services, Judy Pelt, Director | 04 OSP 2117 | Wade | 10/11/05 |
| Regina C Gaither v. Forsyth Co Department of Social Services | 05 OSP 0047 | Conner | 06/27/05 |
| Thomas Freeman, Jr. v. DHHS/Murdoch Center | 05 OSP 0071 | Wade | 08/15/05 |
| Thomas A Horton v. Dept. of Crime Control and Public Safety | 05 OSP 0389 | Lassiter | 06/02/05 |
| Anthony Bruce Allen v Department of Transportation | 05 OSP 0418 | Chess | 06/09/05 |
| Peggy Anderson v. Whitaker School, NC DHHS | 05 OSP 0427 | Gray | 10/25/05 |
| Angela Twitty v DOC, Marion Correctional Institution | 05 OSP 0491 | Wade | 08/31/05 |
| Alan Bradford v. Avery Co. | 05 OSP 0493 | Wade | 10/06/05 |
| Derek H. Babson v. Department of Transportation | 05 OSP 0515 | Chess | 05/31/05 |
| Mary K French Fornes v DOC Eastern Correctional Institution | 05 OSP 0584 | Gray | 07/08/05 |
| James R Campbell v Forsyth Co Department of Social Services | 05 OSP 0587 | Elkins | 08/26/05 |
| Gloria Woodard v. Lyndo Tippet, Secretary, NC DOT | 05 OSP 0588 | Lassiter | 06/24/05 |
| William Rhodney Reep v. DOT, DMV | 05 OSP 0717 | Lassiter | 11/08/05 |
| Glendora Key v. UNC at Chapel Hill | 05 OSP 0784 | Gray | 09/23/05 |
| Deborah Faye Murray v NW Peidmont Council of Governments | 05 OSP 0802 | Chess | 07/13/05 |
| Milton W. Nobles v. DHHS/Dorothea Dix Hospital | 05 OSP 0815 | Gray | 06/15/05 |
| Sandra Thomas v Department of Correction | 05 OSP 0824 | Wade | 07/21/05 |
| Stacy D Bazemore v NCSU CVM-VTH | 05 OSP 0874 | Gray | 08/01/05 |
| Donna P. Minelli v. DOC, Div. of Community Corrections | 05 OSP 0889 | Conner | 10/21/05 |
| Willie Gadden v. Winston-Salem State University | 05 OSP 0904 | Chess | 10/10/05 |
| Albert Ridley v. Odom Correctional Institution, Lawrence Solomon | 05 OSP 0989 | Gray | 10/25/05 |
| Mark P. Gibbons v. Derrick Lee, DOT Plymouth, NC, Robby Taylor, DOT, Creswell, NC | 05 OSP 1080 | Elkins | 10/12/05 |
| Cindy Owens v Justice Academy | 05 OSP 1038 | Conner | 09/19/05 |
| Thomas M. Chamberlin v. Vance-Granville Community College | 05 OSP 1170 | Chess | 09/30/05 |
| Joe L. Harris, MSW, LCSW v. Alamance Caswell MHDDSA/LME | 05 OSP 1221 | Chess | 10/11/05 |
| Lolita B. Keel v. Dept. of Revenue | 05 OSP 1228 | Elkins | 10/12/05 |
| David N. Smith v. NC School of Science and Math | 05 OSP 1236 | Chess | 10/04/05 |
| Gerald R. Tripp v. NC School of Science and Math | 05 OSP 1242 | Chess | 09/22/05 |
| Debra D Moore v. Irene Wortham Center | 05 OSP 1445 | Gray | 11/02/05 |
| <u>SECRETARY OF STATE</u> | | | |
| Monica A Chitwood v. Dept. of Secretary of State | 05 SOS 0237 | Conner | 06/17/05 |
| Janice W. Craver v. Dept. of Secretary of State | 05 SOS 0286 | Conner | 06/06/05 |
| Barbara Jane Kelly v Secretary of State | 05 SOS 0310 | Elkins | 08/22/05 |
| Richard C Capps v. Dept of Secretary of State | 05 SOS 0560 | Gray | 07/14/05 |
| Silvia Rodriguez v Department of Secretary of State | 05 SOS 0926 | Lassiter | 09/09/05 |
| Curtis Eugene Haynes v. Department of Secretary of State | 05 SOS 1031 | Wade | 10/28/05 |
| <u>UNC HOSPITALS</u> | | | |
| Bhimjibhai Lanani v UNC Hospitals | 04 UNC 0008 | Conner | 09/12/05 |
| Amanda Mathis Miller v. UNC Hospitals | 05 UNC 0247 | Lassiter | 06/02/05 |
| Darian C. Jones Ph.D v. UNC Hospitals | 05 UNC 0315 | Lassiter | 06/02/05 |
| Tereasa King v. UNC Hospitals | 05 UNC 0376 | Lassiter | 06/02/05 |
| Lenora White v. UNC Hospitals | 05 UNC 0574 | Bryan | 09/13/05 |
| Ellen Griffith v. UNC Hospitals | 05 UNC 0585 | Conner | 07/26/05 |
| Dawn B & John A Gladden v. UNC Hospitals via Dept. of Revenue | 05 UNC 0608 | Conner | 07/26/05 |
| Joyce Porter v UNC Hospitals | 05 UNC 0623 | Elkins | 08/11/05 |
| Martin T Myers v UNC Hospitals | 05 UNC 0632 | Elkins | 08/11/05 |
| Bettie Brame v UNC Hospitals | 05 UNC 0638 | Conner | 08/01/05 |

20:05 NCR 291

CONTESTED CASE DECISIONS

| | | | |
|--|-------------|--------|----------|
| Joyce Daugherty v. UNC Hospitals | 05 UNC 0663 | Elkins | 08/11/05 |
| Margarida Goulart v UNC Hospitals | 05 UNC 0683 | Conner | 07/26/05 |
| Tashuia Williams v UNC Hospitals | 05 UNC 0684 | Conner | 07/26/05 |
| Audrey Ghia v UNC Hospitals | 05 UNC 0856 | Gray | 09/14/05 |
| DeJuana Middleton v UNC Chapel Hill Hospital | 05 UNC 0701 | Conner | 07/26/05 |
| Marjorie Hindsdale-Shouse v UNC Hospitals | 05 UNC 1002 | Elkins | 09/15/05 |
| Dawn R Dickerson v UNC Hospitals | 05 UNC 1028 | Elkins | 08/11/05 |

- 1 – Combined Cases
- 2 – Combined Cases
- 3 – Combined Cases
- 4 – Combined Cases
- 5 – Combined Cases

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA
FORSYTH COUNTY

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
03 EDC 0029

EAST WINSTON PRIMARY SCHOOL)
)
 Petitioner)
 v.)
)
 NORTH CAROLINA STATE BOARD OF)
 EDUCATION,)
)
 Respondent,)
)
)
)
)
)

DECISION

The above-captioned matter was heard on May 10-11, 2004, January 10, 2005, and March 7, 8, and 9, 2005, in High Point, North Carolina, before the Honorable Sammie Chess, Jr.

APPEARANCES

For Petitioner: Kilpatrick Stockton, LLP
Theodore C. Edwards, II
Suite 400, 3737 Glenwood Avenue
Raleigh, NC 27612

for Respondent: Laura E. Crumpler
Assistant Attorney General
N. C. Department of Justice
P. O. Box 629
Raleigh, NC 27602

ISSUE

1. Did Respondent properly revoke the Petitioner's Charter pursuant to N.C. Gen.Stat. § 115C-238.29G and State Board of Education policies?

STATUTES IN ISSUE

N.C. Gen. Stat. § 115C-238.29A et seq.
On the basis of the careful consideration of the testimony and other evidence presented at the hearing, including the documents and exhibits received into evidence, the undersigned makes the following:

FINDINGS OF FACT

1. Petitioner received a charter from the State Board of Education, effective July 1, 1998, to operate a charter school, "East Winston Primary Charter School," pursuant to N.C. Gen.Stat. § 115C-238.29A et seq.
2. The Charter was effective for 5 years from its effective date.
3. Petitioner applied for a renewal of its charter during the fall of 2001, its fourth year of operation. (T pp. 587-89) In late 2002 or early 2003, the State Board approved the renewal based upon information supplied to it through the renewal process. (T pp. 594-95) A new charter was to become effective July 1, 2003. (Resp. Ex. 3)
4. By the second year of operation under its original charter, 1999-2000, Petitioner was already confronting difficulties (Resp. Ex. 4). By letter dated January 29, 2001, Respondent placed Petitioner on a financial warning due to a large operating deficit.

(Ex. 4) As a result, Petitioner was requested to appear before the Charter School Advisory Committee, at its June 2001 meeting to address the Committee's growing financial concerns about the school. (Resp. Ex. 4)

5. Pursuant to N.C.G.S. 115C-238.29I, the State Board of Education has appointed a Charter School Advisory Committee to '(i) provide technical assistance to chartering entities or to potential applicants, (ii) review applications for preliminary approval, (iii) make recommendations as to whether the State Board should approve applications for charter schools, (iv) make recommendations as to whether the State Board should terminate or not renew a charter, . . . and (vii) provide any other assistance as may be required by the State Board." *Id.*

6. The Committee (the "CSAC") has fifteen members appointed by the State Board. They represent a cross-section of the community, including members from the business community, as well as the education community. (T p. 504) They are all volunteers and meet once a month. (T pp. 503-04) The CSAC reviews applications, both for initial charters and for renewals; and reviews any requests for changes to the charter, such as enrollment increases, changes to the by-laws, or changes to the location of the school. (T pp. 504) In addition, if a school is experiencing difficulty, the CSAC often requests or requires that the board of directors for the school appear at a meeting and respond to questions by the Committee. (T pp. 504-05)

7. The Committee is staffed by the Office of Charter Schools, an office within the Department of Public Instruction ultimately responsible to the State Board of Education. (T p. 506) The Office of Charter Schools works closely with other divisions in DPI to keep the CSAC apprised of all issues involving charter schools, both individually and collectively. (T p. 506)

8. At the June 2001 meeting of the Charter School Advisory Committee, the Committee heard from school officials as well as from Mr. Jimmie Bonham. (T p. 524) After the CSAC heard from the officials and from Mr. Bonham, it was confident that Mr. Bonham's association with the school would help it overcome its current problems.

9. At some point during the summer of 2001, Mr. Bonham was named director of the school and also added as a member of the school's board of directors. (T p. 765) He also executed a promissory note for a personal loan of \$70,000 that he made to the school. (Ex. 81) (T pp. 877-78; 956-57) The promissory note indicated signatures by Keith Penn and by Dr. Carlton Eversley, then chairman of the board of directors. (Pet. Ex 81) Mr. Keith Penn, secretary for the board and also a teacher at the school, however, later testified that it was not his signature and that he had never signed off on such a promissory note. (T p. 877) Dr. Eversley also could not remember signing such a note. (T p. 957) The Court finds Mr. Penn's testimony regarding this matter not to be credible.

10. During the following school year, 2001-02, the original board of directors was left with virtually no members and rarely met as a board. (T p. 777) In December 2001, Dr. Eversley resigned from the board. (Resp. Ex. 13)

11. From the time of Dr. Eversley's resignation until April 28, 2003, the school operated without a board of directors and without regular board meetings. (T pp. 879-881) Mr. Bonham and Keith Penn remained nominally on the board, but the board did not meet as a board and did not exercise any governance functions for the school. (T pp. 879-881)

12. Harry Harris, a teacher at East Winston since August 2000, testified regarding some of the problems encountered by the school early on, including the absence of an active board and the loss of staff. (T pp. 758-763) In the spring of 2001, the school attempted to turn in its charter to the State, but the attempt was rejected since the board of directors had not voted on it. (T pp. 763).

13. Mr. Harris described Jimmie Bonham's appearance during the summer of 2001 as "somebody . . . to basically save us." (T p. 765) However, according to Mr. Harris, Mr. Bonham was never properly voted onto the board of directors. (T p. 765)

14. In addition to teaching at the school, Mr. Harris took over the function of operation of the SIMS, or "Student Information Management System." (T pp. 765-67) The SIMs system maintains all relevant student information so that it is accessible by the State Department of Public Instruction. (T p. 767) It keeps all attendance and enrollment records for students enrolled in the Charter School. (T p. 767)

15. East Winston consisted of more than just the charter school authorized by the State Board of Education. (T p. 772) The school also contained a pre-k program for four-year olds, funded through the Department of Social Services. (T p. 772) The charter school consisted of grades K through 4, and there was a fifth grade that was not authorized by the State and thus was privately operated and funded. (T p. 808)

16. Charter schools are funded on a per pupil basis and funds are generated based upon student headcount. (T p. 985)

17. At the beginning of the 2001-02 school year, there was a drop in funding due to an audit by DPI. (T p. 774) Mr. Harris testified that thereafter Mr. Bonham approached him and asked him to increase the charter school's headcount by adding the names of pre-k students to the enrollment roster of the charter school. (T p. 773) The Court finds Mr. Harris not to be a credible witness.

18. Mr. Harris testified that Mr. Bonham said, "Harry, what would happen if we put the four-year-olds into the SIMS and changed their birth date?" (T p. 773) Mr. Harris told him the pre-k students would show up on the kindergarten roster. (T p. 773)

19. According to Mr. Harris there was no functioning board in place for East Winston from the summer of 2001 until the end of the 2002-2003 school year. (T p. 777) He said that "basically me and Mr. Penn ran the school." (R p. 778)

20. Judith Parker had graduated from law school but not licensed to practice and had some business experience. (T p. 909-910) She began working with East Winston in December 2001, first as a volunteer. (T p. 911) During the Spring of 2002, she also did some work regarding discussions with IRS on getting a compromise on the school's tax lien. (T p. 912-913)

21. In July 2002, Ms. Parker became finance director for the school. (T p. 917)

22. During the 2002-03 school year, Ms. Parker became concerned that she was paying the American Express card bills but did not have the receipts to support the charges. (T pp. 918-919)

23. Ms. Parker also had concerns that "there were some expenditures being made that were also questionable and they did not have anything to do with the credit card. There was purchases of grills, landscaping - there were a number of things that were being done." (T p. 926) Ms. Parker went on to explain her concerns about what she called "double expense." She wondered "why the school was paying someone to do the work and at the same time the school had to go out and buy equipment to do the work." (T p. 927)

24. Ms. Parker's so called "concerns" were not verified as actionable violations.

25. According to Ms. Parker, while the school paid a caterer to provide food services, Ms. Parker had never seen anybody from the caterer deliver food to the school. (T p. 928) There is no evidence by Petitioner that there was no quid pro quo. However, the evidence in the record shows that food was provided. It was not necessary for someone to come in a uniform with the word "caterer" printed on it.

26. By the spring of 2003, discontent among staff, had mounted. (T pp. 779; 921-22; 882-885) There was no board in place; Mr. Bonham was making all the decisions; and animosity seemed to be a growing problem among the key officials running the school. (T pp. 779; 882-84) Ms. Parker shared information with staff that suggested financial mismanagement. (T p. 779)

27. A suggestion of alleged mismanagement is not proof of mismanagement.

28. By the spring of 2003, the Office of Charter Schools began receiving communications from the staff at East Winston expressing their growing concerns at the school. (T p. 684) The Office of Charter Schools (OCS) is the division within the Department of Public Instruction responsible for overseeing the issues arising out of state regulation of charter schools. (T p. 505-507) The OCS has a director and three consultants, each assigned to be a liaison between DPI and individual charter schools. (T p. 678-79) The OCS also serves as staff to the Charter School Advisory Committee. (T p. 680)

29. There were members of the staff at East Winston who wanted to oust Mr. Bonham after he saved the school from bankruptcy.

30. Gail Scott-Taylor, a consultant in the OCS at DPI, received a number of calls from staff at East Winston complaining about the lack of oversight at the school. There were complaints that no board of directors existed, and there were concerns about financial matters, including the lack of receipts to support questionable credit card bills. (T pp. 684-685)

31. Concerns do not equate to wrongdoing.

32. The last Friday in April, 2003, April 25th, Ms. Scott-Taylor went to Winston-Salem to talk with Mr. Bonham about some of the complaints she was receiving. (T pp. 687-89) Nothing much was accomplished at that meeting. (T p. 689) That night several East Winston staff members convened at the home of one of the employees to air their grievances. (T pp. 780-81; 884)

33. The April 28 PTA/East Winston Board meeting was held in the school cafeteria. (T p. 692) According to Mr. Harris, Mr. Bonham set the clocks up fifteen minutes, conducted a meeting at 5:45 consisting of just pre-school parents, and hand-picked a new board of directors from those pre-k parents. (T p. 783) When the East Winston Charter School staff walked into the meeting at 6:00 p.m., Mr. Bonham announced, "I want to let everybody know from this point on that this is the new members . . . I mean the new Board of Directors at East Winston Primary Charter School." (T p. 783) (Resp. Ex. 6)

34. The minutes of the April 28, 2003 meeting at which new members were elected indicated it was a "PTSA meeting." (Resp. Ex. 6)

35. Dr. Tucker's letter outlined a number of concerns that had arisen due to information supplied by members of East Winston's staff, including Judith Parker, Keith Penn, and Harry Harris. (Resp. Ex. 9) The memo raised questions about the origin and scope of the duties of the Executive Director; the division of authority respecting other entities served by the East Winston Board; conflicts of interest; and the recent election of the board of directors. (Resp. Ex. 9)

36. On May 22, 2003, Mr. Bonham responded to Mr. Price's credit card inquiries. Attached to the cover memo was a chart outlining the reasons for various credit card expenditures. (Resp. Ex. 10)

37. On May 23, 2003, Mr. Bonham responded to Dr. Tucker's inquiries. The memo included written responses and some attachments, including his own employment contract, a conflict of interest policy, and resumes for new board members. (Resp. Ex. 11)

38. According to Dr. Tucker, Mr. Bonham's responses were inadequate. (T pp. 608-11) Dr. Tucker still had concerns about the need for separation between the governance of the different entities being operated by the Petitioner and about the governance of the charter school in general. (T pp. 603-611)

39. Mr. Bonham again sent a response to Dr. Tucker's inquiries. (Resp. Ex. 13)

40. The Charter School Advisory Committee held a regularly scheduled meeting on June 12, 2003. (Resp. Ex. 14) Included on the agenda was a discussion concerning East Winston. DPI staff outlined the financial and governance issues including the questionable credit card charges, falsification of SIMS date, and whether or not a functional board of directors existed. (Resp. Ex. 14)

41. Mr. Bonham first addressed the Charter School Advisory Committee, but the Committee specifically asked to hear from the current board chair, Mr. Mikel Muhammed, elected at the PTA meeting in late-April. (Resp. Ex. 14) Mr. Muhammed informed the Charter School Advisory Committee that this was the first time he had heard anything about the issues being discussed. (Resp. Ex. 14) He accordingly was unable to answer any questions.

42. Although letters had been addressed to Mr. Bonham regarding so called "concerns", the committee did not let him speak or ask him questions about their concerns.

43. Although in Dr. Tucker's opinion there was sufficient evidence at that point to begin revocation proceedings, the Charter School Advisory Committee instead directed the DPI staff to continue its investigation and report any illegal conduct to the appropriate authorities. (Resp. Ex. 14) Since the DPI staff was directed to continue to investigate and report any illegal conduct and none was reported.

44. On July 7, 2003, Dr. Tucker and Paul LeSieur, Director of School Business for DPI wrote to Mr. Muhammed informing him that the school was being given a Financial and Governance Warning. (Resp. Ex. 15) This notification was pursuant to the State Board's "Financial and Governance Noncompliance Policy for Charter Schools," State Board of Education Policy No. EEO-U-006. (Resp. Ex. 5) The warning letter to the school outlined numerous issues in both financial matters as well as governance of the school. (Resp. Ex. 15) The concerns outlined included the following: selection of board members; maintenance of minutes for board meetings; role of the board; role of the executive director; conflicts of interest; separation of the various entities being operated by the board; questionable American Express Card expenditures; unauthorized ABC bonuses; duplication of student counts; enrollment of pre-K students in the charter school; and several problems related to the SIMS databases. (Resp. Ex. 15)

45. The July 23, 2003 regularly scheduled meeting of the Charter School Advisory Committee was held in conjunction with the Annual Charter Schools Conference at the Sheraton Grand New Bern. (Resp. Ex. 16) East Winston was on the agenda for that meeting. (T p. 701) Representatives from East Winston had originally registered to attend the conference (T pp. 699-703), but later withdrew their registrations. (T p. 703)

46. The Charter School Advisory Committee discussed East Winston and heard updates from DPI staff regarding the ongoing financial and governance issues, which still included the questionable credit card charges; ABC's bonuses; alleged inflation of student headcounts; alleged falsification of SIMS data; separation of the entities operated by East Winston; possible forgery of the executive director's contract; accuracy of board minutes; and the overall competency of the board to operate the charter school. (Resp. Ex. 18)

47. After considerable discussion, the Charter School Advisory Committee had substantial concerns about the school but nevertheless did not want to shut it down if there was any chance to save it. (T p. 535, 701) Chairman Mike Fedewa specifically stated that the Committee wanted "to do everything possible to save the school." (Resp. Ex. 18)

48. On July 30, 2003, Dr. Tucker and Mr. LeSieur sent another warning letter to the school, elevating it to Governance Disciplinary Status and maintaining it on Financial Disciplinary Status. (Resp. Ex. 19) The issues remained largely the same ones that had been raised previously. (Resp. Ex. 19)

49. Dr. Tucker wrote a letter to Mr. Muhammed on August 4, 2003, reminding him that Dr. Tucker was to be notified of all meetings of the East Winston Board. (Resp. Ex. 20) Dr. Tucker also reminded Mr. Muhammed to send a copy of all board minutes to the Office of Charter Schools as soon as they were available. (T pp. 624-25) (Resp. Ex. 20)

50. Ms. Scott-Taylor attended a meeting of the East Winston Board on August 6, 2003. (T p. 705) Minutes of that meeting were provided to the Office of Charter Schools by East Winston. (T p. 705) However, according to Ms. Scott-Taylor, the minutes did not accurately record what occurred at that meeting. (T p. 706) She testified that several discussions that were reflected in the minutes as having taken place in fact did not occur. (T p. 706) Ms. Scott-Taylor also noted that there was no mention of any board meeting scheduled for the following Saturday, August 9, 2003. (T p. 706)

51. Ms. Scott-Taylor and Dr. Tucker also attended a meeting of the East Winston Board of Directors on August 19, 2003. (T p. 627, 707) East Winston also submitted to the OCS the minutes of the August 19, 2003 board meeting. (T pp. 707-08) According to both Dr. Tucker and Ms. Scott-Taylor, the minutes purporting to be from the August 19, 2003, meeting did not fairly and accurately reflect what occurred at that meeting. The Court recognizes that these are lay individuals trying to engage in corporate matters and procedures.

52. First, the minutes purported to record an "executive session," but no executive session was had at the meeting, nor were there any minutes reflecting an open session properly moved into an executive session. (T pp. 628, 709) Second, the list of persons present at the meeting was incorrect. (T pp. 628, 709) (Ex. 20) Third, the minutes included a resolution purportedly adopted by the board at the August 19, 2003, meeting which was not, in fact, adopted during that meeting. (T pp. 627, 709)

53. At the hearing before the State Board of Education Panel in January 2004, East Winston submitted a new document which it purported to be the correct minutes of the August 19, 2003, meeting. East Winston indicated that the original minutes submitted for August 19, 2003, were in fact for a meeting held on August 9, 2003, a Saturday. (Resp. Ex. 26) The "new" minutes submitted by East Winston for the August 19, 2003, meeting were less detailed than other East Winston minutes, contained no references to motions or votes, were unsigned, and were not approved. (Resp. Ex. 26) The State Board determined that the document submitted as "minutes" did "not constitute the minutes of any East Winston Primary Charter School Board meeting." (Resp. Ex. 26)

54. As of the August 19, 2003, board meeting, only two members remained on the East Winston Board of Directors. (Resp. Ex. 21) In an e-mail memo to Howard Lee, SBE Chairman, the day following the August 19, 2003, meeting, Dr. Tucker noted that Mr. Simon Johnson, a member of the Charter School Advisory Committee, would be working with the "remaining two members of the board [to] act as a nominating committee and a search committee with the expressed purpose of reconstructing the school's board of directors." (Resp. Ex. 21) As of that date, Dr. Tucker noted his positive outlook for the school: "all in all I believe the school is gaining direction." (Resp. Ex. 21)

55. On October 17, 2003, Dr. Tucker wrote to Mr. Mikal Muhammed, Board Chair for East Winston Charter School, regarding the failure of the board to establish a viable governing board of directors. (Resp. Ex. 23) Dr. Tucker testified that the two members left on the board back in August had assured him they would move forward with the help of Mr. Johnson and would proceed to reconstitute the board of directors. (T p. 630) Dr. Tucker had also made it clear to Mr. Muhammed that the OCS needed to be informed of all board meetings and that East Winston needed to provide the OCS with all minutes of those board meetings. (T p. 630) According to Dr. Tucker, the OCS "gave [EW] a couple of months to make that happen, and none of those things seemed to happen." (T p. 630) The State Board of Education Panel Report also noted that "notwithstanding the formal request by Dr. Tucker that he be notified of all meetings of the East Winston Primary Charter School board, the board met on several occasions without notifying OCS. In addition, East Winston Primary Charter School failed to supply full and accurate minutes of meetings as requested by Dr. Tucker." (Resp. Ex. 26)

56. In his October 17, 2003, letter, Dr. Tucker noted that the failure to establish a viable governing board was "of grave concern to the State Board of Education." (Resp. Ex. 23) Dr. Tucker reminded Mr. Muhammed that "the Office of Charter Schools has not been provided copies of minutes, updates regarding reconstitution of the Board as per the bylaws, and any notification from the board chair of meetings." (Resp. Ex. 23) Dr. Tucker also reminded Mr. Muhammed that the OCS "has not seen evidence that the board has initiated a search for board members who are capable of governing the school in a fair and objective manner." (Resp. Ex. 23)

57. The letter requested Mr. Muhammed "to attend the November 20, 2003 meeting of the N. C. Charter School Advisory Committee to present an update of the [school's] progress in complying with the request to institute a viable charter school governing board." (Resp. Ex. 23) The meeting was scheduled to take place at the McKimmon Center in the N.C. State University Campus in Raleigh. (Resp. Ex. 23)

58. On October 24, 2003, Mr. Ted Edwards, attorney with Kilpatrick Stockton LLP retained to represent East Winston, responded to Dr. Tucker's October 17, 2003, letter and stated that a new board had been seated "that can effectively guide the school and make fair but tough decisions regarding hiring, firing, and other school oversight matters." (Resp. Ex. 23) Mr. Edwards went on to say that East Winston Primary Charter School "would be happy to attend the November 20, 2003, meeting of the N.C. Charter School Advisory Committee . . ." (Resp. Ex. 23)

59. On November 7, 2003, Dr. Tucker replied to Mr. Muhammed that while he had received Mr. Edwards' response, "there still are lingering concerns" about various aspects of the school's fiscal well-being and governance structure. (Resp. Ex. 24) The letter directed Mr. Muhammed to "come prepared to address these concerns and others that may be raised by members of the N.C. Charter School Advisory Committee at its November 20, 2003 meeting." The letter specifically requested that members of the Board of Directors attend the meeting. (Resp. Ex. 24)

60. On November 14, 2003, Mr. Edwards wrote to Dr. Tucker again, this time claiming that neither he nor the board members could attend the November 20 meeting due to scheduling conflicts. (Resp. Ex. 24)

61. On November 18, 2003, Dr. Tucker wrote to Mr. Edwards that it was "unfortunate that neither you nor representatives of East Winston Primary Charter School will be present at the meeting; however, the Committee still plans to discuss concerns that have arisen related to governance and other issues at East Winston Primary Charter School." (Resp. Ex. 24) Dr. Tucker urged the school to make every effort to have representation present for the meeting, but that he would apprise the school of any actions taken by the Committee "as soon as possible after the meeting." (Resp. Ex. 24)

62. On November 19, 2003, Mr. Edwards wrote back to Dr. Tucker, again extending his regrets that no one from the board of directors would likely be able to attend the November 20 meeting. (Resp. Ex. 24)

63. East Winston officials, including Mr. Muhammed and Mr. Bonham, had been on notice for several months that there were serious concerns involving the fiscal well-being and the governance structure of the school. The school was put on notice that the State had governance and fiscal concerns as far back as May 9, and was sent at that time a copy of the State Board's Policy regarding Financial and Governance Noncompliance, in which it is stated:

The charter school will be notified when information will be presented to the Charter School Advisory committee related to its noncompliance with financial and/or student reporting requirements. The Charter School Advisory Committee may recommend to the State Board of Education any corrective action required by the charter school or that the charter school's charter be revoked pursuant to Paragraph X of the Charter Agreement.

(Resp. Ex. 5) Similarly, with respect to governance noncompliance, the Charter School Advisory Committee may recommend revocation of the school's charter. (Resp. Ex. 5)

64. At the July 24, 2003, Charter School Advisory Committee meeting in New Bern, North Carolina, the staff once again laid out the concerns with East Winston Primary Charter School and once again discussed revocation of its charter. (Resp. Ex. 18)

65. A member of the Charter School Advisory Committee, Mr. Simon Johnson, was dispatched by the Committee to work with the school and try to reconstitute its board of directors. (Resp. Ex. 21) Two state department officials, Dr. Tucker and Ms. Scott-Taylor provided assistance to East Winston, including personally visiting board meetings during the month of August. (T pp. 625-28; 706-09)

66. The Charter School Advisory Committee meeting began at 11:00 a.m. on November 20, 2003. (T p. 713) The agenda listed a time for each subject. There was no notice that a subject could or would be called before the scheduled time, and, more importantly, that the committee would not hear a representative thereafter, even if the representative was there at the time scheduled on the agenda.

67. Shortly after the meeting began on November 20, 2003, Ms. Scott-Taylor left the meeting room and saw a woman she recognized as being from East Winston. (T p. 713) The woman was not on the board of directors for East Winston and Ms. Scott-Taylor had had no prior notice that the woman, or anyone else from East Winston, planned to attend the meeting. (T p. 714) However, there was no evidence of a requirement for prior notice in order to be present or to be heard.

68. The employee of East Winston was present for the meeting but was asked no questions on the record at the November 20, 2003 meeting.

69. The Charter School Advisory Committee agenda for the November 20, 2003, meeting included a discussion of the issues surrounding East Winston. Following that discussion, the Committee voted to recommend to the State Board of Education that the charter for East Winston be revoked. (T p. 544; Resp. Ex. 24)

70. On November 21, 2003, the Office of Charter Schools wrote to Mr. Muhammed informing him of the action of the Charter School Advisory committee. (Resp. Ex. 24) The letter stated, in pertinent part, as follows:

At the meeting, the Committee heard and considered a number of ongoing concerns regarding East Winston, including serious governance concerns and questionable fiscal management. The committee was presented with documentation from the last several months that evidence violations of law, violations of charter provisions, misappropriation of funds, possible falsification of records, and a continued refusal of school officials and board members to adequately respond to legitimate inquiries by the Office of Charter Schools and the Charter School Advisory Committee.

(Resp. Ex. 24, letter dated November 21, 2003)

71. The letter, consistent with the provisions outlined in the Charter, noted that the Committee's recommendation would be forwarded to the State Board of Education. Id.

72. There is no credible evidence in the record that East Winston ever received any additional State funds as a result of any erroneous records that may have been submitted. The State has not submitted, for example, any evidence showing a comparison of an actual attendance sheet at East Winston versus the Principal's Monthly Report that was submitted to show that the Report was incorrect.

73. The State has alleged that employees at the School, Harry Harris and Lindy Harris, generated false student records, misrepresenting the number of children in the kindergarten and fourth-grade classes, in an attempt to secure additional funding from the State. Ms. Lindy Harris failed to testify at the hearing. Mr. Harry Harris testified but his testimony was not credible. Mr. Harris' testimony was impeached by his prior deposition testimony and the testimony of the Respondent's own witnesses, Mr. Penn and Ms. Parker, as well as Mr. Bonham. Mr. Harris also asserted his Fifth Amendment constitutional right against self-incrimination and refused to respond to questioning from East Winston's counsel.

74. East Winston did, in fact, request a review of the State Board's decision to initiate revocation, and the State Board Chair appointed a Review Panel to hear the appeal. (Resp. Ex. 26)

75. The Review Panel convened on Tuesday, January 6, 2004 and heard evidence presented by the Department of Public Instruction and by representatives, including counsel, for the school. (Resp. Ex 26) The Panel made numerous findings and concluded that East Winston had "failed to establish and maintain a viable governance structure for the school; was guilty of filing false reports; failed to provide prompt and accurate responses to requests for information;" failed to comply with the Open Meetings Law; failed to keep full and accurate minutes of its board meetings; failed to maintain proper accounting practices; submitted false student enrollment information; and failed to explain and substantiate numerous questionable credit card charges. (Resp. Ex. 26)

76. The Panel recommended that the State Board of Education revoke the charter of East Winston pursuant to N. C. G. S. 115C-238.29G(a)(2),(3),(4), and (6) "for failure to meet generally accepted standards of fiscal management; violations of the law; violations of the conditions, standards, or procedures set forth in its charter; and other good cause as identified in the findings and conclusions." (Resp. Ex. 26)

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

CONCLUSION OF LAW

1. Petitioner has the burden of proof by a preponderance of the evidence.
2. The State Board of Education exceeded its authority by basing its decision to terminate East Winston's charter on grounds that were not expressly included in the notice letter to East Winston. The United States Constitution, the North Carolina Constitution, and North Carolina case law require that East Winston receive proper notice from the North Carolina State Board of Education of the specific statutory basis for revoking its charter.
3. It is well settled that the Fourteenth Amendment of the United States Constitution and Article 1, Section 17 of the North Carolina Constitution require notice and the opportunity to be heard before depriving a person of his property. *McDonald's Corp. v. Dwyer*, 338 N.C. 445, 448, 450 S.E.2d 888, 891 (1994) (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 657, 92 L.Ed. 865, 873 (1950)).
4. Moreover, North Carolina courts have held that where a state agency provides notice of its intended action under a referenced disciplinary statute and instead imposes a greater sanction, the State has denied the property holder of notice that his conduct could warrant stricter penalties and therefore denied the property holder of the opportunity to show compliance with statutory requirements. *Miller v. N.C. State Bd. of Registration for Prof'l Eng'r and Land Surveyors*, 86 N.C. App. 91, 356 S.E.2d 793 (1987), *aff'd* 322 N.C. 465, 467, 368 S.E.2d 605, 606 (1988). North Carolina courts have uniformly rejected this practice as a denial of constitutionally required due process. *See id.*
5. On December 8, 2003, Dr. Otho B. Tucker, Director of the Office of Charter Schools, provided East Winston Primary School with notice that the State was initiating proceedings to terminate the Charter of East Winston Primary School pursuant to N.C. Gen. Stat. § 115C-238.29G(a)(2) and provisions of the Charter Agreement.
6. Neither the December 8, 2003, letter from Dr. Tucker nor any subsequent correspondence from the State Board informed East Winston that the State intended to rely on N.C. Gen. Stat. § 115C-238.29G(a)(3), (4) or (6) as authority to terminate East Winston Charter. The Respondent therefore denied East Winston's its constitutional right to due process by relying on N.C. Gen. Stat. § 115C-238.29G(a)(3), (4) or (6) as authority to terminate East Winston's Charter.
7. The SBE failed to use proper procedure during the January 6, 2004, hearing for review of the SBE decision to revoke the School Charter. Due process contemplates a fair process and procedure, which requires at least an opportunity to present objections to the proposed action to a fair, neutral decision maker.
8. Upon granting East Winston a hearing on the revocation of the School Charter, the State notified counsel for both East Winston and the DPI of the procedural details for the hearing. Counsel were required to exchange exhibits that would be presented at the hearing and provide a list of witnesses to be called at the hearing, a brief of legal issues, and a proposed order by 5 p.m. on Monday, January 5, 2004, the day before the hearing. Counsel for East Winston complied but did not receive any of the required information from counsel for the DPI until the day of the hearing. In addition, during the hearing, the School was not permitted to call all of its intended witnesses even though they were identified by Counsel for East Winston on January 5, 2004, and no objection was made prior to the hearing. Moreover, counsel for East Winston was not allowed to complete the testimony of East Winston's witnesses due to a time limit imposed on the parties at the hearing, which was not included in the December 19, 2003, letter outlining the procedures for the hearing.
9. Once the State decides to provide the parties with specific procedures for a hearing, it must comply with those procedures to ensure fairness and the integrity of the process.
10. The Respondent allowed the DPI to use exhibits that were not timely delivered under the deadline set in the December 19, 2003, letter and to examine witnesses not timely identified in accordance with the procedures set out in the December 19, 2003, letter.
11. The Respondent failed to enforce the procedures that would have limited the Respondent's evidence but enforced unwritten policies which served to limit East Winston's defense.
12. The Court finds that the State's decision to revoke the East Winston Primary School Charter was arbitrary and capricious.

13. The Respondent's failure to produce any evidence that East Winston submitted the disputed credit card charges for reimbursement, that the challenged SIMS reports were actually erroneous, that East Winston obtained additional funds based on the allegedly erroneous SIMS reports, that East Winston's financial records are erroneous or that the monies sought in reimbursement from East Winston are validly owed. Respondent wrote several letters expressing alleged concerns but did not verify them although staff was instructed to do repeated investigations and report any violation of law. The staff, nor anyone else, spelled out any violation. Concerns and innuendo do not constitute actionable violations. There is an old axiom of law that states: "he who alleges must prove." Respondent has failed in its proof. The Court therefore finds that the Respondent's decision to revoke East Winston's charter was arbitrary and capricious.

DECISION

NOW THEREFORE, it is the decision Court that Respondent in revoking Petitioner's charter acted erroneously, failed to use proper procedure, acted arbitrarily and failed to act as required by law or rule. The Court further finds that Petitioner is entitled to retain its charter.

NOTICE

The Agency making the final decision in this contested case is required to give each party an opportunity to file exceptions to this recommended decision and to present written arguments to those in the agency who will make the final decision. N.C.G.S. § 150B-36(a).

The agency is required by N.C.G.S. § 150B-36(b) to serve a copy of the final decision on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the final decision in this contested case is the North Carolina State Board of Education.

This the 2 day of September, 2005.

Sammie Chess, Jr.
Administrative Law Judge

A copy of the foregoing was mailed to:

Theodore C. Edwards II
KILPATRICK STOCKTON LLP
3737 Glenwood Avenue Ste. 400
Raleigh, NC 27612
ATTORNEY FOR PETITIONER

Laura E. Crumpler
Assistant Attorney General
N.C. Department of Justice
PO Box 629
Raleigh, NC 27602-0629
ATTORNEY FOR RESPONDENT

This the ____ day of September, 2005.

Office of Administrative Hearings
6714 Mail Service Center
Raleigh, N.C. 27699-6714
919/733-2698
Fax: 919/733-3407