

NORTH CAROLINA

REGISTER



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NORTH CAROLINA ADMINISTRATIVE CODE CLASSIFICATION SYSTEM

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

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

EXECUTIVE ORDER NO. 100

**EXTENDING EXECUTIVE ORDER NO. 97
EMERGENCY RELIEF FOR DAMAGE CAUSED BY HURRICANE KATRINA**

Executive Order No. 97, 95 and 87, which amended Executive Order No. 81 pertaining to emergency relief for damage caused by Hurricane Katrina and amended to apply only to the transport of mobile homes under contract with the Federal Emergency Management Agency (FEMA) as part of the disaster relief effort is hereby extended until March 17, 2006.

This executive order is effective immediately.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Great Seal of the State of North Carolina at the Capitol in Raleigh, this the 20th day of February 2006.

/s/ _____
Michael F. Easley
Governor

ATTEST:

/s/ _____
Elaine F. Marshall
Secretary of State

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

Public Notice

Coastal Resources Commission

RULES 15A NCAC 07H .1102-.1103, .1203, .1302-.1303, .1403, .1503, .1603, .1703, .1803, .1903, .2003, .2102-.2103, .2203, .2303, .2430, .2503, .2603, .2703; AND 07K .0208

The Coastal Resources Commission's proposed amendments for the referenced rules were noticed in the March 1, 2006, issue 20:17 of the North Carolina Register. The public hearing that was scheduled for March 25, 2006 has been canceled, and has been rescheduled as follows:

Date: June 22, 2006

Time: 5:00pm

Location: City Hotel & Bistro, 203 SW Greenville Blvd, Greenville NC

The comment period is hereby extended through June 22, 2006.

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

Camden Square Associates, LLC

Pursuant to N.C.G.S. § 130A-310.34, Camden Square Associates, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property in Charlotte, Mecklenburg County, North Carolina. The brownfields property is referred to in this document as the "Second Amendment Property." The Second Amendment Property, which contains approximately 2.95 acres, is bounded by West Worthington Street to the north, Doggett Street to the south, Hawkins Street to the west and South Tryon Street to the west, and consists of the following Mecklenburg County tax parcels: 121-012-10, 121-012-16, 121-012-52 and 121-012-53. Environmental contamination exists on the Second Amendment Property in soil and groundwater. Camden Square Associates, LLC has committed itself to limit redevelopment of the Second Amendment Property to residential, office, studio and retail uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Second Amendment to Brownfields Agreement between DENR and Camden Square Associates, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Charlotte-Mecklenburg Public Library, 310 North Tryon Street, Charlotte, North Carolina 28202 by contacting Rita Rouse at that address or at (704) 336-2725; or at the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 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 the same thirty-day period. Thus, if Camden Square Associates, LLC, 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 March 16, 2006. 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 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Child Care Commission intends to amend the rule cited as 10A NCAC 09 .1701.

Proposed Effective Date: November 1, 2006

Public Hearing:

Date: May 11, 2006

Time: 11:00 a.m. – 12:00 p.m.

Location: NC Division of Child Development, 319 Chapanoke Rd., Suite 120, Raleigh, NC

Reason for Proposed Action: *The NC Child Care Commission is initiating rule-making to Rule .1701(b) and (c) pursuant to G.S. 150B-20. A rule-making petition was submitted by the Rockingham Family Child Care Home Association regarding requirements for substitute caregivers. The petition seeks to relax some of the requirements for substitute caregivers in family child care homes.*

Further amendments are to .1701(i). The Commission has adopted several recommendations of the Abuse and Neglect Task Force and had proposed to amend the following rules: 10A NCAC 9 .0301, .0707, .0712, .0713, .1606, .1701, .1718, .2201 and .2803. All of the rules were approved by the RRC except for Rule .1701, which must be republished.

When the Commission previously published text for .1701, one of the changes it proposed was to prohibit family home operators from sleeping while children were in care; and to limit the number of hours a family child care home could operate to 17, rather than the 24 hours currently allowed. The Commission received much feedback from family child care home providers and the public about the impact this would have on these small businesses, and also on parents who need non-traditional hours of child care, especially those who work third shift. After the public comment period ended, the Commission reconsidered this change and decided to allow the current language in .1701(h) to remain, i.e., no limit would be imposed on the number of hours of operation. However, the Commission added new language in .1701(i) to require that family child care home operators develop a written plan of care for completing routine tasks to ensure that such tasks will not interfere with the care of children.

Procedure by which a person can object to the agency on a proposed rule: *Anyone wishing to comment on this proposed rule or to request copies of the rule should contact Dedra Alston, Rule-making Coordinator, NC Division of Child Development, 2201 Mail Service Center, Raleigh, NC 27699-*

2201, at (919) 662-4543 or Dedra.Alston@ncmail.net. Written comments will be accepted through May 15, 2006. Oral comments may be made during the public hearing. The Commission Chairperson may impose time limits for oral remarks.

Comments may be submitted to: *Dedra Alston, 2201 Mail Service Center, Raleigh, NC 27699-2201, phone (919) 662-4543, fax (919) 662-4568, email Dedra.Alston@ncmail.net.*

Comment period ends: *May 15, 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 (\geq \$3,000,000)
- None

CHAPTER 09 – DAY CARE RULES

SECTION .1700 –FAMILY CHILD CARE HOME REQUIREMENTS

10A NCAC 09 .1701 GENERAL PROVISIONS RELATED TO LICENSURE OF HOMES

(a) All family child care homes shall comply with the standards for licensure set forth in this Section. A one- star rated license shall be issued to a family child care home operator who complies with the minimum standards for a license contained in this Section and G.S. 110-91.

(b) ~~If an additional individual provides care on a regular basis of at least once per week, while the operator is not on the premises,~~ in the absence of the provider in excess of 20 hours weekly or at least half of the hours of operation, the additional individual shall meet all requirements for qualifications, training, and

records as found in G.S. 110-91(8), 10A NCAC 09 .2702 and this Section. Copies of required information shall be on file in the home available for review and shall be transferable to other family child care homes where the individual is providing substitute care.

(c) An individual who is a regular substitute and provides care during planned absences of the operator such as ~~vacations and regularly scheduled appointments~~, appointments and taking classes, shall be at least 21 years old, ~~have a high school diploma or GED~~, have completed a first aid and cardiopulmonary resuscitation (CPR) course as described in Rule .1705, ~~Paragraphs (a)(3) and (b)(2)~~ Subparagraphs (a)(3), (a)(4), (b)(2), and (b)(3) of this Section, have completed a health questionnaire, have proof of negative results of a tuberculosis test completed within 12 months prior to the first day of providing substitute care, and submit criminal records check forms as required in 10A NCAC 09 .2702, Paragraph (j). Copies of required information shall be on file in the home available for review and shall be transferable to other family child care homes where the individual is providing substitute care.

(d) ~~It shall be the operator's responsibility to~~ The operator shall review the appropriate requirements found in this ~~Subchapter Chapter~~ and in G.S. 110 with any individuals who are providing care prior to the individual's assuming responsibility for the children. The operator and individual providing care shall sign and date a statement which attests that this review was completed. This statement shall be kept on file in the home available for review.

(e) An individual who provides care during unplanned absences of the operator, such as medical emergencies, shall be at least 18 years old and submit criminal records check forms as required in 10A NCAC 09 .2702, Paragraph (j). The children of an emergency caregiver shall not be counted in the licensed capacity for the first day of the emergency caregiver's service.

(f) The provisions of G.S. 110-91(8) which exclude persons with certain criminal records or personal habits or behavior which may be harmful to children from operating or being employed in a family child care home are hereby incorporated by reference and shall also apply to any person on the premises with the operator's permission when the children are present. This exclusion shall not apply to parents or other persons who enter the home only for the purpose of performing parental responsibilities; nor does it include persons who enter the home for brief periods for the purpose of conducting business with the operator and who are not left alone with the children.

(g) The parent of a child enrolled in any family child care home subject to regulation under G.S. 110, Article 7 ~~of these Rules~~ shall be allowed unlimited access to the home during its operating hours for the purposes of contacting the child or evaluating the home and the care provided by the operator. The parent shall notify the operator of his or her presence immediately upon entering the premises.

(h) An operator licensed to care for children overnight may sleep during the nighttime hours when all the children are asleep provided:

- (1) the operator and the children in care, excluding the operator's own children, are on ground level; and

- (2) the operator can hear and respond quickly to the children if needed; and
- (3) a battery operated smoke detector or an electrically operated (with a battery backup) smoke detector is located in each room where children are sleeping.

(i) Each operator shall develop and adopt a written plan of care for completing routine tasks; including running errands, meeting family and personal demands, and attending classes, to ensure that routine tasks shall not interfere with the care of children during hours of operation. The plan shall:

- (1) Specify typical times for completing routine tasks and include those times on the written schedule, or specify that routine tasks will not occur during hours of operation;
- (2) Specify the names of any individuals, such as additional caregivers or substitutes, who will be responsible for the care of children when the operator is attending to routine tasks;
- (3) Specify how the operator shall maintain compliance with transportation requirements specified in 10A NCAC 09 .1723 if children are transported;
- (4) Specify how parents will be notified when children accompany the operator off premises for routine tasks not specified on the written schedule;
- (5) Specify any other steps the operator shall take to ensure routine tasks will not interfere with the care of children;
- (6) Be given and explained to parents of children in care on or before the first day the child attends the home. Parents shall sign a statement acknowledging the receipt and explanation of the plan. Parents shall also give written permission for their child to be transported by the operator for specific routine tasks that are included on the written schedule. The acknowledgement and written parental permission shall be retained in the child's record as long as the child is enrolled at the home and a copy of each document shall be maintained on file for review by Division representatives.

(j) If the operator amends the written plan, the operator shall give written notice of the amendment to parents of all enrolled children at least 30 days before the amended plan is implemented. Each parent shall sign a statement acknowledging the receipt and explanation of the amendment. The operator shall retain the acknowledgement in the child's records as long as the child is enrolled in the home and a copy shall be maintained on file for review by Division representatives.

(k) The written plan shall be developed and shared with parents of children currently enrolled within 60 days after Paragraph (i) of this Rule becomes effective.

Authority G.S. 110-85; 110-86(3); 110-88(1); 110-91; 110-99; 110-105; 143B-168.3.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Medical Care Commission intends to adopt the rule cited as 10A NCAC 13D .2309.

Proposed Effective Date: October 1, 2006

Public Hearing:

Date: May 3, 2006

Time: 10:00 a.m.

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

Reason for Proposed Action: The proposed rules will establish guidelines for cardio-pulmonary resuscitation for nursing homes in North Carolina.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.

Comments may be submitted to: Elizabeth K. Brown, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone (919) 855-3751, fax (919) 733-2757, email elizabeth.brown@ncmail.net

Comment period ends: May 15, 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 13 – N.C. MEDICAL CARE COMMISSION

SUBCHAPTER 13D – RULES FOR THE LICENSING OF NURSING HOMES

SECTION .2300 - PATIENT AND RESIDENT CARE AND SERVICES

10A NCAC 13D .2309 CARDIO-PULMONARY RESUSCITATION

- (a) Each facility shall develop and implement a Cardio-Pulmonary Resuscitation (CPR) policy.
(b) The policy shall be communicated to all residents or their responsible party prior to admission.
(c) Upon admission each resident or their responsible party must acknowledge in writing having received a copy of the policy.
(d) The policy shall designate an outside emergency medical service provider to be immediately notified whenever an emergency occurs.
(e) The policy shall designate the level of CPR that is available using terminology published by the American Heart Association which is hereby incorporated by reference with all subsequent amendments. American Heart Association terminology is as follows:
(1) Heartsaver CPR;
(2) Heartsaver Automatic External Defibrillator (AED);
(3) Basic Life Support (BLS); or
(4) Advanced Cardiac Life Support (ACLS).
(f) The facility shall maintain staff on duty 24 hours a day trained by someone with valid certification from the American Heart Association or American Red Cross capable of providing CPR at the level stated in the policy. The facility shall maintain a record in the personnel file of each staff person who has received CPR training.
(g) The facility shall have equipment readily available as required to deliver services stated in the policy.
(h) The facility shall provide training for staff members who are responsible for providing CPR with regard to the location of resources and measures for self-protection while administering CPR.

Authority G.S. 131E-104.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Medical Care Commission intends to amend the rules cited as 10A NCAC 13J .0906, .1001, .1107.

Proposed Effective Date: October 1, 2006

Public Hearing:

Date: May 2, 2006

Time: 10:00 a.m.

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

Reason for Proposed Action: The proposed rules will establish guidelines to define personnel and law compliance requirements, and to require the listing of aides Nurse Aide

Registry who provide substantial care for clients for Home Care Agencies in North Carolina.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.

Comments may be submitted to: Elizabeth K. Brown, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone (919) 855-3751, fax (919) 733-2757, email elizabeth.brown@ncmail.net

Comment period ends: May 15, 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 13 – N.C. MEDICAL CARE COMMISSION

SUBCHAPTER 13J – THE LICENSING OF HOME CARE AGENCIES

SECTION .0900 - GENERAL

10A NCAC 13J .0906 COMPLIANCE WITH LAWS

- (a) The agency shall be in compliance with all applicable federal, state, and local laws, rules, and regulations...
(b) Staff of the agency shall be currently licensed or registered in accordance with applicable laws of the State of North Carolina.
(c) An agency shall be deemed to meet the licensure requirements and issued a license without further review or inspection if the agency is certified or accredited by one of the accrediting bodies specified in G.S. 131E-138(g) or is recognized by the North Carolina Medical Care Commission as allowed by G.S. 131E-138(g).

(d) Nothing in this Rule shall prohibit the Department from conducting inspections as provided for in Rule .0904 of this Section.

(e) Any agency deemed to be in compliance by virtue of accreditation by one of the specified accrediting bodies shall submit to the Department a copy of its accreditation report within 30 days after the agency receives its report each time it is surveyed by the accrediting body. The agency shall notify the Department of any action taken that affects its accreditation status, either temporarily or permanently. The Department may conduct annual validation surveys to assure compliance.

Authority G.S. 131E-140.

SECTION .1000 - ADMINISTRATION

10A NCAC 13J .1001 AGENCY MANAGEMENT AND SUPERVISION

(a) The governing body or its designee shall establish and implement written policies governing agency operation. Such policies shall be available for inspection by the Department. The policies shall include, at a minimum:

- (1) a description of the scope of services offered;
(2) admission and discharge policies;
(3) supervision of personnel;
(4) development of, and updates to, the plan of care;
(5) management of emergency care situations in the home;
(6) time frame for completion and return of service records to the agency;
(7) personnel qualifications;
(8) an organizational chart;
(9) program evaluation;
(10) employee and client confidentiality; and
(11) coordination of and referral to and from other community agencies and resources.

(b) The agency shall designate an individual to serve as agency director. The agency director shall have the authority and responsibility for administrative direction of the agency and shall meet one or more of the following qualifications:

- (1) a health care practitioner as defined in G.S. 90-640(a);
(2) an individual who has at least two or more years of documented supervisory or management experience in home care or any other provider licensed pursuant to G.S. 131E or G.S. 122C; or
(3) an individual who holds a bachelor's degree in health science, business administration or a related field and has at least one or more years of documented supervisory or management experience in home care or related health programs.

Such qualifications do not apply with respect to persons acting in the capacity of agency director prior to October 1, 2006.

(c) The agency shall designate a person responsible for supervising each type of home care service provided by the agency either directly or by contract. This individual may be the

supervisor for one or more home care services and may also serve as the agency director.

(d) There shall be written documentation that specifies the responsibilities and authority of the agency director and supervisor.

(e) If the position of agency director becomes vacant, the Department shall be notified within five working days in writing of such vacancy along with the name of the replacement, if available. Agency policies shall define the order of authority in the absence of the administrator.

(f) The agency shall have the ultimate responsibility for the services provided under its license; however, it may make arrangements with contractors and others to provide services in accordance with Rule .1111 of this Subchapter.

(g) An agency shall have written policies which identify the specific geographic area in which the agency provides each service. If an agency plans to expand its geographic service area without opening an additional site, the Department shall be notified in writing 30 days in advance.

Authority G.S. 131E-140.

SECTION .1100 - SCOPE OF SERVICES

10A NCAC 13J .1107 IN-HOME AIDE SERVICES

(a) If an agency provides in-home aide services, the services shall be provided in accordance with the client's plan of care.

(b) If the client's plan of care requires the in-home aide to provide extensive assistance to the client which includes substantial hands-on care to the client who is only able to perform part of the activity, the in-home aide shall be listed on the Nurse Aide Registry pursuant to G.S. 131E-256. However, if the client's plan of care requires the in-home aide to provide only limited assistance to the client which includes hands-on care involving guided maneuvering of limbs with eating, toileting, bathing, dressing, personal hygiene, self monitoring of medications or other non weight bearing assistance, the in-home aide shall not be required to be listed on the Nurse Aide Registry.

(c) In-home aides shall follow instructions for client care written by the professional required for the services provided. In-home aide duties may include, but are not limited to the following:

- (1) help with prescribed exercises which the client and in-home aides have been taught by appropriate professional personnel;
- (2) provide or assist with personal care (i.e., bathing, care of mouth, skin and hair);
- (3) assist with ambulation;
- (4) assist client with self-administration of medications which are ordered by a physician or other person authorized by state law to prescribe;
- (5) perform incidental household services which are essential to the client's care at home; and
- (6) record and report changes in the client's condition, family situation or needs to the appropriate health care professional.

Authority G.S. 131E-140.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Medical Care Commission intends to adopt the rules cited as 10A NCAC 13O .2001-.2003.

Proposed Effective Date: October 1, 2006

Public Hearing:

Date: May 4, 2006

Time: 10:00 a.m.

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

Reason for Proposed Action: The proposed rules will establish guidelines for the development of the Medication Aide Registry in North Carolina as mandated by Senate Bill 2005-622. Session Law 2005-276 Section 10.40C(a), Section 10.40(b) and Section 10.40C(c). In these sections new law was created, G.S. 131E-144.2 and G.S. 113E-120. The effective date is July 1, 2006 for all the provisions.

Procedure by which a person can object to the agency on a proposed rule: An individual may object to the agency on the proposed rule by submitting written comments on the proposed rule. They may also object by attending the public hearing and personally voice their objections during that time.

Comments may be submitted to: Elizabeth K. Brown, 2701 Mail Service Center, Raleigh, NC 27699-2701, phone (919) 855-3751, fax (919) 733-2757, email elizabeth.brown@ncmail.net

Comment period ends: May 15, 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 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 130 – HEALTHCARE PERSONNEL
REGISTRY

SECTION .2000 – MEDICATION AIDE REGISTRY

10A NCAC 130 .2001 GENERAL RULE

A facility, as defined in G.S. 131E-114.2, shall not allow any individual to work as a medication aide unless:

- (1) The individual has successfully completed a medication aide training program approved by the North Carolina Board of Nursing, a State medication aide competency evaluation program and is listed on the Medication Aide Registry; or
- (2) The individual has been deemed competent as provided for in Rule .2003(e)(2) of this Section and is listed on the Medication Aide Registry.

Authority G.S. 131E-114.2(b).

10A NCAC 130 .2002 MEDICATION AIDE
COMPETENCY EVALUATION

(a) The individual shall be advised prior to the competency evaluation that upon successful completion of the competency evaluation the individual will be listed on the State's medication aide registry.

(b) The written examination competency evaluation program shall be standardized and shall include:

- (1) each course requirement specified in the North Carolina Board of Nursing's approved training program;
- (2) a set of test questions, only a portion of which is used in any one examination; and
- (3) a system that prevents disclosure of both the set of test questions and the individual competency evaluations.

(c) The competency examination shall be administered and evaluated only by:

- (1) the Department directly; or
- (2) a Department approved entity.

(d) The Department shall establish a standard for satisfactory completion of the competency evaluation.

(e) A record of successful completion of the competency evaluation program shall be included in the medication aide registry within 30 business days of successful completion of the evaluation.

(f) If the individual does not satisfactorily complete the evaluation, the individual shall be advised of the following:

- (1) the areas which the individual did not pass; and
- (2) the right to retake the competency evaluation two times, or a maximum of three times, before being required to retake and successfully complete the Medication Aide training program.

Authority G.S. 131E-114.2(b).

10A NCAC 130 .2003 REGISTRY OF MEDICATION
AIDES

(a) The Department of Health and Human Services shall establish and maintain a registry of medication aides that meets the requirement of this Section.

(b) Before hiring a medication aide into a facility, pursuant to G.S. 131E-114.2, the employer of the facility shall verify the medication aide is listed on the Medication Aide Registry and shall retain a copy of the verification for the employee's file.

(c) Prior to the utilization of a Medication Aide in a facility, pursuant to G.S. 131E-114.2, the facility shall conduct a clinical skills validation for those medication administration tasks to be performed in the facility. This validation shall be conducted by a registered nurse consistent with their occupational licensing laws and who has a current unencumbered license to practice in North Carolina. A record of this validation shall be retained in the Medication Aide's file.

(d) The registry shall:

- (1) include the information contained in Paragraph (j) of this Rule.
- (2) be accessible by internet and by phone to meet the needs of the public and health care providers.

(e) The State shall list on the Medication Aide Registry, all individuals who:

- (1) have successfully completed a North Carolina Board of Nursing approved medication aide training program and the State medication aide competency evaluation program; or
- (2) have been deemed, as outlined below, as meeting following requirements:
 - (A) individuals who have successfully completed a North Carolina Department of Corrections Medication Aide Training Program and have been employed by the Department of Corrections as a medication aide for at least eight hours during the two years prior to the effective date of this Rule and have successfully completed the State Medication Aide Competency evaluation to meet the Medication Aide Registry listing requirements; or
 - (B) any previously licensed nurse may be listed on the Medication Aide Registry without completing a medication aide training or competency evaluation program if the individual is listed on the Medication Aide Registry within two years of the date the license became inactive or lapsed. If two years has lapsed since the nurse was previously licensed the individual shall be required to successfully complete the State's Medication Aide Competency

Evaluation Program before the individual can be listed on the Medication Aide Registry. A nurse currently under disciplinary action by the North Carolina Board of Nursing may be listed on the Medication Aide Registry only after receiving written approval of the North Carolina Board of Nursing.

(f) The Registry shall not contain the names of individuals who:

(1) have not been employed for a minimum of eight hours in each consecutive 24 month period following initial competency evaluation.

(2) have a substantiated finding on the Health Care Personnel Registry of abuse or neglect of a resident, misappropriation of resident or facility property, fraud against the resident or facility or diversion of drugs belonging to a resident or facility.

(g) The Department shall not impose any charges related to the registration of individuals listed on the registry.

(h) The Department shall provide information on the registry within 24 hours of request or one business day.

(i) Individuals who meet the listing requirement as outlined in Part (e)(2)(A) of this Rule, shall have until January 1, 2007 to become listed on the Medication Aide Registry under these provisions. After January 1, 2007, all individuals, other than those covered in Part (e)(2)(B) of this Rule, shall meet the listing requirements of Subparagraph (e)(1) of this Rule.

(j) The registry shall contain at least the following information for each individual who has successfully met the requirements in Subparagraphs (e)(1) and (2) of this Rule:

- (a) the individual's full name;
- (b) the date the individual became eligible for placement on the registry; and
- (c) the training and competency evaluation program completed; and
- (d) the date of listing renewal and expiration.

(k) The Medication Aide Registry shall remove entries for individuals who have not been employed as a medication aide for a minimum of 8 hours in each consecutive 24 month period following initial listing.

(l) The Department shall disclose all public information in Paragraph (j) of this Rule to all persons requesting this information.

(m) Individuals with substantiated findings on the Nurse Aide I Registry or Health Care Personnel Registry shall not be listed on the Medication Aide Registry.

(n) Individuals who gain or attempt to gain registry listing by providing false or misleading information on listing or re-listing applications shall not be listed on the registry.

Authority G.S. 131E-114.2(b).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Insurance intends to adopt the rules cited as 11 NCAC 12 .0329-.0330; 16 .0207-.0208, amend the rules cited as 11 NCAC 16 .0201; 20 .0101, .0201, .0205, and to repeal the rule cited as 11 NCAC 12 .0307.

Proposed Effective Date: July 1, 2006

Public Hearing:

Date: April 4, 2006

Time: 10:00 a.m.

Location: 3rd Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC

Reason for Proposed Action: *Needed to comply with S.L. 2005-412 for insurers providing individual accident and health insurance and to protect consumers from blocks of business being closed.*

Procedure by which a person can object to the agency on a proposed rule: *The Department of Insurance will accept written objections to these rules until the expiration of the comment period on May 15, 2006.*

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

Comment period ends: May 15, 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 12 – LIFE AND HEALTH DIVISION

SECTION .0300 - GENERAL PROVISIONS

11 NCAC 12 .0307 FILING APPROVAL: LIFE:
ACCIDENT AND HEALTH FORMS

TITLE 11 – DEPARTMENT OF INSURANCE

(a) ~~The following procedure shall be used in filing life, annuity, and accident and health and health maintenance organization forms for approval by the Department:~~

- ~~(1) A filing letter shall be submitted in duplicate with the Federal Employee Identification Number (FEIN); forms shall be listed by number and descriptive title; the filer shall indicate if the form is new and briefly describe the use of the form; if the form is a revision the filer shall identify the form being replaced by its number and approval date;~~
- ~~(2) If riders, endorsements or certificates are filed separately, the filer shall indicate policy forms with which they are used;~~
- ~~(3) Forms shall be submitted in duplicate and each form shall be identified by a form number in the lower left hand corner of the first page. Forms filed for Medicare supplement insurance shall be filed in triplicate. For the purposes of approval all forms shall be in final print. The Commissioner shall not accept photocopies as final print;~~
- ~~(4) All forms shall be completed with specimen data;~~
- ~~(5) Rates by age and mode of payment including the actuarial memorandum shall be attached to each form requiring a premium;~~
- ~~(6) The filer shall submit evidence of approval of the subject identical filing by the filer's state of domicile;~~
- ~~(7) The filer shall submit a listing of states in which any subject identical filing has been submitted and a listing of states that have:

 - ~~(A) approved; or~~
 - ~~(B) disapproved, including the reasons for disapproval;~~~~
- ~~(8) The filer shall submit copies of any endorsements, riders or changes in the subject filing required by any other jurisdiction as a condition of approval;~~
- ~~(9) Subparagraphs (6), (7), and (8) of this Paragraph shall not be applicable to domestic insurers;~~
- ~~(10) The filer shall submit copies of sales promotion material to be used in North Carolina for annuities, interest sensitive life, Medicare supplement, and long term care products. All such advertisements shall be identified by a unique form number in the lower left hand corner of the first page.~~

~~(b) Individual accident and health premium rate revisions for which Department approval is required by G.S. 58 must be filed in triplicate and include evidence of the Department's approval of that policy's most recent rate revision.~~

~~(c) A written notice must be given to the Department by the filer before forms or rates are deemed by statute to be approved.~~

~~(d) If the filer does not respond to a forms filing disapproval letter within 90 days of disapproval the Department shall close the file.~~

Authority G.S. 58-2-40; 58-6-5; 58-51-1; 58-54-35; 58-55-30; 58-58-1; 58-65-1; 58-65-40; 58-67-50; 58-67-150.

11 NCAC 12 .0329 SUBMISSION REQUIREMENTS: FORM AND RATE FILINGS

Product forms of life, annuity, accident and health, multiple employer welfare arrangements, or managed care provider contract forms and associated documents, or premium rates, filed for review or approval shall comply with the following:

- (1) Include a cover letter, or the NAIC Adopted Uniform Transmittal Document in lieu thereof, that:

 - (a) Includes the name and address of the submitting company.
 - (b) States the company issuing the form.
 - (c) Includes the toll-free telephone number and valid electronic e-mail address of the filer.
 - (d) Provides a unique identifying form number of each form submitted and its descriptive title.
 - (e) Indicates whether the form is new or a form revision.
 - (f) Identifies, for any revised forms, the form being replaced by its form number, assigned tracking number, and approval date.
- (2) Submitted either via:

 - (a) Paper.
 - (b) Electronic E-Mail compressed in Adobe Acrobat.
 - (c) The National Association of Insurance Commissioners system for electronic rate and form filings (SERFF).
- (3) Using the following forms and formats:

 - (a) Variable text or benefit ranges shall be in brackets and completed with specimen data.
 - (b) If applications, riders, endorsements or certificates are filed separately, the filer shall indicate policy forms with which they are used.
 - (c) The filer shall submit a listing of states in which any subject identical filing has been submitted and a listing of states that have approved or disapproved the filing, and if disapproved, the reason(s) for disapproval.
 - (d) Rates by age and mode of payment, including a signed actuarial memorandum, shall be attached to each form requiring a premium.
 - (e) Forms shall include a unique form number located in the lower left-hand corner of the first page.

- (f) Filing shall be comprised of one clean copy of the entire submission.
- (g) Electronic submissions shall be formatted in Portable Document Format Adobe Acrobat.
- (h) Red-line side by side comparisons shall be provided with initial submissions that are revising previously-approved forms. An officer of the company shall provide a statement certifying that no changes, other than those red-lined, were made to the form(s).
- (i) Red-line side by side comparisons shall be provided with each resubmission of forms revised during the review process as requested by the Department.
- (4) Advertisements:
 - (a) All Medicare supplement and long-term care promotional materials require prior approval and shall be identified by a unique form number in the lower left-hand corner of the first page.
 - (b) Annuity and interest-sensitive life promotional materials submitted 90 days after the policy is approved shall be an informational filing. The submission documents shall include the date of policy approval and the approved form number of the policy.
- (5) Rates:
 - (a) Individual or non-group accident and health products subject to G.S. 58 shall demonstrate and describe the development of the requested premium. All 29 of the State's "Additional Data Requirements" as required in 11 NCAC 16 .0205 shall be addressed.
 - (b) Credit involuntary unemployment insurance, credit life, credit accident and health, and credit property products subject to G.S. 68 shall demonstrate and describe the development of the requested premium. All applicable data elements as required in 11 NCAC 16 .0400 or 16 .0500 shall be addressed;
 - (c) Health maintenance organizations subject to G.S. 58 shall demonstrate and describe the development of the requested premium. All data elements as required in 11 NCAC 16 .0400 and 16 .0600 shall be addressed;
 - (d) Medical Service Corporations subject to G.S. 58 shall demonstrate and describe the development of the

requested premium adjustment in accordance with sound actuarial principles and standards.

- (e) Implementation of a requested rate adjustment, unless otherwise exempt by G.S. 58, is subject to prior approval.
- (6) No form or rate shall be deemed approved by statute unless the filer provides the Department with written notice, and such notice is acknowledged by the Department.
- (7) Submissions that have been disapproved and are not brought into compliance within 60 days of initial receipt shall be closed. File closure shall not prevent revised subsequent submissions but such will be treated as a new filing.
- (8) Incomplete submissions shall be subject to rejection and formal disapproval.

Authority G.S. 58-2-40; 58-6-5; 58-51-1; 58-54-35; 58-55-30; 58-58-1; 58-65-1; 58-65-40; 58-67-50; 58-67-150.

11 NCAC 12 .0330 NOTICE OF A CLOSED BLOCK OF INDIVIDUAL BUSINESS

(a) Definitions:

- (1) "Accident and health coverage" has the same meaning as in G.S. 58-3-275.
- (2) "Block of business" has the same meaning as in G.S. 58-3-275.
- (3) "Closed block of business" has the same meaning as in G.S. 58-3-275.
- (4) "Policyholder" means the primary insured under an individual accident and health coverage and includes the term as described in G.S. 58-3-275(c)(6).
- (5) "Insurer" has the same meaning as in G.S. 58-3-275.

(b) Notices required under G.S. 58-3-275 shall conform to the following:

- (1) The notice to the Commissioner shall be submitted to the Life & Health Division of the Department; as applicable, be accompanied by a sample copy of the notices required by G.S. 58-3-275(a)(2) and G.S. 58-3-275(a)(3), in accordance with Subparagraphs (b)(2) and (b)(3) of this Rule, and include:
 - (A) Identification of the policy form(s) for which the insurer has determined to cease active marketing, sale and issuance.
 - (B) The date the cessation of sales will be effective.
 - (C) The number of North Carolina policyholders and covered individuals currently covered under the listed forms and riders.

- (2) The notice to a policyholder shall be provided by first-class mail to the policyholder's current address or, if not known, the policyholder's last address; be delivered to the policyholder no later than the policy delivery date if the policyholder is an applicant; and include:
 - (A) Identification of the policy form(s) for which the insurer has determined to cease active marketing, sale and issuance.
 - (B) The effective date of the cessation of sales, and the closure date as defined in G.S. 58-3-275(c)(5).
 - (C) Information regarding the availability of the Commissioner's office for assistance, including the telephone number and address of the office.
 - (D) A toll-free telephone number for the insurer to which a policyholder may direct questions and inquiries regarding the closure.
 - (E) An explanation of the insurer's decision to cease the sales of the affected products and the possible effects upon future premiums.
 - (F) A general explanation of the 12-month premium rate guarantee required by G.S. 58-51-95(f).
 - (G) Language similar in content and meaning to the following:
"<INSERT INSURER'S NAME> has decided to stop selling the health insurance policy that you own, creating a closed block of business. With no new sales of this product, future premium rate increases may be greater than they would have been if sales of this product had continued."
- (3) The notice to an agent/broker shall include:
 - (A) Identification of the policy form(s) for which the insurer has determined to cease active marketing, sale and issuance.
 - (B) The date the cessation of sales will be effective and the closure date as defined in G.S. 58-3-275(c)(5).
 - (C) An explanation of the insurer's decision to cease the sales of the affected products and the possible effects upon future premiums.

Authority G.S. 58-2-40(1); 58-3-275; 58-51-95.

CHAPTER 16 – ACTUARIAL SERVICES DIVISION

SECTION .0200 - INDIVIDUAL ACCIDENT AND HEALTH INSURANCE

11 NCAC 16 .0201 MINIMUM LOSS RATIO

STANDARDS

- (a) For individual accident and health insurance policies and riders delivered in this State, the standard minimum guideline loss ratio for conditionally renewable, guaranteed renewable, and noncancelable medical expense and loss of income type coverages shall be as promulgated by the National Association of Insurance Commissioners for such coverages, coverages as of the issue date of such policies and riders.
- (b) If a company fails to satisfy NAIC minimum future or lifetime loss ratio standards for a particular type of coverage, then to comply with the loss ratio standards in Paragraph (a) of this Rule, the company shall:
 - (1) Combine the experience of such policy form(s) with other forms with similar type of coverage for which the pooling of experience is actuarially justified;
 - (2) Provide premium credits or refunds;
 - (3) Decrease premium rates; or
 - (4) Implement an actuarially justified alternative proposal.

Authority G.S. 58-2-40; 58-3-275; 58-51-95; 58-63-15(7)b.

11 NCAC 16 .0207 COMMON BLOCK

- (a) "Common Block" means a grouping of similar policy form types for which the pooling of experience is actuarially justified and for which the rate revisions are based upon the common experience. A Common Block may include both open and closed policy form types.
- (b) If a company establishes a Common Block for compliance with G.S. 58-51-95(h), with respect to all future rate revision filings, the company shall request a common uniform rate revision to apply to all policy forms in the Common Block and not an apportionment by form. Once policy forms are grouped into a Common Block, they must remain grouped for future rate filings. Actuarially justified apportionments of the common rate increase, due to differences in benefits between forms, shall be allowed.
- (c) If a company establishes a Common Block for compliance with G.S. 58-51-95(h), then compliance with G.S. 58-3-275 is required for the Closed Block portion of policy forms that make up the Common Block.

Authority G.S. 58-2-40; 58-3-275; 58-51-95; 58-63-15(7)b.

11 NCAC 16 .0208 ANNUAL ACTUARIAL CERTIFICATIONS FOR LONG-TERM CARE FORMS

For actuarial certifications required by G.S. 58-51-95(i):

- (1) The actuarial certification is to be made by an individual who is either a Fellow or an Associate of the Society of Actuaries, or a member of the American Academy of Actuaries.
- (2) For a policy form which becomes closed, but for which no corrective action is currently required, or for other situations for which no corrective action is currently required, the actuary shall, in lieu of the plan of corrective action required by G.S. 58-51-95(i)(2), provide

a certification that the actuary has reviewed the historical experience for the policy form and that in the actuary's opinion, a rate revision is not currently justified.

Authority G.S. 58-2-40; 58-3-275; 58-51-95; 58-63-15(7)b.

CHAPTER 20 – MANAGED CARE HEALTH BENEFITS PLAN

SECTION .0100 - MANAGED CARE DEFINITIONS

11 NCAC 20 .0101 SCOPE AND DEFINITIONS

(a) Scope.

- (1) Sections .0200, .0300, and .0400 of this Chapter apply to HMOs, licensed insurers offering PPO benefit plans, and any other entity that falls under the definition of "network plan carrier".
- (2) Sections .0500 and .0600 of this Chapter apply only to HMOs.
- (3) Nothing in this Chapter applies to service corporations offering benefit plans under G.S. 58-65-25 or G.S. 58-65-30 that do not have any differences in copayments, coinsurance, or deductibles based on the use of network versus non-network providers.

(b) Definitions. As used in this Chapter:

- (1) "Carrier" means a network plan carrier.
- (2) "Health care provider" means any person who is licensed, registered, or certified under ~~G.S. 90; Chapter 90 of the General Statutes;~~ or a health care facility as defined in G.S. 131E-176(9b); or a pharmacy.
- (3) "Health maintenance organization" or "HMO" has the same meaning as in G.S. 58-67-5(f).
- (4) "Intermediary" or "intermediary organization" means any entity that employs or contracts with health care providers for the provision of health care services, and that also contracts with a network plan carrier or its intermediary.
- (5) "Member" means an individual who is covered by a network plan carrier.
- (6) "Network plan carrier" means an insurer, health maintenance organization, or any other entity acting as an insurer, as defined in G.S. 58-1-5(3), that provides reimbursement or provides or arranges to provide health care services; and uses increased copayments, deductibles, or other benefit reductions for services rendered by non-network providers to encourage members to use network providers.
- (7) "Network provider" means any health care provider participating in a network utilized by a network plan carrier.
- (8) "PPO benefit plan" means a benefit plan that is offered by a hospital or medical service corporation or network plan carrier, under ~~G.S. 58-50-50 and 58-50-55 or under G.S. 58-65-1~~

~~and 58-65-140, in which plan: G.S. 58-50-56, in which plan:~~

- (A) either or both of the following features are present:
 - (i) utilization review or quality management programs are used to manage the provision of covered services;
 - (ii) enrollees are given incentives via benefit differentials to limit the receipt of covered services to those furnished by participating providers;
- (B) health care services are provided by participating providers who are paid on negotiated or discounted fee-for-service bases; and
- (C) there is no transfer of insurance risk to health care providers through capitated payment arrangements, fee withholds, bonuses, or other risk-sharing arrangements.
- (9) "Preferred provider" has the same meaning as in ~~G.S. 58-50-50~~ G.S. 58-50-56 and 58-65-1.
- (10) "Provider" means a health care provider.
- (11) "Quality management" means a program of reviews, studies, evaluations, and other activities used to monitor and enhance quality of health care and services provided to members.
- (12) "Service area" means a geographic area in North Carolina approved by and on file with the Commissioner in which an HMO enrolls persons who either work in the service area, reside in the service area, or work and reside in the service area.
- (13) "Service corporation" means a medical or hospital service corporation operating under ~~G.S. 58, Article 65.~~ Article 65 of Chapter 58 of the General Statutes.
- (14) "Single service HMO" means an HMO that undertakes to provide or arrange for the delivery of a single type or single group of health care services to a defined population on a prepaid or capitated basis, except for a member's responsibility for non-covered services, coinsurance, copayments, or deductibles.
- (15) "Utilization review" means those methodologies used to improve the quality and maximize the efficiency of the health care delivery system through review of particular instances of care, including, whenever performed, precertification, concurrent review, discharge planning, and retrospective review.

Authority G.S. 58-2-40(1); 58-50-50; 58-50-55; 58-65-1; 58-65-140; 58-67-150.

SECTION .0200 - CONTRACTS BETWEEN NETWORK PLAN CARRIERS AND HEALTHCARE PROVIDERS

11 NCAC 20 .0201 WRITTEN CONTRACTS

(a) All contracts between network plan carriers and health care providers and between network plan carriers and intermediary organizations offering networks of health care providers to be used by network plan carriers for the provision of care on a preferred or in-network basis shall be in writing and shall comply with 11 NCAC 20 .0202 as a condition of such health care providers' and networks' being listed in the carrier's provider directory.

(b) The form of every contract under paragraph (a) of this rule shall be filed for approval with the Division before it is used.

(c) As used in this Section and in Section .0600 of this Chapter, "Division" means the Managed Care and Health Benefits Life and Health Division of the Department of Insurance.

Authority G.S. 58-2-40(1); 58-50-50; 58-50-55; 58-65-25; 58-65-140; 58-67-10; 58-67-20; 58-67-35; 58-67-65; 58-67-140; 58-67-150.

11 NCAC 20 .0205 FILING REQUIREMENTS

All contract form filings shall be submitted to the Department in the following manner:

- (1) New managed care contract forms shall be submitted in ~~triplicate~~ either paper or an electronic format in accordance with 11 NCAC 12 .0329, and accompanied by a self-addressed, stamped envelope.
- (2) Amendments to contract forms shall include both a be filed by submitting the entire contract in redline format red-line formatted copy and a clean copy of the contract and three copies of non-redline format, accompanied by a self-addressed, stamped envelope.
- (3) Each contract form shall be designated by a unique form number assigned by the carrier for identification ~~purposes, that shall not exceed the length of 70 character spaces.~~
- (4) Contract form filings shall be held open for a ~~90-day~~ 60-day period beginning on the date that the Division ~~notifies the filer of its disapproval of a contract.~~ receives the submission. ~~If a response from the filer is not received the submission is not brought into compliance within that period, the file shall be formally disapproved and closed.~~

Authority G.S. 58-2-40(1); 58-50-50; 58-50-55; 58-65-25; 58-65-140; 58-67-10; 58-67-20; 58-67-35; 58-67-150.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Criminal Justice Education and Training Standards Commission intends to amend the rules cited as 12 NCAC 09B .0226-.0227, .0232-.0233, .0303-.0304, .0312; 09G .0309, .0312.

Proposed Effective Date: August 1, 2006

Public Hearing:

Date: May 18, 2006

Time: 1:00 p.m.

Location: Ramada Inn Resort and Conference Center, 1701 South Virginia Dare Trail, Kill Devil Hills, NC 27948

Reason for Proposed Action:

12 NCAC 09B .0226-.0227, .0232-.0233, .0304: Grants authority to the In-Service Training Coordinator to endorse a candidate for specialized instructor school.

12 NCAC 09B .0303; 09G .0309: Specifies that instructors shall have 90 days from the date of expiration in which to submit application to renew their instructor certification. If an instructor fails to renew certification within 90 days, the instructor will be required to attend a full instructor course in order to acquire instructor certification again.

12 NCAC 09B .0312; 09G .0312: States the Director may, for just cause, grant an extension of the 90 day period in which to apply for instructor recertification.

Procedure by which a person can object to the agency on a proposed rule: The objection, reasons for the objections, and the clearly identified portion of the rule to which the objection pertains, must be submitted in writing to Teresa Marrella, Department of Justice, Criminal Justice Standards Division, 114 West Edenton Street, Raleigh, NC 27602.

Comments may be submitted to: Teresa Marrella, Department of Justice, 114 West Edenton Street, Raleigh, NC 27602, phone (919) 716-6475, fax (919) 716-6752, email tmarrella@ncdoj.com

Comment period ends: May 18, 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 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

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

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

- (6) Mental Conditioning 1 Hours
- (7) Shotgun Operation and Firing 4 Hours
- (8) Service Handgun - Operation and Use 5 Hours
- (9) Rifle - Operation and Maintenance 4 Hours
- (10) Service Handgun - Maintenance and Cleaning 2 Hours
- (11) Range Medical Emergencies 2 Hours
- (12) In-Service Firearms Requirements 2 Hours
- (13) BLET Lesson Plan Review/Post Test 3 Hours

12 NCAC 09B .0226 SPECIALIZED FIREARMS INSTRUCTOR TRAINING

(a) The instructor training course requirement for specialized firearms instructor certification shall consist of a minimum of 83 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized firearms instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice firearms instructor in a Basic Law Enforcement Training Course or a "Law Enforcement ~~Officers's~~ Officers' In-Service Firearms Training and Qualification Program".

(c) Each applicant for specialized firearms instructor training shall:

- (1) have completed the criminal justice general instructor training course; and
- (2) present a written endorsement by a certified school director indicating the student will be utilized to instruct firearms in the Basic Law Enforcement Training Course; or
- (3) present a written endorsement by a department ~~head or head,~~ certified school ~~director director,~~ or in-service training coordinator, indicating the student will be utilized to instruct firearms in a "Law Enforcement ~~Officers's~~ Officers' In-Service Firearms Training and Qualification Program"; and
- (4) possess a valid CPR Certification that included cognitive and skills testing.

(d) Each specialized firearms instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- (1) Orientation/Pretest 8 Hours
- (2) Range Operations 38 Hours
- (3) Civil Liability 4 Hours
- (4) Night Firing 2 Hours
- (5) Combat Shooting 8 Hours

(e) The "Specialized Firearms Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized firearms instructor training courses. Copies of this publication may be inspected at the agency:

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

and may be obtained at no cost to the student from the Academy at the following address:

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

(f) ~~Commission-accredited~~ Commission-certified schools that are ~~accredited~~ certified to offer the "Specialized Firearms Instructor Training" course are: The North Carolina Justice Academy.

Authority G.S. 17C-6.

12 NCAC 09B .0227 SPECIALIZED DRIVER INSTRUCTOR TRAINING

(a) The instructor training course required for specialized driver instructor certification shall consist of a minimum of 35 hours of instruction presented during a continuous period of not more than one week.

(b) Each specialized driver instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice driver instructor in a Basic Law Enforcement Training ~~Course.~~ Course or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized driver instructor training shall:

- (1) have completed the criminal justice general instructor training course;
- (2) present a written endorsement by a certified school director indicating the student will be utilized to instruct driving in Basic Law Enforcement Training Courses; or

- (3) present a written endorsement by a department head, certified school director, or in-service training coordinator, indicating the student will be utilized to instruct driver training in the "Law Enforcement Officer's Annual In-Service Training Program"; and
- ~~(3)~~(4) possess a valid operator driver's license;
- ~~(4)~~(5) maintain a safe driving record where no more than four points have been assigned against the driving record within the past three years; and
- ~~(5)~~(6) possess a valid CPR Certification that included cognitive and skills testing.

(d) Each specialized driver instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- | | | |
|-----|---|----------|
| (1) | Orientation | 1 Hour |
| (2) | Lesson Plan Review (BLET) | 4 Hours |
| (3) | General Mechanical Knowledge | 1 Hour |
| (4) | Before - Operation Inspection | 1 Hour |
| (5) | Laws of Natural Force & Operating Characteristics | 2 Hours |
| (6) | Driver Practicum/Pre-Test | 19 Hours |
| (7) | Fundamentals of Professional Liability for Trainers | 4 Hours |
| (8) | Course Review/State Exam | 3 Hours |

(e) The "Specialized Driver Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized driver instructor training courses. Copies of this publication may be inspected at the agency:

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

and may be obtained at no cost to the student from the Academy at the following address:

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

(f) Commission-certified schools that are certified to offer the "Specialized Driver Instructor Training" course are: The North Carolina Justice Academy and The North Carolina State Highway Patrol.

Authority G.S. 17C-6.

12 NCAC 09B .0232 SPECIALIZED SUBJECT CONTROL ARREST TECHNIQUES INSTRUCTOR TRAINING

(a) The instructor training course required for specialized subject control arrest techniques instructor certification shall

consist of a minimum of 80 hours of instruction presented during a continuous period of not more than two weeks.

(b) Each specialized subject control arrest techniques instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice subject control arrest techniques instructor in a Basic Law Enforcement Training ~~Course. Course~~ or a "Law Enforcement Officers' Annual In-Service Training Program."

(c) Each applicant for specialized subject control arrest techniques instructor training shall:

- (1) have completed the criminal justice general instructor training course;
- (2) present a letter from a licensed physician stating the applicant's physical fitness to participate in the course;
- (3) present a written endorsement by a certified school director indicating the student will be utilized to instruct subject control arrest techniques in Basic Law Enforcement Training ~~Courses; and Courses; or~~
- ~~(4)~~ present a written endorsement by a department head, certified school director, or in-service training coordinator indicating the student will be utilized to instruct Subject Control Arrest Techniques for the "Law Enforcement Officers' In-Service Training Program"; and
- ~~(4)~~(5) possess a valid CPR Certification that included cognitive and skills testing.

(d) Each specialized subject control arrest techniques instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

- | | | |
|--------------|--|-----------------|
| (1) | Orientation | 1 Hour |
| (2) | Skills Pre-Test | 1 Hour |
| (3) | Student Instructional Practicum | 3 Hours |
| (4) | Practical Skills Evaluation | 3 Hours |
| (5) | Response to Injury | 4 Hours |
| (6) | Importance of Being Physically Fit and Conducting Safe Warm-Up Exercises | 12 Hours |
| (7) | Safety Guidelines/Rules | 2 Hours |
| (8) | Practical Skills Enhancement | 4 Hours |
| (9) | Subject Control/Arrest Techniques Practical Skills and Instructional Methods | 44 Hours |
| (10) | Fundamentals of Professional Liability For Law Enforcement Trainers | 4 Hours |
| (11) | State Comprehensive Examination/Course Closing | 2 Hours |
| TOTAL | | 80 Hours |

(e) The "Specialized Subject Control Arrest Techniques Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized subject control arrest techniques instructor training courses. Copies of this publication may be inspected at the agency:

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

and may be obtained at no cost to the student from the Academy at the following address:

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

(f) ~~Commission-accredited-Commission-certified~~ schools that are ~~accredited-certified~~ to offer the "Specialized Subject Control Arrest Techniques Instructor Training" course are: The North Carolina Justice Academy.

Authority G.S. 17C-6.

12 NCAC 09B .0233 SPECIALIZED PHYSICAL FITNESS INSTRUCTOR TRAINING

(a) The instructor training course required for specialized physical fitness instructor certification shall consist of a minimum of 60 hours of instruction presented during a continuous period of not more than one week.

(b) Each specialized physical fitness instructor training course shall be designed to provide the trainee with the skills and knowledge to perform the function of a criminal justice physical fitness instructor in a Basic Law Enforcement Training ~~Course~~ Course or a "Law Enforcement Officers' Annual In-Service Training Program."

- (c) Each applicant for specialized physical fitness training shall:
 - (1) qualify through one of the following three options:
 - (A) have completed the criminal justice general instructor training course; or
 - (B) 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
 - (C) be presently instructing physical education topics in a community college, college or university and hold a minimum of a baccalaureate degree in physical education; and
 - (2) present a written endorsement by a school director indicating the student will be utilized to instruct physical fitness in Basic Law Enforcement Training Courses; ~~and or present a written endorsement by a certified school director, or in-service training coordinator indicating the student will be utilized to~~

instruct physical fitness for the "Law Enforcement Officers' In-Service Training Program"; and

- (3) present a letter from a physician stating fitness to participate in the course; and
- (4) possess a valid CPR Certification that included cognitive and skills testing.

(d) Each specialized physical fitness instructor training course shall include as a minimum the following identified topic areas and minimum instructional hours for each area:

(1)	Orientation	5 Hours
(2)	Lesson Plan Review	8 Hours
(3)	Physical Fitness Assessments, Exercise Programs and Instructional Methods	31 Hours
(4)	Injury Care and Prevention	4 Hours
(5)	Nutrition	6 Hours
(6)	Civil Liabilities for Trainers	2 Hours
(7)	CVD Risk Factors	2 Hours
(8)	State Examination	2 Hours

TOTAL 60 Hours

(e) The "Physical Fitness Instructor Training Manual" as published by the North Carolina Justice Academy shall be used as the basic curriculum for delivery of specialized physical fitness instructor training courses. Copies of this publication may be inspected at the agency:

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

and may be obtained at no cost to the student from the Academy at the following address:

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

(f) ~~Commission-accredited-Commission-certified~~ schools that are ~~accredited-certified~~ to offer the "Specialized Physical Fitness Instructor Training" course are: The North Carolina Justice Academy.

Authority G.S. 17C-6.

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

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) All instructors shall have 90 days from the date of expiration of their instructor certification to submit an application for renewal along with documentation of having met the minimum requirements of Paragraph (c) of this Rule during the previous certification period. The prescribed 90 day period shall not extend the instructor certification period beyond its specified expiration period. If the renewal application is not submitted within 90 days from the expiration of the previous certification, such applicants will be required to meet the minimum requirements for general instructor certification as specified in Rule .0302 of this Section.

~~(g)~~ 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)~~(h) 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 or the in-

service training coordinator on the Commission Instructor Evaluation Form shall verify compliance with this Rule.

Authority G.S. 17C-6.

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.~~ director or in-service training coordinator.

(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.~~ director or in-service training coordinator.

(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 an organization whose curriculum meets the national standard; and
- (C) hold current basic EMT certification; and
- (D) obtain the recommendation of a Commission-certified school ~~director.~~ director or in-service training coordinator.

(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.~~ director or in-service training coordinator.

(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.~~ director or in-service training coordinator.

(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;~~ director or in-service training coordinator; 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;~~ director or in-service training coordinator.
- (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~~ the Awareness/Operations Level Hazardous Materials Course developed by the North Carolina Department of Insurance, Office of the State Fire Marshal; and
 - (C) obtain the recommendation of a Commission-certified school ~~director;~~ director or in-service training coordinator.

Authority G.S. 17C-6.

12 NCAC 09B .0312 INSTRUCTOR CERTIFICATION RENEWAL

(a) Individuals who hold general instructor certification or full-specialized instructor certification may, for just cause, be granted an extension of the three year period to successfully teach the twelve hour minimum requirement. The Director may grant such extensions on a one-time basis only not to exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from fulfilling the teaching requirement.

(b) The Director may, for just cause, grant an extension of the 90 day period in which an instructor's renewal application must be submitted as specified in 12 NCAC 09B .0303(e). Such extension, however, shall not exceed 12 months and shall not extend the instructor's certification period beyond its specified expiration period.

Authority G.S. 17C-6.

SUBCHAPTER 09G - STANDARDS FOR CORRECTIONS
EMPLOYMENT, TRAINING, AND CERTIFICATION

SECTION .0300 - CERTIFICATION OF
CORRECTIONAL OFFICERS, PROBATION/PAROLE
OFFICERS, PROBATION/PAROLE OFFICERS-
INTERMEDIATE, AND INSTRUCTORS

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-accredited~~ 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-accredited~~ 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-accredited~~ 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, at a minimum, the following:

- (1) proof that the applicant has, within the three year period preceding application for renewal, instructed a minimum of twelve hours in a ~~Commission-accredited~~ 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 twelve hours in a ~~Commission-accredited~~ 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-accredited~~ 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 twelve 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 minimum requirements of 12 NCAC 09G .0308 of this Section.

(e) All instructors shall have 90 days from the date of the expiration of their instructor certification to submit an application for renewal along with documentation of having met the minimum requirements of Paragraph (c) of this Rule during the previous certification period. The prescribed 90 day period shall not extend the instructor certification period beyond its specified expiration period. If the renewal application is not submitted within 90 days from the expiration of the previous certification, the applicant will be required to meet the minimum requirements for general instructor certification as specified in Rule .0302 of this Section.

Authority G.S. 17C-6.

12 NCAC 09G .0312 INSTRUCTOR CERTIFICATION
RENEWAL

(a) Individuals who hold General Instructor Certification or Specialized Instructor Certification may, for just cause, be granted an extension of the three year period to successfully teach the 12 hour minimum requirement. The Director of the Standards Division may grant such extensions on a one-time basis only not to exceed 12 months. For purposes of this Rule, just cause means accident, illness, emergency, course cancellation, or other exceptional circumstances which precluded the instructor from fulfilling the teaching requirement.

(b) The Director of the Standards Division may, for just cause, grant an extension of the 90 day period in which an instructor's renewal application must be submitted as specified in 12 NCAC 09G .0309(c). Such extension, however, shall not exceed 12 months and shall not extend the instructor's certification period beyond its specified expiration period.

Authority G.S. 17C-6.

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Labor/Boiler Safety Bureau intends to adopt the rules cited as 13 NCAC 13 .0422-.0423, amend the rules cited as 13 NCAC 13 .0101, .0103, .0201-.0212, .0301-.0306, .0401-.0402, .0404-.0411, .0414-.0416, 0419-.0421, .0501, .0701-.0703, .0705, .0801-.0809, .0811-.0813, and repeal the rules cited as 13 NCAC 13 .0102, .0704, .0706, .0815.

Proposed Effective Date: July 1, 2006

Public Hearing:

Date: April 11, 2006

Time: 10:00 a.m.

Location: 4 West Edenton Street, Room 205, Raleigh, NC 27699

Reason for Proposed Action: Due to changes made during the 2005 Session of the North Carolina General Assembly, certain technical/general amendments, adoptions, and repeals are necessary to ensure that the North Carolina Administrative Code remains consistent with the Boiler Safety Act.

Procedure by which a person can object to the agency on a proposed rule: Objections to the proposed rules may be submitted, in writing, to Erin T. Gould, Assistant Rulemaking Coordinator, via United States mail at the following address: 1101 Mail Service Center, Raleigh, North Carolina 27699-1101; or via facsimile at (919) 733-4235. Objections may also be submitted during the public hearings conducted on these rules, which are noticed above. Objections shall include the specific rule citation(s) for the objectionable rule(s), the nature of the objection(s), and the complete name(s) and contact information for the individual(s) submitting the objection. Objections must be received by 5:00 p.m. on May 15, 2006.

Comments may be submitted to: Erin T. Gould, Assistant Rulemaking Coordinator, 1101 Mail Service Center, Raleigh, North Carolina 27699-1101, phone (919) 733-0368, fax (919) 733-4235, email erin.gould@nclabor.com

Comment period ends: May 15, 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 13 - BOILER AND PRESSURE VESSEL

SECTION .0100 - DEFINITIONS

13 NCAC 13 .0101 DEFINITIONS

The following definitions are applicable throughout this Chapter: the rules in this Chapter, and shall be construed as controlling in case of any conflict with the definitions contained in any other standard or code:

- "Appurtenance" means any control, fitting, appliance or device attached to or working in conjunction with the boiler or pressure vessel proper.
"ASME Code" means all sections of the Boiler and Pressure Vessel Code of the American Society of Mechanical Engineers that have been adopted by the Boiler and Pressure Vessel Division Engineers.
"Audit" means activities performed activities, other than those identified as inspections, conducted by the Director, his designee, or a deputy inspector other than those identified as inspections, including: Chief Inspector or his designee. These activities include, in part:
(a) reviews and surveys for ASME and National Board stamp issuance and renewal;
(b) audits performed conducted on an inspector at the location of a manufacturer or repair organization as may be required by the ASME Code, National Board Inspection Code, or National Board Rules and Regulations; and for Commissioned Inspectors; and
(c) audits pursuant to evaluation for the issuance of North Carolina Specials.
"Automatically fired boiler" means a boiler that cycles automatically in response to a control system and which does not require a constant attendant for the purpose of introducing fuel into the combustion chamber or to control electrical input or nuclear fission input.
"Authorized inspection agency" Inspection Agency" means an organization employing inspectors holding valid North Carolina Commissions and National Board Commissions, including the following:

- (a) the Department of ~~Labor;~~Labor, Boiler Safety Bureau;
 - (b) an inspection agency of an insurance company licensed to write boiler and pressure vessel insurance; or
 - (c) an owner-user inspection agency that meets the requirements of G.S. 95-69.15.
- (6) "Authorized Inspector" means an employee of an Authorized Inspection Agency who is commissioned by the National Board and this State, holds an appropriate endorsement on his/her National Board Commission, and inspects as the third party inspector in ASME Code manufacturing facilities.
- ~~(6)(7)~~ "Board" means the North Carolina Board of Boiler and Pressure Vessel Rules.
- ~~(7)(8)~~ "Boiler", as defined in G.S. 95-69.9(b), includes the following types of boilers:
- (a) "Exhibition boiler" means a historical or antique boiler which generates steam or hot water for the purposes of entertaining or educating the public or is used for demonstrations, tourist travel or exhibitions. This term shall include steam tractors, threshers, steam powered sawmills, and similar usages.
 - ~~(b) "Heating boiler" means:~~
 - ~~(i) a steam boiler operated at pressures not exceeding 15 psig; or~~
 - ~~(ii) a hot water heating boiler operated at pressures not exceeding 160 psig and temperatures not exceeding 250°F, at or near the boiler outlet, and supplying heated water, normally used for building heat applications (hydronic boiler), in which water is returned to the boiler from the piping system;~~
 - ~~(iii) a hot water supply boiler that furnishes hot water to be used externally to itself (domestic water boiler) at pressures not exceeding 160 psig or temperatures not exceeding 250°F at or near the hot water outlet; and~~
 - ~~(iv) a potable hot water heater operating at pressures not exceeding 160 psig and temperatures not exceeding 210°F, at or near the boiler outlet, and supplying water~~
 - ~~intended for potable use only.~~
- ~~(e) "Steam boiler" means a power boiler or heating boiler which generates steam or other vapor within the internal mechanism or at the boiler outlet during operation;~~
- ~~(d) "Water boiler" means a power boiler or heating boiler which does not produce steam or other vapor during operation. The term water boiler also applies to boilers heating liquids other than water which do not create a vapor during operation.~~
- ~~(a)(b) "Power boiler" "High pressure boiler" means a boiler in which steam or other vapor is generated at a pressure of more than 15 psig and includes a high temperature water boiler operating at pressures exceeding 160 psig or temperatures exceeding 250°F or both at or near the boiler outlet; psig, including the following:~~
- ~~(i) Electric boilers~~
 - ~~(ii) Miniature boilers~~
 - ~~(iii) High temperature water boilers~~
 - ~~(iv) High temperature liquid boilers (other than water).~~
- ~~(c) "Hot water heating boiler" means a low pressure boiler in which water is heated and operated at pressures not exceeding 160 psig and temperatures not exceeding 250°F, at or near the boiler outlet, and supplying heated water, normally used for building heat applications (hydronic boiler), in which water is returned to the boiler from the piping system.~~
- ~~(d) "Hot water supply boiler" means a low pressure boiler that furnishes hot water to be used externally to itself (domestic water boiler) at pressures not exceeding 160 psig or temperatures not exceeding 250°F at or near the hot water outlet.~~
- ~~(e) "Model hobby boiler" means a boiler which generates steam, whether stationary or mobile, where the boiler does not exceed 20 square feet heating surface, a shell diameter of 16 inches, a volume of 5 cubic feet and a pressure not exceeding 150 psig and is used for the purpose of entertainment or exhibiting steam technology.~~
- ~~(f) "Steam heating boiler" means a low pressure boiler in which steam is~~

- generated and operated at pressures not exceeding 15 psig.
- (g) "Water heater" means a closed vessel in which water is heated by the combustion of fuel, by electricity, or by any other source and withdrawn for use external to the system at pressures not exceeding 160 psig and temperatures not exceeding 210°F.
- (8)(9) "Boiler blowoff" means that system associated with the rapid draining of boiler water to remove concentrated solids which have accumulated as a natural result of steam generation. This term also applies to the blowoff for other boiler appurtenances, such as the low-water fuel cutoff.
- (9)(10) "Boiler or pressure vessel proper" means the internal mechanism, shell, and heads of a boiler or pressure vessel terminating at:
- (a) the first circumferential joint for welded end connections;
 - (b) the face of the first flange in bolted flange connections; or
 - (c) the first threaded joint in threaded connections.
- ~~Note: Superheaters, economizers and other pressure parts connected directly to the boiler or pressure vessel without intervening valves are part of the boiler or pressure vessel proper.~~
- (11) "Bureau" means the Boiler Safety Bureau of the North Carolina Department of Labor.
- (10)(12) "Certificate inspection" means an inspection, the report of which is used by the ~~Director~~ Chief Inspector as justification for issuing, withholding or revoking the inspection certificate. The term certificate inspection also applies to the external inspection ~~performed~~ conducted in accordance with this Chapter whether or not a certificate is intended to be issued as a result of the inspection.
- (11)(13) "Certificate of competency" means the certificate issued by the Commissioner to a person who has passed the National Board inspector's examination given by the Board and who is employed by an Authorized Inspection Agency examination.
- (14) "Chief Inspector" means the Bureau Chief of the Boiler Safety Bureau of the North Carolina Department of Labor.
- (12)(15) "Commissioner" means the Commissioner of the North Carolina Department of Labor.
- (13)(16) "Condemned boiler or pressure vessel" means a boiler or pressure vessel:
- (a) that has been found not to comply with G.S. Chapter 95, Article 7A, or this Chapter;
 - (b) that constitutes a menace to public safety; and
- (c) that cannot be repaired or altered so as to comply with G.S. Chapter 95, Article 7A, and this Chapter.
- (14)(17) "Coil type water tube boiler" means a boiler having no steam space, such as a steam drum, whereby the heat transfer portion of the water containing space consists only of a coil of pipe or tubing.
- (18) "Commissioned Inspector" means an employee of an Authorized Inspection Agency that is commissioned by the National Board and this State and who is charged with conducting in-service inspections of pressure equipment and inspecting repairs and/or alterations to that equipment.
- (15)(19) ~~"Deputy inspector"~~ "Inspector" means a boiler and pressure vessel inspector employed by the ~~Division Bureau.~~
- (16)(20) "Design criteria" means ASME ~~and Divisional~~ requirements relating to the mode of design and construction of a boiler or pressure vessel.
- (17) ~~"Division" means the Boiler and Pressure Vessel Division of the North Carolina Department of Labor.~~
- (18)(21) "External inspection" means an inspection of the external surfaces and appurtenances of a boiler or pressure vessel. An external inspection may entail the "shutting down" of a boiler or pressure vessel while it is in operation, including inspection of internal surfaces, if the inspector determines this action is warranted.
- (19)(22) "Hydropneumatic storage tank" means a pressure vessel used for storage of water at ambient temperature not to exceed 120°F and where a cushion of air is contained within the vessel.
- (20)(23) "Imminent danger" means any condition or practice in any location that a boiler or pressure vessel is being operated which is such that a danger exists, and which could reasonably be expected to cause death or serious physical harm immediately ~~or before the imminence of such danger can be eliminated through the enforcement procedures otherwise provided by these Rules if the condition is not abated.~~
- (21) ~~"Inspector" means an inspector in possession of a valid North Carolina Commission and a National Board Commission including a deputy inspector, an insurance inspector, or an owner/user inspector.~~
- (22)(24) "Insurance inspector" means the special inspector employed by an Insurance Company, and holding a valid North Carolina Commission and National Board Commission.
- (23)(25) "Internal inspection" means as complete an examination as can reasonably be made of the internal and external surfaces and

- appurtenances of a ~~power-boiler or pressure vessel~~ while it is shut down.
- (24)(26) "Maximum allowable working ~~pressure~~" pressure (MAWP) means the ~~lesser of the maximum allowable working maximum gauge~~ pressure as determined by ~~the manufacturer in accordance with the requirements of the ASME code, employing the stress values, design rules and dimensions designated by the ASME Code,~~ or as determined by the ~~Director~~ Chief Inspector in accordance with this Chapter.
- (25)(27) "Menace to public safety" means a boiler or pressure vessel that cannot be operated without a substantial risk of injury to persons and property.
- (26)(28) "Miniature boiler" means a boiler which does not exceed any of the following:
- (a) 16 inch inside shell diameter;
 - (b) 20 square feet of heating surface (does not apply to electrically fired boilers);
 - (c) 5 cubic feet volume; and
 - (d) 100 ~~psig~~ maximum allowable working pressure.
- (27)(29) "National Board" means The National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of government jurisdictions who are charged with the enforcement of the provisions of the ~~ASME Code~~ Code and the National Board Inspection Code.
- (28)(30) "National Board Commission" means the commission issued by the National Board to a holder of a certificate of competency who has fulfilled the requirements of the National Board ~~and who is in the full time employ of an Authorized Inspection Agency~~ Rules for Commissioned Inspectors.
- (29)(31) "National Board Inspection ~~Code~~" Code (NBIC) means the ~~inspection handbook~~ ANSI/NB-23 standard published by the National Board, as adopted by the ~~Division~~ Bureau.
- (30)(32) "Nonstandard boiler or pressure vessel" means:
- (a) ~~power~~ high pressure boilers contracted for or installed before December 7, 1935;
 - (b) heating boilers contracted for or installed before January 1, 1951;
 - (c) pressure vessels contracted for or installed before January 1, 1976;
 - (d) ~~hydropneumatic storage tanks containing water under pressure at ambient temperatures~~ contracted for or installed before January 1, ~~1986;~~ 1986; and
- (e) boilers or pressure vessels for which the ASME Code is not intended to apply, other than those boilers and pressure vessels to which the term North Carolina Special ~~applies;~~ and applies.
- (f) ~~hydropneumatic storage tanks installed at a distance of not less than 250 feet from a building of public assembly, apartment house, or residence, and provided with overpressure protection.~~
- (31)(33) "Normal working hours" means between the hours of 6:00 AM and ~~8:00 PM,~~ 6:00 PM, Monday through Friday, except for state recognized holidays.
- (32)(34) "North Carolina Commission" means the commission ~~and~~ issued by the Board, to holders of a National Board Commission, authorizing them to conduct inspections in this State.
- (33)(35) "NPS" means nominal pipe size.
- (36) "Nuclear component" means the items in a nuclear power plant such as pressure vessels, piping systems, pumps, valves, and component supports.
- (34)(37) "Nuclear ~~energy~~ system" means ~~any closed vessel in which water is heated, steam is generated, steam is superheated, or any combination thereof under pressure or vacuum for use externally to itself by the direct application of heat from nuclear energy and associated components, vessels, piping systems, pumps, valves, storage tanks, and appurtenances~~ a system comprised of nuclear components which collectively serve the purpose of producing and controlling an output of thermal energy from nuclear fuel and includes those associated systems essential to the function and overall safety of the power system.
- (35)(38) "Operating pressure" means the pressure ~~of the lowest set safety valve installed on the~~ at which a boiler or pressure vessel operates. It shall not exceed the MAWP except as shown in Section I of the ASME Code for forced flow steam generators.
- (36)(39) "Owner or user" means any person or legal entity responsible for the operation of any boiler or pressure vessel installed in this State. This term shall also apply to a contractor, installer, or agent of the owner or user, as applicable.
- (40) "Owner-User Inspector" means a qualified individual employed by a company operating pressure vessels for its own use and not for resale, and maintains an established inspection program for periodic inspection of pressure vessels owned or used by that company.

- (37)(41) "Pressure piping" means piping including welded piping, external to power-high pressure boilers from the boiler proper to the required valve(s).
- (38) ~~"Pressure vessel proper"; see boiler or pressure vessel proper.~~
- (42) "Pressure relief devices" mean the devices on boilers and pressure vessels set to open and relieve the pressure in the event of an over pressurization event, and include the following:
- (a) "Non-reclosing pressure relief device" means a pressure relief device designed to remain open after operation and includes the following:
- (i) "Rupture disk" means a non-reclosing pressure relief device actuated by static pressure upstream of the device and designed to function by the bursting of a pressure retaining disk.
- (b) "Pressure relief valve" means a pressure relief device that is designed to reclose and prevent the further flow of fluid after normal conditions have been restored. These devices include:
- (i) "Relief valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve which opens further with the increase in pressure over the opening pressure.
- (ii) "Safety relief valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve and characterized by full opening pop action or by opening in proportion to the increase in pressure over the opening pressure.
- (iii) "Safety valve" means an automatic pressure relief valve that is actuated by static pressure upstream of the valve and characterized by full opening pop action.
- (39)(43) "PSIG" means pounds per square inch gauge.
- (40)(44) "Reinspection" or "Follow-Up Inspection" means as complete an examination as is necessary to verify that any repair or corrective action required as a result of a certificate inspection is completed.
- (41) ~~"Safety valve" means any safety valve, safety relief valve, pressure relief valve, or non-~~

- ~~reclosing device intended to prevent over pressurization of a boiler or pressure vessel.~~
- (45) "Service Vehicle" means a vehicle mounted with an air storage tank and often with other storage tanks that have oil, grease or other fluids. The purpose of the vehicle is to service vehicles and equipment in the field away from the owner's shop.
- (42)(46) "Shop inspection" means an inspection performed—conducted by an inspector or Authorized Inspector pursuant to an inspection service agreement whereby the fabrication process or the repair or alteration of a boiler or pressure vessel is observed to ensure compliance with ASME and the National Board.
- (43)(47) "Special inspection" means any inspection performed—conducted by a deputy inspector or Deputy Inspector other than a regularly scheduled inspection. Special inspection also includes the performance of an inspection by a deputy inspector—Deputy Inspector which requires that the inspector make a special trip to meet the needs of the individual or organization requesting the inspection, including performing—conducting certificate inspections during hours other than normal working hours, and inspection of field repairs and alterations.
- (48) "Special Inspector" means a National Board commissioned inspector employed by an insurance company authorized to write boiler and pressure vessel insurance in the state of North Carolina.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0102 CONTROLLING DEFINITIONS

~~The definitions contained in Rule .0101 of this Section shall be construed as controlling in case of any conflict between the definitions contained in Rule .0101 of this Section and any definitions contained in the ASME Code.~~

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0103 INCORPORATED STANDARDS

The following standards are incorporated by reference elsewhere in this Chapter. This incorporation by reference includes subsequent amendments and editions of the standards. The rules of this Chapter shall control when any conflict between these Rules and the following standards exists. ~~These standards are available for public inspection at the office of the Director and may be purchased at the address in this Rule. The prices listed in this Rule reflect the price as of the date of adoption of this Rule. For current prices, the organization listed in this Rule should be contacted.~~

- (1) The ANSI/NB-23 National Board Inspection Code (NBIC) (NBIC). Copies of the ANSI/NB-23 National Board Inspection Code

are available for inspection at the offices of the Bureau and may also be obtained from the National Board of Boiler and Pressure Vessel Inspectors, via U.S. Mail at 1055 Crupper Avenue, Columbus, Ohio 43299, via telephone at (614) 888-8320, or via the internet at www.nationalboard.org. The cost is one-hundred and fifty dollars (\$150.00) per copy.

~~National Board of Boiler and Pressure Vessel Inspectors,
1055 Crupper Avenue,
Columbus, Ohio 43229
phone number: (614) 888-8320
cost: fifty dollars (\$50.00).~~

- (2) The American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code Code. Copies of the complete set of the ASME Code are available for inspection at the offices of the Bureau and may also be obtained from the American Society of Mechanical Engineers, via U.S. Mail at 22 Law Drive, Box 2300, Fairfield, New Jersey 07007-2300, via telephone at (800) 843-2763, or via the internet at www.asme.org. The cost is ten-thousand nine-hundred dollars (\$10,900.00) per set.

~~American Society of Mechanical Engineers,
United Engineering Center,
PO Box 3199,
Grand Central Station,
New York, New York 10163
phone number: 1-800-THE-ASME.
cost: four thousand seven hundred and fifty three dollars (\$4,753.00).~~

- (3) The North Carolina State Building Code Code. Copies of the North Carolina State Building Code are available for inspection at the offices of the Bureau and may also be obtained from the North Carolina Department of Insurance, Office of the State Fire Marshall, Engineering Division, Codebook Section, via U.S. Mail at 322 Chapanoke Road, Suite 200, Raleigh, North Carolina 27603, via telephone at (919) 661-5880, or via the internet at www.ncdoi.com/OSFM/. The cost is fifty dollars (\$50.00) per copy.

~~North Carolina Department of Insurance,
Code Council Section,
PO Box 26387,
Raleigh, NC 27611
phone number: (919) 733-3901
cost: two hundred and fifty dollars (\$250.00).~~

Authority G.S. 95-69.11; 95-69.14.

SECTION .0200 - ADMINISTRATION

13 NCAC 13 .0201 NAME: ADDRESS

- (a) ~~The Boiler and Pressure Vessel Division, Boiler Safety Bureau, which administers the provisions of Article 7A of G.S. Chapter 95, is located in the Raleigh office of the department on the corner of Edenton and Salisbury Streets, Raleigh at the following physical address:~~

~~N.C. Department of Labor
Boiler Safety Bureau
Old Revenue Building
111 Hillsborough Street
Raleigh, North Carolina 27603.~~

- (b) ~~Address-All correspondence to-should be addressed to the following mailing address:~~

~~Boiler and Pressure Vessel Division
North Carolina Department of Labor
Boiler Safety Bureau
4 West Edenton Street-1101 Mail Service Center
Raleigh, North Carolina 27604-27699-1101
Telephone (919) 807-2760
Fax (919) 807-2762.~~

Authority G.S. 95-69.12.

13 NCAC 13 .0202 INSPECTOR QUALIFICATIONS

- (a) ~~Deputy Inspectors performing-conducting certificate inspections shall be in possession of a valid North Carolina Commission and National Board Commission. Special Inspectors and Owner-User Inspectors shall be in possession of a National Board Commission and a North Carolina Commission. A North Carolina Commission shall be issued to an inspector who has passed an examination administered by the Chief Inspector on the Uniform Boiler and Pressure Vessel Act and the rules of this Chapter. There is no fee for this examination.~~

- (b) A Certificate of Competency shall be issued to an inspector who passes an examination written and graded by the National Board and administered by the ~~Board~~-Chief Inspector. The Certificate of Competency authorizes an individual to obtain a National Board Commission.

- (c) ~~National Board examinations are administered on the first Wednesday and Thursday of March, June, September and December. Applications-Applicants for the examination are available from the Director-should contact the Chief Inspector by the 10th of the month prior to the month in which they desire to sit for the examination. Completed applications shall contain an accurate educational and employment history.~~

- (d) ~~The examination-National Board examination covers the construction, installation, operation, maintenance and repair of boilers and pressure vessels and their appurtenances, and is administered upon payment to the Department of Labor of a fee of one hundred dollars (\$100.00). Unsuccessful Applicants who desire to retake the National Board examination must pay an additional one hundred dollar (\$100.00) fee before retaking the examination.~~

- (1) ~~covers the construction, installation, operation, maintenance and repair of boilers and pressure vessels and their appurtenances;~~
- (2) ~~is given on the first Wednesday and one half day Thursday in March, June, September, and December at a site selected by the Director,~~

~~provided that a minimum of four applicants are registered; and~~

~~(3) is administered upon payment to the Department of Labor of a fee of fifty dollars (\$50.00), which is also required when the examination is retaken by an unsuccessful applicant.~~

(e) A grade of 70 percent or greater must be attained to achieve a passing grade on ~~the examination.~~ both examinations.

Authority G.S. 95-69.11; 95-69.15.

13 NCAC 13 .0203 NORTH CAROLINA COMMISSION

(a) When requested by the employer, a North Carolina Commission, bearing the signature of the ~~chairperson of the board, Commissioner,~~ shall be issued by the Board to persons holding a valid National Board Commission.

(b) Requests for a North Carolina Commission shall be processed upon proof of a National Board Commission and payment of a ~~fifteen dollar (\$15.00)~~ twenty-five dollar (\$25.00) fee to the Department of Labor.

(c) North Carolina Commissions are valid through December 31, at which time the inspector's employer shall submit a renewal application and a ~~fifteen dollar (\$15.00)~~ twenty-five dollar (\$25.00) fee to the Department of Labor.

(d) The North Carolina Commission shall be returned by the ~~inspector employing company with notification of termination date to the Division upon Bureau within 30 days of~~ termination of employment.

(e) A North Carolina Commission may be suspended or revoked by the ~~board, Board~~ in accordance with G.S. ~~95-69.17-95-69.13~~ for incompetence, untrustworthiness or falsification of any statement in an application or inspection report. The Board shall give notice of the commencement of proceedings for suspension or revocation of a commission pursuant to G.S. 150B-23. A North Carolina Commission may be suspended prior to the hearing if the ~~Board Chief Inspector~~ determines that the public health, safety or welfare requires this action. In this case, the proceedings shall be promptly commenced and determined. The Board's decision regarding the competency of an inspector shall be determined after consideration of the knowledge, skill, and care ordinarily possessed and employed by boiler and pressure vessel inspection personnel in good standing. Industry custom and practice shall be considered but are not determinative. Failure to ~~perform conduct~~ the inspections in accordance with this Chapter shall constitute incompetence. The inspector shall be given the opportunity to show that he is ~~performing~~ conducting his duties in a competent manner and that suspension or revocation is unwarranted. If the inspector believes that the decision of the Board is not warranted, he may file a petition for a judicial hearing review pursuant to Article 4 of ~~G.S. 150B, Chapter 150B of the N.C. General Statutes.~~

Authority G.S. 95-69.11; 95-69.1.

13 NCAC 13 .0204 CONFLICT OF INTEREST

An inspector shall not engage in any conduct or endeavor that would constitute a conflict of interest. ~~interest, including but not limited to the following:~~

- (1) Ownership or employment in any kind of boiler or pressure vessel sales or service business;
- (2) Ownership or employment in any kind of boiler or pressure vessel parts or appurtenances sales or service business;
- (3) Consultative services for ASME Code or National Board quality programs design or implementation;
- (4) Inspection services outside the purview of the employing entity; or
- (5) Any other activities that may be considered a conflict of interest as determined by the Board.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0205 OWNER-USER INSPECTION AGENCY

(a) A company seeking to ~~perform conduct~~ inspections of its own ~~boilers and~~ pressure vessels shall file an application with the ~~Director Chief Inspector~~ and obtain approval from the Board.

(b) The company shall, in its application, designate a supervisor who shall be ~~a registered professional~~ an engineer within its employ, who, upon approval of the application, shall:

- (1) ascertain that the company's inspectors, pursuant to Rules .0202 and .0203, are issued certificates of competency and owner-user commission cards;
- (2) supervise inspections of ~~boilers and~~ pressure vessels and see that an inspection report, signed by the owner-user inspector, is filed at the equipment site;
- (3) promptly notify the ~~Director Chief Inspector~~ of any unsafe ~~boiler or~~ pressure vessel which presents a condition of imminent danger;
- (4) maintain a master file of inspection records which shall be made available for examination by the ~~Director Chief Inspector~~ or his representative during business hours:
 - (A) identifying each ~~boiler and~~ pressure vessel by serial number and abbreviated description; and
 - (B) showing the date of the last and next scheduled inspection;
- (5) on a date mutually agreed upon with the ~~Director, Chief Inspector,~~ file an annual statement signed by the supervisor, showing the number of boilers and certifying that each inspection was ~~performed conducted~~ pursuant to this Chapter, accompanied by an ~~inspection certificate administrative fee of fifteen dollars (\$15.00)~~ twenty dollars (\$20.00) per vessel.

(c) Inspection certificates are not required for pressure vessels inspected under an owner-user program.

Authority G.S. 95-69.11; 95-69.15; 95-69.16.

13 NCAC 13 .0206 OWNERS OR USERS TO NOTIFY CHIEF INSPECTOR OF ACCIDENTS

~~(a) When an accident renders a boiler, pressure vessel, or nuclear energy system inoperative, or causes damage to property, personal injury, or death, the owner or user shall immediately notify the Director by the most expedient means available. This notification shall be followed by a detailed written description. The owner or user of a boiler or pressure vessel shall immediately notify the Chief Inspector when a device is rendered inoperative due to an over pressurization, dry firing or any related event that causes damage to the equipment, real or personal property, personal injury, or death.~~

~~(b) No person shall remove or disturb the boiler, pressure vessel, or nuclear energy system, or any of its parts, before an investigation by the Director Chief Inspector or designee has been made, except for the purpose of conserving life or limiting consequential damages.~~

~~(c) Insurance inspectors who elect to investigate an accident may do so after the Director has concluded his investigation. Any insurance inspector who elects to investigate an accident shall submit an accident report to the Director within 10 days of the completion of the investigation.~~

Authority G.S. 95-69.11; 95-69.1.

13 NCAC 13 .0207 INSPECTION REPORTS

~~(a) Inspectors shall file inspection reports with the Chief Inspector:~~

- ~~(1) inspection reports with the Director within 10 working days after each certificate inspection; and~~
- ~~(2) inspection reports immediately for with the Director regarding all conditions of imminent danger, or any condition that would result in the insurance company's refusal to issue or continue an insurance policy on the boiler, boiler or pressure vessel, or nuclear energy system, immediately vessel.~~

~~(b) Inspectors shall notify the Chief Inspector, in person or by electronic means, immediately upon becoming aware of an accident which renders a boiler or pressure vessel inoperative or causes damage to property, personal injury, or death.~~

~~(c) Should the inspector, during the course of making an inspection, find a condition of imminent danger, he shall immediately notify the Chief Inspector, in person or by electronic means, so that steps might be taken to remove the device from service.~~

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0208 INSURANCE COMPANIES TO NOTIFY CHIEF INSPECTOR

~~(a) All insurance companies shall notify the Director Chief Inspector by reference to the applicable North Carolina serial number and owner/user's name and address within 10-30 days regarding actions taken on all boiler, pressure vessel, or nuclear installation boiler or pressure vessel risks, including but not limited to:~~

- (1) the issuance of a policy;
- (2) the cancellation of a policy;
- (3) the non-renewal or suspension of a policy because of unsafe conditions; or
- (4) removal of a boiler or pressure vessel from service.

Such notification shall include reference to the applicable North Carolina identification number and the owner/user's name and address.

~~(b) Should the inspector, during the course of making an inspection, find a condition of imminent danger, he shall immediately notify the Director by telephone or fax in order that steps might be taken to remove the vessel from service.~~

~~(c) The inspector shall notify the Director immediately upon becoming aware of an accident which renders a boiler, pressure vessel, or nuclear energy system inoperative or causes damage to property, personal injury, or death.~~

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0209 INSTALLERS TO NOTIFY CHIEF INSPECTOR

~~All contractors Any company or individual installing boilers or pressure vessels subject to inspection in accordance with this Chapter shall notify the Director Chief Inspector and request a certificate inspection not less than 30-10 working days prior to placing equipment in operation. Equipment shall not be operated prior to the owner or user obtaining an inspection certificate an inspection being conducted that finds the boiler or pressure vessel to be in compliance with this Chapter. Payment of the initial inspection fee shall be the responsibility of the requesting contractor.~~

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0210 SHOP INSPECTIONS AND NATIONAL BOARD R STAMP QUALIFICATION REVIEWS

~~(a) Manufacturers or repair firms seeking to employ deputy inspectors to inspect their fabrication process for boilers, pressure vessels, and nuclear energy system components, the Boiler Safety Bureau to act as their Authorized Inspection Agency pursuant to the ASME Code, Code or National Board Inspection Code, shall enter into a written agreement with the North Carolina Department of Labor Labor, Boiler Safety Bureau for this purpose.~~

~~(b) The Department of Labor shall perform the qualification audit for issuance of the National Board R symbol stamp pursuant to the National Board Inspection Code as adopted, except as provided in paragraph (c) of this Rule. An audit of the Authorized Inspector and the company in which he/she is working shall be conducted on an annual basis for non-nuclear companies and twice each year for nuclear companies. The subject company will be required to pay the Audit fees required in Rule .0213 of this Section.~~

~~(c) The Department of Labor shall not perform the qualification audit for those individuals or organizations for which the Department of Labor provides inspection services, for those individuals and organizations in possession of or concurrently~~

~~applying for an ASME Code symbol stamp, or for those individuals or organizations which specifically request the audit be performed by the National Board. The Chief Inspector or his designee shall conduct the qualification reviews for issuance of the National Board R symbol stamp pursuant to the National Board Inspection Code as adopted, except as provided in Paragraph (d) of this Rule.~~

~~(d) An audit to be performed by the Department shall be scheduled upon receipt of request by the National Board. Payment of the fee as required in Rule .0213 of this Section shall be the responsibility of the individual or organization being audited. Should an applicant not be successful in obtaining accreditation, the applicable fee shall be paid before a new audit is performed. The Chief Inspector or his designee shall not conduct the qualification reviews of those companies for which the Boiler Safety Bureau provides inspection services, or those companies which specifically request the review be conducted by the National Board.~~

~~(e) A review to be conducted by the Boiler Safety Bureau shall be scheduled upon receipt of request by the National Board. A deposit of twelve hundred dollars (\$1,200.00) shall be made by the applying company to cover the fees and expenses incurred and shall be received by the Boiler Safety Bureau no less than 30 days prior to the subject review. This deposit will be applied to the cost of the review. Payment of the fee as required in Rule .0213 of this Section shall be the responsibility of the company being reviewed. Should an applicant not be successful in obtaining accreditation, the applicable deposit shall be paid before a new review is conducted.~~

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0211 CERTIFICATE INSPECTIONS

(a) ~~An~~ A commissioned inspector shall inspect all boilers and pressure vessels at the time of installation and at regular intervals thereafter, as provided in this Rule.

(b) Subject to the exceptions in Paragraphs (c) and (d) of this Rule, and after seven days notice is given to the owner or user, an inspector shall conduct an internal inspection ~~for a power of a high pressure boiler~~ at the time of installation and annually thereafter. Three to nine months after the internal inspection, an external inspection shall be ~~performed. conducted while the boiler is in operation. The inspector shall ensure that the safety controls are operating as required. Issuance of the inspection certificate shall be based on the results of the internal inspection. inspection; however, if the inspector determines during the external inspection that an unsafe condition exists that is likely to result in serious personal injury or property damage, the certificate of operation may be revoked or suspended until such time as the device has been made safe for operation.~~

(c) In place of the first internal inspection ~~for of a new power boiler being placed into service,~~ high pressure boiler, an inspector may conduct an external inspection if the inspector determines that data sufficient to determine compliance with the rules of this Chapter can be gathered from an external inspection. This shall not apply to relocated used boilers.

(d) Miniature boilers, coil-type watertube boilers, and boilers heating a fluid other than water which do not produce steam or vapor operating as ~~power-high pressure~~ boilers shall undergo an

external inspection annually. Miniature boilers, coil-type watertube boilers and boilers heating a fluid other than water operating as heating boilers shall undergo an external inspection biennially. Hobby boilers, locomotive boilers and exhibition boilers shall be inspected annually, at the beginning of the season when they are anticipated to be operated.

(e) Heating boilers and pressure vessels, except hydropneumatic storage tanks, shall undergo an external inspection biennially.

(f) Owner-user inspectors shall conduct inspections for ~~boilers and~~ pressure vessels as prescribed in this Rule.

(g) Inspectors may order coverings removed, internal inspections, external inspections, control and safety device testing or calibration, or pressure tests whenever conditions warrant further evaluation of ~~a boiler, pressure vessel, or nuclear energy system.~~ the pressure equipment.

(h) Hydropneumatic storage tanks shall undergo an external inspection every ~~five~~ four years.

(i) When the inspector or ~~Director~~ Chief Inspector determines that a certificate ~~can not~~ cannot be issued as a result of an inspection, the boiler or pressure vessel shall be reinspected after the necessary repairs are made.

(j) Inspections shall be ~~performed~~ conducted in accordance with the National Board Inspection Code, ~~Chapter II, Inspection of Boilers and Pressure Vessels, 1992 edition,~~ including subsequent amendments and editions, which is hereby incorporated by reference. The inspector may require controls and safety devices to be disassembled, tested, checked or calibrated as necessary to ensure their proper operation.

(k) The ~~Director~~ Chief Inspector may consider extending an existing inspection certificate for a ~~power-high pressure~~ boiler for a period not exceeding ~~60-90~~ days beyond the certificate expiration date, should an inspection at the specified period result in undue hardship for the owner or user. The owner or user shall submit a written request to extend an existing inspection certificate, providing justification for an extension. The request shall include a report from a commissioned inspector of an external inspection which shall have been ~~performed~~ conducted no earlier than 60 days before the certificate expiration date, and the inspection report shall include a recommendation from the inspector for an extension to the inspection certificate.

(l) The inspection frequency established by this Rule may be modified by the ~~Director~~ Chief Inspector for individual boilers and pressure vessels if the ~~Director~~ Chief Inspector determines that due to unique conditions, the frequency established herein is not appropriate, and that the safety attained by the normal inspection frequency will be otherwise obtained.

Authority G.S. 95-69.11; 95-69.14; 95-69.17.

13 NCAC 13 .0212 PREPARATION FOR INSPECTION

(a) The owner or user shall prepare a ~~power boiler~~ high pressure boiler, including locomotive, hobby and exhibition boilers, for internal inspection by:

- (1) cooling the boiler, furnace, and setting so as to prevent damage to any part;
- (2) draining and washing thoroughly internal parts to be inspected, including disassembly and

cleaning of float bowl type low-water fuel cutoff devices and associated piping plugs or caps;

- (3) removing wash-out, drain, and inspection plugs;
- (4) removing enough of the grates in an internally fired boiler to permit inspection;
- (5) removing enough brickwork, refractory, and insulation to permit inspection;
- (6) removing manhole and handhole plates;
- (7) preparing the controls and safety devices for inspection and testing;
- (8) preventing leakage of water, steam, or vapors into boiler interiors that would endanger personnel;
- (9) providing adequate ventilation to prevent the accumulation of hazardous gasses; and
- (10) providing, when requested by the inspector, a competent person, as defined under the North Carolina Occupational Safety & Health standard for confined spaces, to assist the inspector in the performance of his inspection.

(b) In addition to the requirements in Paragraph (a) of this Rule, the owner or user shall prepare a ~~power~~ high pressure boiler that has a manhole and which is connected to a common header with another boiler for internal inspection by:

- (1) closing and tagging, or padlocking, the ~~nonreturn~~ and steam stop valves and opening all drain valves or cocks located between the ~~nonreturn~~ and steam stop valves;
- (2) closing and tagging, or padlocking, the feed and check valves and opening all drain valves or cocks located between the feed and check valves;
- (3) draining boiler and then closing and padlocking the blowoff valves;
- (4) disconnecting, at the request of the inspector, blowoff lines between pressure parts and valves;
- (5) opening all drains and vent lines; ~~and~~
- (6) closing and tagging or padlocking all fuel valves, blower or fan motors and any other devices that may deliver energy in any form to the boiler; and
- ~~(6)~~(7) after complying with all other provisions of this Rule, ~~opening~~ removing the manhole covers.

(c) The owner or user need not make any special preparation for an external inspection of a boiler or pressure vessel, except that if the inspector requires the boiler or pressure vessel to be shut down for a closer inspection, the boiler or pressure vessel shall be prepared as is required for the internal inspection of a power high pressure boiler.

Authority G.S. 95-69.11.

SECTION .0300 - ENFORCEMENT OF STANDARDS

13 NCAC 13 .0301 INSPECTION

DOCUMENTATION

(a) The inspector shall document the results of the inspection on ~~an a written inspection report-report or in an electronic format approved by the Chief Inspector.~~

(b) If the inspector finds that the boiler or pressure vessel is in compliance with the rules in this Chapter, he shall indicate on the ~~inspection~~-report that the boiler or pressure vessel is satisfactory.

(c) If the inspector finds the boiler or pressure vessel is not in compliance with the rules in this Chapter, he shall specify in detail on the inspection report the deficiencies and the required repairs or corrective action.

(d) The inspector shall determine if the deficiency is such that operation of the boiler or pressure vessel creates a condition of imminent danger. If a condition of imminent danger exists, the inspector shall state on the inspection report that operation of the boiler or pressure vessel ~~should~~ is to cease immediately until completion of the necessary repairs or corrective action. The inspector shall immediately notify the ~~Director~~ Chief Inspector of any condition of imminent danger.

(e) If the condition of the boiler or pressure vessel is such that repairs or corrective action ~~can not~~ cannot bring the boiler or pressure vessel into compliance, he shall indicate on the inspection report that the boiler or pressure vessel should be condemned from further use.

(f) For inspections revealing deficiencies, the inspector shall request the owner/user to sign the inspection report acknowledging receipt of a copy of the report and confirming that the inspector explained the necessary repairs or corrective action.

~~(g) The inspector shall leave a copy of the inspection report with the owner/user, and submit the original to the Director.~~

~~(g)(h) The inspector or the Division, at the Director's discretion, The Bureau shall issue an invoice to the owner or user for the inspections made and for issuance of the inspection certificate. The owner or user shall remit payment as indicated on the invoice within 45 30 days to the North Carolina Department of Labor.~~

Authority G.S. 95-69.11; 95-69.16.

13 NCAC 13 .0302 CERTIFICATE ISSUANCE

(a) The ~~Director~~ Chief Inspector ~~or his designee~~ shall ~~review the inspection report and, if he finds~~ issue an inspection certificate to the owner/user, upon receipt of payment, when the boiler or pressure vessel is found to be in compliance with this Chapter, issue an inspection certificate to the owner/user, pending receipt of payment. ~~Chapter.~~

(b) The owner shall post the inspection certificate under protective cover in a prominent place ~~visible to the operator while reading the pressure, or if a pressure gauge is not required to be installed, while observing operation of the~~ near the boiler or pressure vessel-vessel unless environmental conditions or proprietary reasons make it impracticable. The certificate shall ~~be placed under glass, or otherwise protected from the environment.~~ be maintained in a readily retrievable location should the conditions make it impracticable to post.

(c) If the Commissioner determines that a boiler or pressure vessel is exposing the public to an unsafe condition likely to

result in serious personal injury or property damage, the Commissioner may refuse to issue or renew or may revoke, suspend or amend an inspection certificate; provided, however, that whenever any action is taken under this subpart, the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with G.S. 150B.

Authority G.S. 95-69.11; 95-69.17.

13 NCAC 13 .0303 INSPECTIONS REVEALING DEFICIENCIES

(a) The owner or user shall complete any required repairs or corrective action and request an additional inspection within ~~30~~ 60 days of the inspection, except in cases where the boiler or pressure vessel is removed from service, in which case the owner or user shall send in written confirmation, signed by the owner or user, that use of the boiler or pressure vessel has been discontinued and that the boiler or pressure vessel has been removed from the source of energy.

(b) Upon notification by the inspector of a boiler or pressure vessel for which continued operation creates a condition of imminent danger, the ~~Director~~ Chief Inspector shall determine if the recommendations of the inspector are valid, and if so, he shall immediately notify the owner or user by the most expedient means possible, followed by written notification within 15 days stating that the use of the boiler or pressure vessel shall be discontinued immediately.

(c) The owner or user may continue operation of the boiler or pressure vessel, including those boilers or pressure vessels which are condemned, during the ~~30-60~~ day period, except that this provision shall not apply to boilers and pressure vessels after verbal notification by the ~~Director~~ Chief Inspector to the owner or user that a condition of imminent danger exists.

(d) After completion of any required repairs or corrective action, the boiler or pressure vessel shall be reinspected to the extent necessary to verify satisfactory completion of the required repairs or corrective action. ~~For reinspections performed by deputy inspectors, an external inspection fee shall apply.~~

(e) For each reinspection or follow-up inspection conducted by Deputy Inspectors, a fee of thirty-five dollars (\$35.00) shall be paid to the North Carolina Department of Labor.

Authority G.S. 95-69.11.

13 NCAC 13 .0304 APPEALS

(a) If the owner or user believes that the recommendations of the inspector are not warranted, he may request a review by the ~~Director~~ Chief Inspector within 15 days of the inspection. The ~~Director~~ Chief Inspector shall notify the owner or user of his decision in writing within 15 days of receipt of a request for a decision.

(b) If the owner or user believes that the decision of the ~~Director~~ Chief Inspector is not warranted he may file for a contested case hearing pursuant to Article 3 of ~~G.S. 150B~~ Chapter 150B of the N.C. General Statutes. The decision of the ~~Director~~ Chief Inspector shall not be stayed pending a contested case hearing.

(c) After verbal notification from the ~~Director~~ Chief Inspector that a condition of imminent danger exists, the owner or user

shall not operate the boiler or pressure vessel, however, the owner or user may file for a contested case hearing pursuant to Article 3 of ~~G.S. 150B~~ Chapter 150B of the N.C. General Statutes.

Authority G.S. 95-69.11; 95-69.17.

13 NCAC 13 .0305 MENACE TO PUBLIC SAFETY NOTICE

(a) The ~~Director~~ Chief Inspector or his designee ~~shall~~ may post a menace to public safety notice on the boiler or pressure vessel:

- (1) if the owner or user fails to request a reinspection within ~~30-60~~ 60 days of an inspection during which time deficiencies were noted;
- (2) immediately upon verbal notification by the ~~Director~~ Chief Inspector regarding an inspection whereby the inspector identified a condition of imminent danger; or
- (3) within 15 days after the ~~Director~~ Chief Inspector renders a decision regarding an appealed decision.

(b) The notice described in this rule shall be posted in a prominent place on the boiler or pressure vessel and in a prominent place in the establishment where the boiler or pressure vessel is being used so that it may be easily read by members of the public and employees.

(c) The menace to public safety notice shall not be removed, rendered illegible or inaccessible, or otherwise obliterated except under the explicit approval of the ~~Director~~ Chief Inspector.

(d) The Chief Inspector shall notify the Commissioner of Labor regarding action pursuant to G.S. 95-69.19.

Authority G.S. 95-69.11; 95-69.17.

13 NCAC 13 .0306 VIOLATIONS

(a) Any person or legal entity operating a boiler or pressure vessel:

- (1) without an inspection certificate;
- (2) after the inspection certificate has expired;
- (3) while the inspection certificate is suspended;
- (4) after the inspection certificate has been revoked and the boiler or pressure vessel has been condemned; or
- (5) in excess of the maximum allowable working pressure as stated on the inspection certificate, or outside of the design pressure or temperature of the boiler or pressure vessel, ~~shall be subject to action as described in this Rule.~~ shall be subject to action as described in this Rule.

(b) Action to be taken by the ~~Director~~ Chief Inspector ~~shall include~~ may include any or a combination of the following actions:

- (1) injunctive proceedings instituted by the ~~Director~~ on behalf of the Commissioner pursuant to G.S. ~~95-69.11; 95-69.11~~ or

- (2) ~~criminal prosecution pursuant to G.S. 95-69.18; or civil penalties issued by the Commissioner pursuant to G.S. 95-69.19.~~
- (3) ~~both injunctive proceedings pursuant to G.S. 95-69.11 and criminal prosecution pursuant to G.S. 95-69.18.~~

- (1) ~~Power high pressure boilers installed after November 2, 1946;~~
- (2) ~~heating boilers (except cast iron boilers) installed after January 1, 1976; and 1976;~~
- (3) ~~pressure vessels installed after January 1, 1979, 1979; and~~
- (4) ~~hydropneumatic storage tanks installed after January 1, 1986.~~

Authority G.S. 95-69.11; 95-69.14; 95-69.18.

SECTION .0400 - GENERAL REQUIREMENTS

13 NCAC 13 .0401 DESIGN AND CONSTRUCTION STANDARDS

- (a) ~~The design, construction, installation, inspection, stamping, and operation of all boilers and pressure vessels except nonstandard boilers and pressure vessels and North Carolina "Specials" shall conform to the Rules in this Chapter and the ASME Code, 1992 edition, including subsequent amendments and editions, which is hereby incorporated by reference. Code.~~
- (b) ~~Repairs and alterations to boilers and pressure vessels, vessels shall conform to the requirements of the following sections of the National Board Inspection Code, 1992 edition, including subsequent amendments and editions, which are hereby incorporated by reference. Code.~~
 - (1) ~~Chapter III, Repairs and Alterations to Boilers and Pressure Vessels by Welding; and~~
 - (2) ~~Appendices C-R and C-VR.~~
- (c) ~~The rules of this Chapter shall control when any conflict is found to exist between the Rules and the ASME Code or the National Board Inspection Code.~~
- (d) ~~Welded repairs and alterations may only be made by an individual or organization in possession of a valid certificate of authorization for use of the National Board "R" symbol stamp or an ASME Code symbol stamp. stamp.~~
- (e) ~~Repairs of safety valves or safety relief valves shall be made by an individual or organization in possession of a valid certificate of authorization for use of the National Board "VR" symbol stamp.~~

Authority G.S. 95-69.11; 95-69.13; 95-69.14.

13 NCAC 13 .0402 NORTH CAROLINA STAMPING AND REGISTRATION

- (a) ~~Boilers and pressure vessels shall be registered with the National Board and shall bear the National Board stamping as follows:~~

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0404 CONTROLS AND SAFETY DEVICES

Boilers and pressure vessels shall be equipped with all suitable controls and safety devices required for safe operation of the equipment. Controls and safety devices shown in Table-0404 in this Rule shall be considered minimum requirements for the various types of boilers and pressure vessels listed. All devices required herein and shown in Table-0404 shall be suitable for the maximum allowable operating pressure and temperature of the boiler or pressure vessel on which they are installed. The design, construction, installation, and operational requirements for controls and safety devices shall be as required in Rules .0405 through .0420 of this Section.

TABLE-0404

- (b) ~~Boilers and pressure vessels shall may be exempted from the requirement for National Board registration provided the owner or user submits a letter of request requesting a variance to the Director enclosing with the letter a copy of the original manufacturer's data report and all R-1 reports of Welded Repair or Alteration for all repairs and alterations which have been made to the boiler or pressure vessel and all of this information is suitable to the Director Chief Inspector giving reason for the request. The requestor shall enclose with the letter a copy of the original manufacturer's data report.~~ The documentation shall be reviewed by the Director Chief Inspector to determine if the information is complete and traceable to the boiler or pressure vessel. ~~The Director shall require an inspection of the boiler or pressure vessel if necessary to make the determination.~~ The owner or user shall be advised of the Director's Chief Inspector's decision within 40-30 working days with regard to the approval or disapproval of the request.
- (c) ~~Electric boilers shall bear the Underwriters' Laboratories label. be listed with a qualified testing laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) pursuant to 29 CFR 1910.7.~~
- (d) ~~The owner or user shall, upon request of the inspector making an inspection, inspector, provide a manufacturer's data report for the boiler or pressure vessel.~~
- (e) ~~When a new boiler or pressure vessel is installed, or when an existing installation receives its first certificate inspection, an inspector a Deputy Inspector shall conduct the first inspection and apply a metal tag embossed or stamped with the North Carolina serial identification number (e.g., NC000) to the boiler or pressure vessel on or adjacent to the manufacturer's nameplate or stamping. If the boiler or pressure vessel is constructed of materials having adequate thickness to allow stamping, the serial identification number shall may be stamped onto the boiler or pressure vessel.~~
- (f) ~~The owner or user shall keep all required stamping exposed at all times unless a clearly marked removable cover is installed so that it may be readily accessible at any time.~~

PROPOSED RULES

REQUIRED DEVICE AND REFERENCED RULE	HIGH PRESSURE BOILER	STEAM HEATING BOILER	HOT WATER HEATING BOILER	HOT WATER SUPPLY BOILER	PRESSURE VESSEL
Safety Valve(s) .0405	X	X	X	X	X
High Limit Control .0406	X	X	X	X	X
Pressure Gage .0407	X	X	X		X
Steam Syphon (steam boilers only) .0407	X	X			
Water Column & Gauge Glass (steam boilers only) .0408	X	X			
Low Water Fuel Cutoff (If input > 400,000 Btu) .0409	X	X	X	X	
Temperature Gauge .0410			X	X	
Bottom Blowoff Valves .0411	X	X			
Drain Valves .0411	X	X	X	X	X
Make-up Water Stop Valve(s) .0411	X	X	X	X	
Back flow Preventer .0411	X	X	X	X	
Expansion Tank .0412			X	X	
Flame Failure Control .0420	X	X	X	X	

<u>REQUIRED DEVICE AND REFERENCED RULE</u>	<u>HIGH PRESSURE BOILER</u>	<u>STEAM HEATING BOILER</u>	<u>HOT WATER HEATING BOILER</u>	<u>HOT WATER SUPPLY BOILER</u>	<u>WATER HEATER</u>	<u>PRESSURE VESSEL</u>
<u>Pressure Relief Device .0405</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>High Limit Control .0406</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>
<u>Pressure Gauge .0407</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>		<u>X</u>
<u>Steam Syphon (steam boilers only) .0407</u>	<u>X</u>	<u>X</u>				
<u>Water Column & Gauge Glass (steam boilers only) .0408</u>	<u>X</u>	<u>X</u>				
<u>Low-Water Fuel Cutoff (If input > 400,000 Btu) .0409</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>		
<u>Temperature Gauge .0410</u>			<u>X</u>	<u>X</u>	<u>X</u>	
<u>Bottom Blowoff Valves .0411</u>	<u>X</u>	<u>X</u>				
<u>Drain Valves .0411</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

PROPOSED RULES

<u>Make-up Water Stop Valve(s)</u> <u>.0411</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	
<u>Expansion Tank</u> <u>.0412</u>			<u>X</u>	<u>X</u>		
<u>Flame Failure Control</u> <u>.0420</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>		

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0405 PRESSURE RELIEF DEVICES

(a) Boilers and pressure vessels shall be protected from overpressurization by a ~~safety valve-pressure relief device~~. All ~~safety valves-pressure relief devices~~ installed on any ~~boiler, boiler or pressure vessel, or nuclear energy system vessel~~ shall be constructed and stamped in accordance with the ASME Code.

(b) All ~~safety valves-pressure relief devices~~ shall be stamped and capacity certified by the manufacturer indicating compliance with the National Board. The stamping shall include the set pressure (that pressure at which the valve is set to open) and the relieving capacity (the rate of flow).

(c) ~~Power-High pressure~~ boilers with over 500 square feet of heating surface and electrically fired boilers having an input in excess of 1100 kW shall be provided with a minimum of two safety valves.

(d) Safety valves and safety relief valves for heating boilers shall have a seat diameter of not less than ½ inch, ~~not~~ and not more than 4 ½ inches.

(e) ~~Safety valves-Pressure relief devices~~ shall have a set pressure and relieving capacity in accordance with the ASME Code requirements for the type ~~device equipment~~ on which the ~~safety valve-pressure relief device~~ is installed. The At least one pressure relief device shall have the set pressure for the safety

~~valve shall set at~~ not be greater than the maximum allowable working pressure of the boiler or pressure vessel. The relieving capacity shall not be less than the minimum required relieving capacity indicated on the manufacturer's name plate or stamping, or as otherwise required by the ASME Code. Safety relief

valves installed on ~~potable~~ water heaters shall be of the combination temperature and pressure relieving type.

(f) All safety valves installed on ~~power-high pressure~~ boilers shall be installed on top of the boiler, or in the case of water tube boilers on top of the upper drum, with the spindle in the vertical position. All safety valves and safety relief valves installed on heating boilers shall be on top of the boiler or on an opening at the highest practicable part of the side of the boiler, but in no case shall the safety valve be installed below the normal operating level for a steam boiler. Safety valves and safety relief valves installed on hot water heating boilers, hot water supply boilers, and steam heating boilers shall be installed with the spindles mounted in the vertical position. Safety relief valves for ~~potable~~ water heaters may be installed with the spindles mounted in either the vertical or horizontal position. In no case may pressure relief devices be mounted on appurtenances.

(g) The distance between the ~~safety valve-pressure relief device~~ outlet nozzle on the boiler and the ~~safety valve-pressure relief device~~ inlet shall be kept to a minimum consistent with the size of the ~~safety valve-pressure relief device~~ and the pipe sizes

required. In no case shall any valves or stops be installed in the inlet piping to the ~~safety valve-pressure relief device~~ or in the discharge piping from the ~~safety valve-pressure relief device~~. The boiler outlet and the piping between the boiler outlet and the ~~safety valve-pressure relief device~~ shall have a cross sectional area of not less than the cross sectional area of the ~~safety valve-pressure relief device~~ inlet.

(h) Discharge piping from the ~~safety valve-pressure relief device~~ outlet shall be the same size, or larger, than the outlet pipe connection on the ~~safety valve-pressure relief device~~ and shall be extended full size to a safe location. A safe location shall be interpreted to mean a location within six inches of the finished floor of the mechanical room, to a location outside the building terminating a safe distance above the building roof or to a location outside the building within six inches above the finished grade. For vessels such as organic fluid heaters where the medium presents a hazard, the discharge shall be to a containment vessel large enough to hold all anticipated pressure relief discharges. When safety valve-pressure relief device discharge piping is routed vertically, piped drainage shall be provided by the use of drip pan elbows installed on the outlet of each ~~safety valve-pressure relief device~~ served.

(i) Multiple ~~safety valves-pressure relief devices~~ may be piped to the point of discharge using a common discharge header pipe. The header pipe size shall have a diameter sufficient to provide an equivalent cross-sectional area equal to or larger than the sum of the cross-sectional areas of the ~~safety valve-pressure relief device~~ outlets to which it is connected.

(j) ~~Safety valves-Pressure relief devices~~ on pressure vessels may be installed with the spindle in the vertical or horizontal position. The ~~safety valve-pressure relief device~~ inlet, discharge piping, and the requirement for piping the discharge to a safe location shall be the same as noted for boilers. The requirement for discharge piping is optional for pressure vessels used to store compressed air, inert gasses, water, or other fluids no more hazardous than water.

(k) ~~Safety valves-Pressure relief devices~~ for direct fired pressure vessels and for those used as air compressor storage tanks shall be installed directly on the pressure vessel with no intervening valves. ~~Safety valves-Pressure relief devices~~ for all other pressure vessels may be installed directly on the pressure vessel or in the piping system, except as modified in this Rule. A stop valve may be installed between a pressure vessel and the ~~safety valve-pressure relief device~~ if one of the following is satisfied:

- (1) the stop valve is normally locked in the open position, and may only be closed when there is a full time attendant stationed at the stop valve when it is in the closed position for testing purposes; or
- (2) isolating the ~~safety valve-pressure relief device~~ from the pressure vessel by closing the stop

valve also isolates the pressure vessel from the source of pressure.

(l) ~~Safety valves-Pressure relief devices~~ shall be sealed to prevent the valve from being taken apart without breaking the seal. ~~Safety valves-Pressure relief devices~~ for boilers and pressure vessels containing air, water, or steam, shall be provided with a test lever or pull test ring which may be used to test the operation of the valve. ~~Safety valves-Pressure relief devices~~ which are required to be provided with a test lever or pull ring shall be readily accessible for testing from the work platform or other means, such as a pull chain, shall be provided so that the ~~safety valve-pressure relief device~~ can be tested from the work platform.

(m) When a hot water supply boiler or storage vessel is heated indirectly by steam or hot water in a coil or pipe, the ~~safety valve-pressure relief device~~ capacity shall be determined by the heating surface available for heat transfer, and the ~~safety valve-pressure relief device~~ shall not be less than 1 inch diameter.

(n) A person shall not:

- (1) attempt to remove, tamper or ~~perform-conduct~~ any work on any safety appliance while the ~~boiler, boiler or pressure vessel, or nuclear energy system-vessel~~ is in operation, except as permitted by the ASME or the National Board Inspection Code;
- (2) load a ~~safety valve-pressure relief device~~ in any manner to maintain a working pressure in excess of the maximum allowable working pressure as stated on the inspection certificate;
- (3) operate any ~~boiler, boiler or pressure vessel, or nuclear energy system-vessel~~ without the safety appliances as described in this Chapter, the ASME Code, and the National Board Inspection Code, or

(4) use a ~~safety valve-pressure relief device~~ required by this Chapter as an operating pressure control.

(o) If an owner or user can demonstrate that a pressure vessel is operating in a system of such design that the maximum allowable working pressure cannot be exceeded, the ~~Director Chief Inspector~~ shall ~~may~~ waive the requirement for installation of a ~~safety valve-pressure relief device~~.

(p) ~~Safety valve-Pressure relief device~~ piping shall be supported sufficiently so that the piping is supported with no additional force being applied to the ~~safety valve-pressure relief device~~.

(q) Hydropneumatic storage tanks shall be provided with a ~~safety-relief valve rated for liquid, installed below the water line, and rated in gallons per minute commensurate with the total output of the supplying pumps. Alternatively, for those hydropneumatic storage tanks installed such that the immediate release of water as a result of vessel rupture will not create an additional hazard, a safety relief valve of not less than 3/4" NPS may be installed at the top of the tank. of not less than 3/4 inch NPS and rated in standard cubic feet per minute (SCFM). The relief valve is to be installed on top of the tank. This rule shall apply to new installations. Hydropneumatic tanks that have been formerly inspected under the previous rules do not require a change-out of the existing relief valve unless the current relief valve becomes defective.~~

NOTE: This new criterion shown for hydropneumatic tanks is applicable to any equipment installed after the effective date of the changes to this Chapter. Preexisting installed equipment will meet the criteria codified and effective on January 1, 1995.

(r) Dead weight safety valves are prohibited from use on any boiler or pressure vessel regulated by this Chapter.

(s) When the minimum safety valve relieving capacity is not found on the data plate, the following guide may be used to determine the required safety valve capacity for steam boilers. Multiply the factor noted in the table by the heating surface of the boiler to determine required safety valve relieving capacity.

Table-0405 Guide for Estimating Steaming Capacity Based on Heating Surface

	<u>Firetube Boilers</u>	<u>Watertube Boilers</u>
<u>Boiler heating surface:</u>		
<u>Hand fired</u>	<u>5</u>	<u>6</u>
<u>Stoker fired</u>	<u>7</u>	<u>8</u>
<u>Oil, gas, or pulverized fuel</u>	<u>8</u>	<u>10</u>
<u>Waterwall heating surface:</u>		
<u>Hand fired</u>	<u>8</u>	<u>8</u>
<u>Stoker fired</u>	<u>10</u>	<u>12</u>
<u>Oil, gas, or pulverized fuel</u>	<u>14</u>	<u>16</u>

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0406 HIGH PRESSURE OR TEMPERATURE LIMIT CONTROL

(a) ~~Each automatically fired boiler or pressure vessel shall be protected from overpressurization by two pressure or~~

~~temperature operated controls which monitor the upper pressure or temperature of the water, steam, or other fluid in the boiler or pressure vessel. At least one of the controls shall be wired to interrupt the fuel supply to the burner and stop burner operation,~~

~~or for electric boilers to interrupt the electrical supply to the heating elements or electrodes, before the maximum pressure or temperature is exceeded. One of the controls may be used as a normal operating control. Each automatically fired steam boiler or system of commonly connected steam boilers shall have at least one steam pressure control that will shut off the fuel supply to each boiler or system of commonly connected boilers when the pressure reaches a preset maximum operating pressure. In addition to the required operating pressure control, each individual automatically fired steam boiler shall have a high steam pressure limit control that will shut off the fuel supply to the boiler to prevent pressure in excess of the maximum allowable working pressure. The high limit control shall be equipped with a manual reset which shall prevent the boiler from being fired after the maximum pressure has been reached until the operator resets the switch manually. Steam boilers shall be provided with a syphon(s) or equivalent which will provide a water seal and protect the pressure control(s) from being damaged by the steam.~~

(b) ~~In a multiple boiler or pressure vessel installation, where the pressure or temperature actuated operating control may be installed in a header or other point common to all boilers and pressure vessels in the installation, and can be isolated from any of the boilers or pressure vessels in the installation, the owner or user shall equip each boiler or pressure vessel with at least one high limit control. Each automatically fired hot water heating boiler, hot water supply boiler, water heater or each system of commonly connected hot water heating or supply boilers shall have at least one temperature-actuated control to shut off the fuel supply when the system water reaches a preset operating temperature. In addition to the required temperature control, each individual automatically fired hot water heating boiler, hot water supply boiler, and water heater shall have a high temperature limit control that will prevent the water temperature from exceeding the maximum allowable temperature for the respective equipment. The high limit control for the hot water heating boilers and hot water supply boilers shall be equipped with a manual reset which shall prevent the boiler from being fired after the maximum temperature has been reached until the operator resets the switch manually.~~

(c) ~~For boilers installed after January 1, 1995, and for all boilers after January 1, 2000, the high limit control shall be equipped with a manual reset which shall prevent the boiler from being fired after the maximum temperature or pressure has been reached until the operator resets the switch manually. Automatic resets or remote resets by electronic means are prohibited. The manual reset may be incorporated in the high limit control. Where the reset device is separate from the high limit control, a means shall be provided to indicate actuation of the high limit control. Each high limit and operating control shall have its own sensing element and operating switch.~~

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0407 PRESSURE GAUGES

(a) Boilers and pressure vessels, other than ~~potable~~-water heaters, shall be provided with a pressure indicating gauge which is visible to the operator on the floor or normal work platform.

(b) Pressure gauges shall have a pressure range of not less than 1½ times the operating pressure, nor more than four times the operating pressure, except that steam heating boilers shall have an upper limit of not less than 30 ~~psi-psig~~ nor more than 60 ~~psi-psig~~, and a dial travel of three inches between 0 ~~psi-psig~~ and 30 ~~psi-psig~~.

(c) Hot water storage vessels and expansion tanks in boiler systems need not be provided with a pressure gauge in addition to the gauge supplied on the boiler.

(d) Steam boilers shall be provided with a syphon or equivalent which will provide a water seal and protect the gauge from being damaged by the steam.

(e) Pressure vessels, other than those used as air compressor receiver tanks, may have a remotely located pressure indicating device or a system pressure monitoring device in lieu of a pressure gauge connected directly to the pressure vessel.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0408 GAUGE GLASSES AND WATER COLUMNS

(a) Steam boilers, except for forced flow steam boilers and forced flow water boilers requiring forced circulation to prevent overheating of the tubes, shall be provided with a visible gauge glass which will allow the operator to observe the water level of the boiler. ~~Boilers operating with a maximum allowable working pressure in excess of 400 psi-psig shall have two gauge glasses. Two independent remote level indicators may be used used, in accordance with the ASME Code, in lieu of one of the gauge glasses for boilers operating in excess of 900 psi-gauges.~~ Gauge glasses and remote level indicators must be visible to the operator while reading the pressure at the boiler.

(b) Gauge glasses shall be mounted directly on the boiler or on a water column. Gauge glasses shall be mounted so that the lowest visible part of the gauge glass is above the lowest permissible water level by at least 2 inches for ~~power-high~~ pressure boilers and 1 inch for steam heating boilers. Gauge glasses may be installed with stop cocks or valves to allow for gauge glass replacement during boiler operation. The connections from the boiler shall be not less than 3/4 inch ~~nominal pipe size-NPS~~ up to and including the isolation valves, and not less than 1/2 inch outside diameter tubing from the isolation valve to the gauge glass.

(c) Gauge glasses shall be provided with a drain valve or cock and discharge outlet at the bottom-most connection of not less than 1/4 inch diameter. The discharge outlet shall be piped to a safe location to prevent injury to the operator while blowing down the gauge glass.

(d) Water columns, chambers which moderate fluctuations in water elevations for determining the operating water level in a boiler, when used, shall be designed, constructed, and stamped as required by the ASME ~~code-Code~~. The piping connections to the boiler shall be not less than 1 inch ~~nominal pipe size-NPS~~ for ~~power-high~~ pressure boilers or 3/4 inch ~~nominal pipe size-NPS~~ for heating boilers. Water columns shall have a drain valve and discharge outlet of not less than 3/4 inch ~~nominal pipe size-NPS~~.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0409 AUTOMATIC LOW-WATER FUEL CUTOFF CONTROLS AND WATER-FEEDING DEVICES

~~(a) Each automatically fired steam or vapor system boiler, and each hot water heating boiler or hot water supply boiler having a minimum safety valve relieving capacity greater than 400,000 Btu/hr, shall be equipped with an automatic low water fuel cutoff so located as to automatically cut off the fuel supply and stop the operation of the burner before the surface of the water falls to the lowest safe water line. For electric boilers, the low-water fuel cutoff shall cut off the electrical supply to the electric elements or electrodes. The lowest safe water line shall be that level identified by the manufacturer which indicates the lowest safe water level for safe operation of the boiler. Low water fuel cutoff devices embodying a float and float bowl shall be installed so that the boiler feedwater or makeup water can not be introduced through the float chamber.~~

~~(b) Steam and vapor boilers fired by the combustion of fuels and installed after January 1, 1995 and all steam and vapor boilers fired by the combustion of fuels after January 1, 2000 shall be protected by two low water fuel cutoffs, one of which may also be used to regulate the normal water level.~~

~~(c) The low water fuel cutoff shall be attached directly to the boiler or to the water column. Piping from the boiler shall be not less than one half inch nominal pipe size. The ends of all nipples shall be reamed to full size inside diameter. The low-water fuel cutoff installed in a water boiler system may be installed anywhere in the system so long as there is no isolation valve installed between the device and the boiler.~~

~~(d) For steam and vapor system boilers, low-water fuel cutoff designs embodying a float and float bowl shall have a vertical straightaway valve drain pipe at the lowest point in the water-equalizing pipe connections by which the bowl and the equalizing pipe can be flushed and the device tested.~~

~~(e) A coil type boiler or a watertube boiler requiring forced circulation to prevent overheating of the coils or tubes may have a flow sensing device installed at or near the boiler proper, in lieu of a low water fuel cutoff, to automatically cut off the fuel supply when the circulation of flow is interrupted.~~

~~(f) For boilers installed after January 1, 1995, and for all boilers after January 1, 2000, for which a low water fuel cutoff is required by this Chapter, at least one of these devices shall be equipped with a manual reset which shall prevent the boiler from being fired after a low water condition until the operator resets the switch manually.~~

~~(g) Automatically fired boilers installed after January 1, 1995 and all automatically fired boilers after January 1, 2000 shall be provided with a system to automatically maintain a constant water level so that the water level can not fall below the lowest safe water line.~~

(a) Each automatically fired steam or vapor boiler, except miniature boilers, shall have at least two automatic low-water fuel cutoff devices.

- (1) One of the low-water fuel cutoff devices may also be used to regulate the normal water level.
- (2) Each cutoff device shall be installed to prevent startup and to shut down the boiler fuel or energy supply automatically when the surface

of the water falls to a level not lower than the lowest visible part of the gauge glass.

(3) One control shall be set to function ahead of the other. The lower fuel cutoff device shall be equipped with a manual reset which shall prevent the boiler from being fired after the low water limit has been reached until the operator resets the switch manually.

(4) The low-water fuel cutoff shall be attached directly to the boiler or to the water column. Piping from the boiler shall be not less than 1 inch NPS. Low-water fuel cutoff designs embodying a float and float bowl shall have a vertical straightaway valved drain pipe of not less than 3/4 inch NPS at the lowest point in the water-equalizing pipe connections by which the bowl and the equalizing pipe can be flushed and the device tested.

(b) Each automatically fired hot water heating boiler with heat input greater than 400,000 Btu/hr (117 kW/hr) shall be protected by a low-water fuel cutoff intended for hot water service.

(1) The fuel cutoff device shall be installed to prevent startup and to shut down the boiler fuel or energy supply automatically when the surface of the water falls to a level not lower than the lowest safe permissible water level established by the boiler manufacturer.

(2) The fuel cutoff device shall be equipped with a manual reset which shall prevent the boiler from being fired after the lowest water level has been reached until the operator resets the switch manually.

(3) The low-water fuel cutoff installed in a hot water heating boiler system may be installed anywhere in the system above the lowest safe permissible water level established by the boiler manufacturer, so long as there is no isolation valve installed between the device and the boiler. Connections to the system shall be not less than 1 inch NPS.

(4) A means shall be provided for testing the operation of the low-water fuel cutoff on a hot water heating boiler system without resorting to draining the entire system.

(c) Coil type boilers or watertube boilers requiring forced circulation to prevent overheating of the coils or tubes may have a flow-sensing device installed at or near the boiler proper, in lieu of a low-water fuel cutoff, to automatically cut off the fuel supply when the circulation of flow is interrupted. If there is a definitive water line, a low-water fuel cutoff complying with the forgoing shall be provided in addition to the flow-sensing device.

(d) Electric boilers where uncovering of the electrical element can lead to an unsafe condition shall be equipped with a low-water fuel cutoff device. In the case of electrode type boilers, where the reduction in water level provides a self-limiting control on heat input, a low-water cutoff control is not required.

(e) Automatically fired boilers shall be provided with a system to automatically maintain a constant water level so that the water level cannot fall below the lowest safe water line.

(f) Low water fuel cutoff devices embodying a float and float bowl shall be installed so that the boiler feedwater or makeup water cannot be introduced through the float chamber.

Authority G.S. 95-69.14.

13 NCAC 13 .0410 TEMPERATURE GAUGES

~~Hot High temperature water boilers, hot water heating boilers, hot water supply boilers, and potable water heaters shall be provided with a temperature gauge, installed as close as practicable to the hot water outlet, which will indicate the temperature in degrees Fahrenheit. The indicating device shall have a range of approximately 2 times the intended operating temperature but not temperature, but in no case shall the indicating device have a range of less than 1 1/2 times nor more than 4 times the intended operating temperature, nor more than 4 times the intended operating temperature.~~

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0411 VALVES, DRAINS, AND BOTTOM BLOWOFFS

(a) ~~Power-High pressure~~ boilers operating in excess of 100 psi ~~must~~ be provided with two stop valves for boiler blowoff and drain outlets. Any boiler having a common steam connection with another boiler, and having a manhole opening, shall be provided with two steam outlet stop valves with ~~a drain or vent of not less than 3/4 inch NPS~~ an ample free-blow drain or vent between the two stop valves. The discharge of this drain shall be visible to the operator while operating the valve.

(b) All boilers, except for coil-type water tube boilers, shall be provided with a drain outlet and stop valve of not less than 3/4 inch NPS at the lowest water containing space, except that if the boiler is provided with a blowoff outlet at the lowest water containing space, an additional drain outlet is not required.

(c) ~~Power-High pressure~~ boilers shall be provided with a bottom blowoff outlet and valve of not less than 1 inch NPS nor more than 2 1/2 inches NPS, except as modified below:

- (1) Miniature ~~power-high pressure~~ boilers shall have a blowoff outlet of not less than 3/4 inch NPS.
- (2) Electric ~~power-high pressure~~ boilers not greater than 200kW shall have a blowoff outlet of not less than 3/4 inch NPS.
- (3) ~~Power-High pressure~~ boilers having a heating surface not greater than 100 square feet shall have a blowoff outlet of not less than 3/4 inch NPS.
- (4) All other ~~power-high pressure~~ boilers shall have a blowoff outlet of not less than 1 inch NPS.

(d) Steam heating boilers shall be provided with a bottom blowoff outlet and valve of not less than 1 inch NPS ~~(nominal pipe size)~~ nor more than 2 1/2 inches NPS, except as modified below:

- (1) Steam heating boilers having a minimum safety valve relieving capacity not exceeding 500 pounds of steam per hour shall have a blowoff outlet of not less than 3/4 inch NPS.
- (2) Steam heating boilers having a minimum safety valve relieving capacity greater than 1205 pounds of steam per hour but not greater than 2500 pounds of steam per hour shall have a blowoff outlet of not less than 1 1/4 inches NPS.
- (3) Steam heating boilers having a minimum safety valve relieving capacity greater than 2500 pounds of steam per hour but not greater than 6000 pounds of steam per hour shall have a blowoff outlet of not less than 1 1/2 inches NPS.
- (4) Steam heating boilers having a minimum safety valve relieving capacity greater than 6000 pounds of steam per hour shall have a blowoff outlet of not less than 2 inches NPS.
- (5) All other steam heating boilers shall have a blowoff outlet of not less than 1 inch NPS.

(e) All blowoff from boilers shall discharge into a blowdown tank suitable for separating steam and water or shall be piped to prevent injury. Discharge directly to a sewer is prohibited.

(f) Valves for ~~power-high pressure~~ boilers shall be designed and constructed in accordance with the requirements of ASME Section I, and shall be stamped or embossed with the pressure/temperature rating of the valve.

(g) Valves for heating boilers shall be suitable for the operating pressure and temperature of the boiler.

(h) Pressure reducing valves shall be installed in the makeup water line where inlet supply water pressure is more than 75 percent of the maximum allowable working pressure of the boiler or pressure vessel.

(i) A shutoff valve shall be provided in the makeup water line next to each boiler, or for a series of boilers having a single water makeup ~~line, line;~~ the valve shall be installed next to the boiler piping system. If the water-containing capacity of the boiler exceeds 120 gallons, a check valve ~~or back flow preventer~~ shall be installed on the source side of the shutoff valve.

(j) Pressure vessels subject to corrosion shall be equipped with a drain valve installed at the lowest point of the pressure vessel or by installation of an internal drain pipe installed not less than 1/4 inch above the lowest internal surface.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0414 GAS-FIRED JACKETED STEAM KETTLE

Gas-fired jacketed steam kettles having a steam space of such size that ~~it is they are~~ subject to the rules in this Chapter shall be equipped with the operating controls and safety devices required for boilers.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0415 AGE LIMIT FOR CERTAIN BOILERS AND PRESSURE VESSELS

(a) Except as provided in Paragraph (b) of this Rule, a boiler or pressure vessel shall not be operated for longer than 20 years from the date of its installation if it is not constructed according to the ASME Code and has riveted longitudinal lap joints.

(b) The ~~Director~~ Chief Inspector may authorize operation of a boiler or pressure vessel meeting the criteria listed in Paragraph (a) of this Rule after the owner or user satisfactorily completes such additional examinations, tests, and engineering evaluations as may be deemed necessary by the ~~Director~~ Chief Inspector, to demonstrate that the boiler or pressure vessel is suitable for operation at the maximum allowable working pressure for the term of the inspection certificate.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0416 REINSTALLATION OF CERTAIN BOILERS AND PRESSURE VESSELS

~~(a) Except as provided in Paragraph (b) of this Rule, a boiler or pressure vessel that is not constructed pursuant to the ASME Code and is operating at a location in this State, shall not be removed and reinstalled at any location in this State. A boiler or pressure vessel that is not constructed pursuant to the ASME Code shall not be reinstalled at any location in this State when the reinstallation is accompanied by a change of ownership of the boiler or pressure vessel unless the owner/user receives authorization in writing from the Chief Inspector.~~

~~(b) The Director may authorize operation of a boiler or pressure vessel meeting the criteria listed in Paragraph (a) of this Rule after the owner or user satisfactorily completes such additional examinations, tests, and engineering evaluations as may be deemed necessary by the Director, to demonstrate that the boiler or pressure vessel is suitable for operation at the maximum allowable working pressure for the term of the inspection certificate. Used boilers or pressure vessels cannot be installed unless an application for permission to install the equipment has been approved in writing by the Chief Inspector followed by a certificate inspection by a Deputy Inspector.~~

~~(c) Applications to install used and/or nonstandard boilers or pressure vessels must be made in writing to the Chief Inspector.~~

Authority G.S. 95-69.11; 95-69.1.

13 NCAC 13 .0419 AIR AND VENTILATION REQUIREMENTS

~~(a) A permanent source of outside air shall be provided for each boiler room to permit satisfactory combustion of fuels as well as proper ventilation of the boiler room under normal operating conditions. Unobstructed air openings shall be sized on the basis of 1 sq. in. (650 sq. mm) free area per 2000 Btu/hr. maximum fuel input of the combined burners located in the boiler room, or as specified in the National Fire Protection Association (NFPA) standards for oil and gas burning installations for the particular job conditions. The boiler room air supply openings shall be kept clear at all times.~~

~~(b) Mechanical ventilation may be used in lieu of the provisions of paragraph (a). When mechanical ventilation is used in lieu of Paragraph (a) of this Rule, the supply of combustion and ventilation air to the boiler room and the firing device shall be interlocked with the fan so the firing device will not operate with~~

~~the fan off. The velocity of the air through the louver shall not exceed 500 feet per minute and the total air delivered shall be equal to or greater than shown in Paragraph (a) of this Rule. Power ventilators or fans shall be sized on the basis of 0.2 cfm (0.0057 cubic meters per minute) for each 1000 Btu/hr. of maximum fuel input for the combined burners of all boilers and water heaters located in the boiler room.~~

~~(c) When power ventilators or fans are used to supply combustion air they shall be installed with interlock devices so that the burners will not operate without an adequate number of ventilators/fans in operation.~~

~~(d) Oil, gas and solid fuel fired boilers and pressure vessels shall be equipped with exhaust flues, stacks, or chimneys discharging to a safe point outside of the building.~~

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0420 BURNER CONTROLS

~~(a) Fired Automatically fired boilers and pressure vessels shall be provided with burner controls and shall be equipped with exhaust flues or chimneys. Automatically fired boilers and pressure vessels shall be protected by a flame failure device which will cut off the fuel supply and prevent ignition in case of a flame failure. controls.~~

~~(b) Oil, gas-fired, and electrically heated boilers shall be equipped with suitable primary (flame safeguard) safety controls, safety limit switches, and burners or electric elements that are listed and labeled with a qualified testing laboratory recognized by the Occupational Safety and Health Administration as a nationally recognized testing laboratory (NRTL) pursuant to 29 CFR 1910.7.~~

~~(c) Automatically fired boilers installed after January 1, 2007, shall be provided with a clearly marked remote emergency fuel shut-off switch. The remote shut-off switch shall be located outside each door of the room in which the boiler is located. Alternatively, the shut-off switch may be located just inside the entrance door(s) where the equipment is located. If there is more than one door to the boiler room, there shall be a switch located at each door designed for primary emergency egress from the boiler room. Where specific conditions give reason to request a variance, variance requests shall be submitted in writing to the Chief Inspector.~~

~~(d) For installations which are gas-fired, the burners used shall conform to the North Carolina Fuel Gas Code in effect at the time of installation.~~

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0421 NORTH CAROLINA SPECIAL

~~(a) The North Carolina Department of Labor shall may issue an inspection certificate for a boiler or pressure vessel constructed under standards equivalent to those established in the ASME Code if an application for permission to construct and install a North Carolina Special is submitted to and approved by the ~~Director~~ Chief Inspector prior to commencing construction. The ~~director~~ Chief Inspector shall may approve a request for an inspection certificate if the application is complete and if the information contained in the application demonstrates that the boiler or pressure vessel is as safe as a similar boiler or pressure~~

vessel constructed to the requirements of the ASME Code. The application, which may be in the form of a letter, shall contain relevant data proving that its construction is equivalent to ASME standards. The ~~Director-Chief Inspector~~ or his designee may elect to visit, at the expense of the owner, user or manufacturer, the facility where the boiler or pressure vessel is under construction in order to audit the manufacturer's construction techniques, personnel qualifications, and quality control program.

(b) The North Carolina Department of Labor ~~shall~~ may issue an inspection certificate for a boiler or pressure vessel which has operated in another state even if the ASME construction and stamping requirements otherwise contained in the North Carolina Rules are not satisfied if the following requirements are satisfied:

- (1) ~~The~~ the state in which the boiler or pressure vessel was operated enforces ASME ~~code~~ Code requirements for similar boilers and pressure vessels;
- (2) the boiler or pressure vessel was inspected during construction by an inspector commissioned by the state in which the item was installed or manufactured; and
- (3) the report from the last certificate inspection ~~performed~~ conducted in the state in which the boiler or pressure vessel was previously installed is made available to the ~~Director~~, Chief Inspector, and the inspection resulted in the applicable authorization for operation.

(c) The applicant shall submit a design specification, certified by a professional engineer, to the ~~Director-Chief Inspector~~ to verify that the boiler or pressure vessel meets the ASME Code as far as is practicable. The following documentation shall be included as a minimum:

- (1) design calculations and drawings;
- (2) material test reports or their equivalent, and for material not allowed by ASME, an evaluation of the materials in comparison to the most similar material approved for ASME construction;
- (3) a record of welding qualifications as required by Section IX of the ASME Welding and Brazing Qualifications Code; and
- (4) satisfactory results of any additional examination or test deemed necessary by the ~~Director~~. Chief Inspector.

(d) Design calculations for pressure vessels to be operated in excess of 3,000 ~~psi~~ psig shall include a fatigue analysis as described in ASME Section VIII, Division ~~2~~ 2 or 3, to determine the operating lifetime of the pressure vessel, and a proposal for operation that details the owner's monitoring program to verify compliance with the fatigue analysis.

(e) The maximum allowable working pressure for the boiler or pressure vessel as established in the calculations shall be consistent with what is required by the ASME Code for similar boilers or pressure vessels.

(f) Boilers and pressure vessels operating as North Carolina State Specials shall meet all installation, alteration, inspection, repair, and operation requirements of this Chapter.

(g) The ~~Director-Chief Inspector~~ may approve operation of boilers and pressure vessels which were constructed to the requirements of a department of the federal government which enforces requirements equivalent to the ASME Code, provided an application as otherwise required by this Chapter is submitted to the ~~Director-Chief Inspector~~ and found acceptable.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0422 EXHIBITION BOILERS

In addition to the requirements outlined in this Chapter for manually fired boilers, exhibition boilers shall meet the following requirements:

- (a) Exhibition boilers that are not built to the ASME Code shall not be operated above 125 psig without specific written approval by the Chief Inspector who shall base such approval on documentation and calculations submitted by the owner. These documents and an inspection shall support higher pressure ratings.
- (b) Safety relief valves shall not exceed the maximum allowed working pressure and shall be ASME/NB certified valves.
- (c) Each boiler shall have as a minimum:
 - (1) A properly operating pressure gauge which shall be approximately double the pressure to which the safety relief valve is set but in no case shall it be less than 1 1/2 times the set pressure.
 - (2) A safety relief valve which shall be capable of protecting the boiler from over pressurization.
 - (3) A water gauge glass
- (d) When fusible plugs are used, they shall be replaced every two years with appropriately sized plugs of the required material.
- (e) A hydrostatic test may be required by the inspector if, in his opinion, it is necessary to prove the integrity of the pressure boundary. The hydrostatic test shall not exceed 100% of the maximum allowed working pressure of the vessel or the set pressure of the safety valve, whichever is greater.
- (f) Upon successful completion of the inspection and payment of fees the Chief Inspector shall issue a Certificate of Inspection valid for one year.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0423 MODEL HOBBY BOILERS

In addition to the requirements outlined in this Chapter for manually fired boilers, model hobby boilers shall meet the following requirements:

- (a) Each boiler shall have as a minimum:
 - (1) A properly operating pressure gauge that shall not be less than 1 1/2 times

- nor more than four times the operating pressure of the boiler;
- (2) Two safety relief valves each of which shall be capable of protecting the boiler from over pressurization. Requirements for ASME/NB certification are waived;
- (3) An easily accessible mud-ring valve;
- (4) A water gauge glass; and
- (5) If constructed of copper, a fusible plug in the top of the crown sheet.
- (b) Upon successful completion of the inspection and payment of the fees, the Chief Inspector shall issue a Certificate of Inspection valid for one year.

Authority G.S. 95-69.11; 95-69.14.

SECTION .0500 - NON-STANDARD BOILERS AND PRESSURE VESSELS

13 NCAC 13 .0501 GENERAL REQUIREMENTS

- (a) All aspects of a nonstandard boiler or pressure vessel including, but not limited to, its installation, repair, alteration, inspection, appurtenances, and operation shall conform to the ASME Code and the National Board Inspection Code and the Rules in this Chapter, except for the design criteria for the boiler or pressure vessel proper and pressure piping.
- (b) Replacement parts for the boiler or pressure vessel shall conform to the ASME Code and the Rules in this Chapter.
- (c) An inspector shall determine the maximum allowable working pressure for a nonstandard boiler or pressure vessel in accordance with the Rules in this Chapter.
- (d) The maximum allowable working pressure on the shell of a nonstandard boiler or pressure vessel shall be determined by the strength of the weakest course computed from the thickness of the plate, the tensile strength of the material, the efficiency of the longitudinal joint, inside diameter of the weakest course and the factor of safety set by the Rules in this Chapter.
- (e) For cylindrical pressure parts subject to internal pressure: $(TS_t)/(RFS) =$ maximum allowable working pressure, psig.
- (f) Design variables:

- (1) TS = ultimate tensile strength of shell plate; if unknown, it shall be taken as 45,000 psi;
- (2) t = minimum thickness of shell plate of weakest course, in inches;
- (3) E = efficiency of longitudinal joint depending upon construction;
- (A) values for riveted joints are determined by calculated riveted efficiency; and
- (B) values for fusion welded joints and riveted joints are determined pursuant to the following table:

WELD JOINT DESIGN	
EFFICIENCY	
single -Single lap weld	0.40
double -Double lap weld	0.50

single -Single butt weld	0.60
double -Double butt weld	0.75

<u>RIVETED JOINT DESIGN</u>	
<u>EFFICIENCY</u>	
Single lap	<u>0.58</u>
Double lap	<u>0.74</u>
Double butt and strap	<u>0.82</u>
Triple butt and strap	<u>0.84</u>
Quadruple butt and strap	<u>0.94</u>

- (4) R = inside radius of weakest course of shell, in inches, provided the thickness does not exceed 10 percent of the radius; if the thickness is over 10 percent of the radius, the outer radius shall be used;
- (5) FS = factor of safety allowed by the Rules in this Chapter.

(g) The maximum allowable working pressure for cylindrical nonstandard boilers and pressure vessels subject to external pressure, flat or formed heads, and non-circular boilers and pressure vessels shall be determined by the most applicable rules for new construction in the ASME Code.

(h) The maximum allowable working pressure for cast iron boilers, including boilers having cast iron shells or heads and steel or wrought iron tubes, shall be not greater than 30 psig for water service and 15 psig for steam service.

(i) Replacement parts, repair, and alteration of nonstandard boilers and pressure vessels shall be as required for ASME stamped boilers and pressure vessels of similar design.

Authority G.S. 95-69.11; 95-69.14.

SECTION .0700 - NUCLEAR POWER SYSTEMS

13 NCAC 13 .0701 STANDARDS

(a) ~~All nuclear energy~~-Nuclear power components and systems covered under the scope of Section III of the ASME Code shall be designed, constructed, reworked, stamped, installed, repaired, altered, operated, and inspected and installed in accordance with Sections Section III and XI of the ASME Code. Balance of plant items may be constructed under other ASME Code sections as appropriate.

(b) All nuclear ~~energy power~~ systems ~~shall be stamped and registered with the National Board and stamped with a North Carolina serial number.~~falling under the scope of the ASME Code, Section III, are inspected in service under the requirements of Section XI of the ASME Code. The equipment is not required to be inspected under this Chapter. Balance of plant pressure equipment not covered by Section XI are required to be registered with a North Carolina identification number and inspected in accordance with the Chapter.

(c) A vessel composed of two or more pressure retaining compartments shall constitute one complete unit for the purpose of assigning ~~and stamping~~ the North Carolina ~~serial identification~~ number.

(d) The design criteria for nuclear ~~energy power~~ systems shall be certified as to compliance with Section III of the ASME Code by a registered professional engineer with at least one year of experience in nuclear pressure vessel design.

Authority G.S. 95-69.9; 95-69.11; 95-69.14.

13 NCAC 13 .0702 INSPECTION DURING CONSTRUCTION

The constructor of a nuclear power plant shall have a contract with an Authorized Inspection Agency who will be responsible for ASME Code, Section III third party code inspections. It is the duty of the ~~inspector~~ Authorized Nuclear Inspector (ANI) to ~~make~~ conduct all of the inspections specified by the rules of the ASME Code, ~~Sections~~ Section III and ~~XI~~ ASME QAI-1, in addition to such other inspections and tests as in his judgment are necessary to verify that the equipment is fabricated and installed in accordance with requirements of the ASME Code and these Rules.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0703 INSERVICE INSPECTION

~~Inservice inspection of a~~ The owner/operator of an operating nuclear system shall be performed in accordance with Section ~~XI~~ of the ASME Code. ~~power plant shall have a contract with an Authorized Inspection Agency who will be responsible for ASME Code, Section III and Section XI third party code inspections. It is the duty of the ANI and Authorized Nuclear In-service Inspector (ANII), as applicable, to make all of the inspections specified by the rules of the ASME Code, Section III, Section XI and ASME QAI-1, and any other inspections and tests necessary to verify that the equipment is inspected, examined, repaired or replaced in accordance with requirements of the ASME Code.~~

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0704 INSPECTOR QUALIFICATIONS

Nuclear energy systems shall be inspected by the ~~director, a boiler or pressure vessel inspector, or a special inspector,~~ provided the inspector is qualified in accordance with ASME Sections NCA 5121 and NCA 5122 and holds a valid ~~commission to inspect boilers and pressure vessels in this State.~~

Authority G.S. 95-69.11; 95-69.14; 95-69.15.

13 NCAC 13 .0705 SEMI-ANNUAL AUDIT OF NUCLEAR INSPECTORS

The ~~director, or his authorized representative,~~ Authorized Inspection Agency shall maintain qualified Authorized Nuclear Supervisors (ANIS) to monitor the performance of the ANI and ANII and to audit semi-annually all aspects of a nuclear inspector's activities on the job site. ~~the activities at the nuclear power plants for which inspection agreements have been made.~~ The ANIS shall conduct audits of all the aspects of a ANI and ANII activities at the nuclear power plant.

Authority G.S. 95-69.11; 95-69.14.

13 NCAC 13 .0706 CONSTRUCTION

(a) ~~The rules of this Chapter are applicable to nuclear energy systems to the extent that these Rules do not conflict with areas covered by exclusive federal jurisdiction.~~

(b) ~~The rules of this Section shall be construed to be in addition to any other pertinent rule contained in this Chapter.~~

Authority G.S. 95-69.11; 95-69.14.

SECTION .0800 - FORMS

13 NCAC 13 .0801 INSPECTION CERTIFICATE

An inspection certificate is issued by the ~~Director~~ Chief Inspector and certifies that a boiler or pressure vessel complies with Article 7A of G.S. Chapter 95 and this Chapter. It includes the:

- (1) North Carolina ~~serial~~ identification number;
- (2) Allowable pressure;
- (3) Type of boiler or pressure vessel;
- (4) Manufacturer's name;
- (5) Year the boiler or pressure vessel was built;
- (6) Location of the boiler or pressure vessel;
- (7) ~~Director's~~ Chief Inspector's name applied by computer; and
- (8) Commissioner's name applied by computer.

Authority G.S. 95-69.11.

13 NCAC 13 .0802 APPLICATION FOR A NORTH CAROLINA COMMISSION

(a) An application for a North Carolina ~~certificate of competency~~ Commission includes the name of the applicant and his or her employer, an academic and employment history, and a listing of any other boiler inspector's certificates or commissions held, and an oath supporting both the Constitution of the United States and the Constitution of the State of North Carolina. ~~held.~~
(b) The application shall be notarized.

Authority G.S. 95-69.13.

13 NCAC 13 .0803 NORTH CAROLINA CERTIFICATE OF COMPETENCY

A certificate of competency, signed by the Chairperson of the Board of Boiler and Pressure Vessel rules Commissioner and the ~~Director~~ Chief Inspector, is shall be issued to persons ~~meeting the qualifications in G.S. 95-69.15(e) and certifies that the person named has~~ having passed the ~~inspector examination and is competent to conduct inspections for boiler and pressure vessels.~~ National Board examination.

Authority G.S. 95-69.11; 95-69.14; 95-69.15.

13 NCAC 13 .0804 NORTH CAROLINA COMMISSION

A North Carolina Commission is a wallet-sized card, signed by the ~~Chairperson of the Board~~ Commissioner and certifies that the person named is competent and authorized to conduct inspections for boilers and pressure vessels. Inspectors conducting in-service inspections in this State must first pass an examination on Article 7A of G.S. Chapter 95 and the rules of this Chapter. If an inspector's commission becomes inactive for more than one year, the inspector must take/retake and pass this examination before becoming active again in this State.

Authority G.S. 95-69.15.

13 NCAC 13 .0805 OWNER-USER AGENCY APPLICATIONS

An owner-user agency application states that the company seeking owner-user status agrees to abide by Article 7A of G.S. Chapter 95 and this Chapter. The application contains the following:

- (1) company name and address;
- (2) plant name and address;
- (3) name of the supervising inspector;
- (4) names of inspectors and a copy of the inspector's National Board Commission;
- (5) name of a company official requesting the agency;
- (6) ~~commissioner's signature and signature of the chairperson of board.~~ proof that the agency has been audited by the National Board and certified as an owner-user agency; and
- (7) name of professional engineer responsible for the program.

Authority G.S. 95-69.15.

13 NCAC 13 .0806 OWNER-USER INSPECTION AGENCY STATEMENTS

The owner-user inspection agency statement is an annual report prepared by the inspector-supervisor stating the number of ~~boilers and~~ pressure vessels inspected by the company and a certification of compliance with these Rules. The annual statement is accompanied by the appropriate fee.

Authority G.S. 95-69.11; 95-69.15.

13 NCAC 13 .0807 INSPECTION REQUEST

~~The contractor's report~~ Inspection Request is a request for inspection and contains information regarding ~~boilers and pressure vessels installed which are of newly installed pressure equipment~~ subject to this Chapter. It includes data on:

- (1) ~~the installing contractor's~~ installer's name and mailing address;
- (2) the manufacturer ~~and owner~~ of the vessels;
- (3) ~~the number, type, and location of the vessels; and the owner of the vessels and address;~~ the user of the vessels and address;
- (4) ~~the heat input, if applicable.~~ the user of the vessels and address;
- (5) the number, type, and location of the vessels; and
- (6) the heat input, if applicable.

Authority G.S. 95-69.11.

13 NCAC 13 .0808 INCIDENT REPORT

An ~~accident~~ incident report contains information on the following:

- (1) ~~type of vessel;~~ NC identification number;
- (2) ~~vessel manufacturer;~~ National Board Number;

- (3) ~~safety and safety relief valves; and owner and user name and address;~~
- (4) ~~type and probable cause of the accident. type and use of vessel;~~
- (5) vessel manufacturer and year built;
- (6) information on all safety controls;
- (7) extent of damage;
- (8) victim names;
- (9) type and probable cause of the accident;
- (10) persons contacted; and
- (11) any other information considered relevant for records purposes.

Authority G.S. 95-69.11.

13 NCAC 13 .0809 INSPECTION REPORT

The inspection report covers in detail all pertinent information regarding the boiler or pressure vessel. The report includes all applicable identification numbers for the boiler or pressure vessel, the allowable pressure, the results of the inspection, corrective action necessary for issuance of an inspection certificate, date of inspection, and the signature of the ~~inspector.~~ Inspector. For purposes of this Rule, an electronic signature may be substituted for a written signature if it is attached to or logically associated with the inspection report by the Inspector with the intent to sign the inspection report, in accordance with Article 40 of Chapter 66 of the N.C. General Statutes (the Uniform Electronic Transactions Act).

Authority G.S. 95-69.11.

13 NCAC 13 .0811 INSPECTION SERVICE AGREEMENT

An inspection service agreement is a contract setting out the manufacturer's ~~financial~~ obligations and the duties of the North Carolina Department of Labor in providing ~~shop~~ ASME Code and National Board "R" Stamp inspection services.

Authority G.S. 95-69.11.

13 NCAC 13 .0812 REPORT OF REPAIR OR ALTERATION

The report of repair (National Board Form R1) or alteration (National Board Form R2) describes repairs, alterations, and the results of hydrostatic pressure tests.

Authority G.S. 95-69.11.

13 NCAC 13 .0813 AUDIT REPORT

The ~~shop or field~~ audit report is a report of the ~~shop or field~~ inspection activities of an ~~inspector~~ Authorized or Commissioned Inspector pertaining to inspection of the ~~construction~~ construction, alteration or repair of ASME-boilers and pressure vessels covering the following:

- (1) inspector's activities;
- (2) materials used in fabrication;
- (3) welding procedures;
- (4) non-destructive examinations used;
- (5) manufacturing process;

- (6) quality control system; and
- (7) inspector's logbook.

Authority G.S. 95-69.11.

13 NCAC 13 .0815 REPAIR LETTER NOTICE OF NONCOMPLIANCE

The notice of noncompliance specifies repairs or alterations that must be made for a boiler or pressure vessel to comply with Article 7A, G.S. Chapter 95, and this Chapter.

Authority G.S. 95-69.11.

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 rule cited as 15A NCAC 02H .1020.

Proposed Effective Date: April 1, 2007

Public Hearing:

Date: April 4, 2006

Time: 7:00 p.m.

Location: Catawba Valley Community College – Auditorium, 2550 Highway 70 SE, Hickory, NC 28602

Date: April 6, 2006

Time: 7:00 p.m.

Location: New Hanover County Public Library – Main Branch, 201 Chestnut Street, Wilmington, NC 28401

Date: April 11, 2006

Time: 7:00 p.m.

Location: Archdale Building – Ground Floor Hearing Room, 512 North Salisbury Street, Raleigh, NC 27604

Reason for Proposed Action: *The Environmental Management Commission has proposed to adopt the Universal Stormwater Management Program Rule. There are presently a myriad of various stormwater programs that are in place within North Carolina. Many of these programs overlap, causing a considerable amount of confusion among the regulated public and a substantial amount of difficulty in administering the program at the city or county level. The proposed rule, 15A NCAC 02H .1020, seeks to alleviate these difficulties by developing one program, the Universal Stormwater Management Program (USMP) that would replace many of these existing, overlapping programs with a single set of understandable requirements. Not only would the new Universal Stormwater Management Program be simpler to implement and administer throughout the State, but it would also be more protective of water quality and aquatic species than the existing stormwater programs.*

Procedure by which a person can object to the agency on a proposed rule: *You may attend one of the Public Hearings and*

make relevant verbal comments, and/or submit written comments, data or other relevant information by May 15, 2006. The Hearing Officers may limit the length of time that you may speak at the Public Hearing, if necessary, so that all those who wish to speak may have an opportunity to do so.

The Environmental Management Commission is very interested in all comments pertaining to the proposed Universal Stormwater Management Program (USMP) Rule. In addition, the EMC is specifically soliciting comments regarding the stormwater design standards in the proposed rule. These alternatives are presented in Paragraphs 15A NCAC 02H .1020(d) and (e) of the proposed rulemaking. In this regard, the EMC is seeking comments regarding whether the stormwater design standard should be:

As currently proposed; for the 20 coastal counties: "control the runoff from the first one and one half inch of rainfall", and for the 80 non-coastal counties: "control the runoff from the first one inch of rainfall"; or should this be modified so that the design standard for both the coastal counties and the non-coastal counties becomes: "control the first inch of stormwater runoff".

All persons interested and potentially affected by the proposal are strongly encouraged to read this entire notice and make comments on the proposed amendments. The EMC may not adopt a rule that differs substantially from the text of the proposed rule published in this notice unless the EMC publishes the text of the proposed different rule and accepts comments on the new text (see G.S. 150B 21.2(g)). Written comments may be submitted to Tom Reeder of the DWQ Wetlands and Stormwater Branch at the postal address, e-mail address, or fax number listed in this notice.

Comments may be submitted to: *Tom Reeder, DENR/DWQ, Wetlands and Stormwater Branch, 1617 Mail Service Center, Raleigh, NC 27699-1617, phone (919) 733-5083 ext 528, fax (919) 733-9612, email tom.reeder@ncmail.net*

Comment period ends: May 15, 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 02 – ENVIRONMENTAL MANAGEMENT

**SUBCHAPTER 02H - PROCEDURES FOR PERMITS:
APPROVALS**

SECTION .1000 - STORMWATER MANAGEMENT

**15A NCAC 02H .1020 UNIVERSAL STORMWATER
MANAGEMENT PROGRAM**

(a) Adoption of the Universal Stormwater Management Program (USMP) shall be made at the option of a local government by adopting an ordinance that complies with the requirements of this Rule and the requirements of 15A NCAC 02B .0104(f). The Environmental Management Commission shall approve local ordinances if it determines that the requirements of the local ordinance equal or exceed the provisions of this Rule. A model ordinance for the Universal Stormwater Management Program shall be available from the Division of Water Quality (DWO). Administration and implementation of the USMP shall be the responsibility of the adopting local government within its jurisdiction. The requirements of the USMP shall supercede and replace all other existing post-construction stormwater requirements within that jurisdiction, as specified in Paragraph (b) of this Rule.

(b) With the exceptions noted in Paragraph (c) of this Rule, the requirements specified in this Rule shall replace the following DWQ stormwater control requirements:

- (1) Water Supply (WS) Watershed II (WS II) (15A NCAC 02B .0214(3)(b)(i));
- (2) WS Watershed II Critical Area (WS II CA) (15A NCAC 02B .0214(3)(b)(ii));
- (3) WS Watershed III (WS III) (15A NCAC 02B .0215(3)(b)(i));
- (4) WS Watershed III Critical Area (WS III CA) (15A NCAC 02B .0215(3)(b)(ii));
- (5) WS Watershed IV (WS IV) (15A NCAC 02B .0216(3)(b)(i));
- (6) WS Watershed IV Critical Area (WS IV CA) (15A NCAC 02B .0216(3)(b)(ii));
- (7) High Quality Waters (HQW) for Freshwaters (15A NCAC 02H .1006);
- (8) High Quality Waters (HQW) for Saltwaters (15A NCAC 02H .1006);
- (9) Outstanding Resource Waters (ORW) for Freshwaters (15A NCAC 02H .1007);
- (10) Outstanding Resource Waters (ORW) for Saltwaters (15A NCAC 02H .1007);
- (11) Shellfishing (SA) (15A NCAC 02H .1005(2));
- (12) The Post-Construction Requirements of the NPDES Phase 2 Program;
- (13) Coastal Counties Stormwater Requirements in 15A NCAC 02H .1005(3);
- (14) Stormwater Controls for 401 Certifications under 15A NCAC 02H .0500;
- (15) Catawba Buffer Rules (15A NCAC 02B .0243 and 02B .0244); and

(16) Urban Stormwater Management Requirements of the Randleman Lake Water Supply Watershed Rules (15A NCAC 02B .0251).

(c) As mandated in 15A NCAC 02H .0506(b)(5) and (c)(5), the Division Director may review and require amendments to proposed stormwater control plans submitted under the provisions of the 401 Certification process in order to ensure that the proposed activity will not violate water quality standards. Adoption of the Universal Stormwater Management Program does not affect the requirements specified in 15A NCAC 02B .0214(3)(b)(i)(I), 02B .0214(3)(b)(ii)(C) and (D), 15A NCAC 02B .0215(3)(b)(i)(I), 02B .0215(3)(b)(ii)(C) and (D), and 15A NCAC 02B .0216(3)(b)(ii)(C) and (D). The Catawba Buffer Rules shall be superceded in those areas where the buffers are contained within the jurisdiction of another stormwater program listed in Paragraph (b) of this Rule and the requirements of that program are replaced by the USMP. For the Lake James area, which is not contained within the jurisdiction of another stormwater program, the Catawba Buffer Rules shall be superceded if the USMP is implemented in the entire area within five miles of the normal pool elevation of Lake James. The implementation of the USMP shall supercede the Urban Stormwater Management Requirements of the Randleman Lake Water Supply Watershed in 15A NCAC 02B .0251, but USMP implementation does not affect the Randleman Lake Water Supply Watershed; Protection and Maintenance of Riparian Areas requirements specified in 15A NCAC 02B .0250.

(d) Coastal Counties Requirements. All development activities located in one of the 20 Coastal Counties that disturb 5,000 square feet or more of land shall control the runoff from the first one and one half inch of rainfall to the level specified in Paragraph (f) of this Rule. [Alternative language in *italics*: All development activities located in one of the 20 Coastal Counties that disturb 5,000 square feet or more of land shall control *the first inch of stormwater runoff* to the level specified in Paragraph (f) of this Rule.] In addition, all impervious surfaces, except for roads, paths, and water dependent structures, shall be located at least 30 feet landward of all perennial and intermittent surface waters. Redevelopment activities that meet the provisions of 15A NCAC 02H .1002(14) shall not be required to comply with the requirements of this Paragraph.

(e) Non-Coastal Counties Requirements. All residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs one acre or more of land and all non-residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs ½ acre or more of land shall control the runoff from the first one inch of rainfall as specified in Paragraph (f) of this Rule. [Alternative language in *italics*: All residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs one acre or more of land and all non-residential development activity that is located in one of the 80 Non-Coastal Counties that disturbs ½ acre or more of land shall control *the first inch of stormwater runoff* as specified in Paragraph (f) of this Rule.] Except as allowed in this Paragraph, no new impervious or partially pervious surfaces, except for roads, paths, and water dependent structures, shall be allowed within the 1% Annual Chance Floodplain as delineated by the North Carolina Floodplain Mapping Program in the Division of Emergency Management. For perennial and

intermittent streams that do not have a floodplain delineated by the Floodplain Mapping Program, all activities subject to this Rule shall be located at least 30 feet landward of all perennial and intermittent surface waters. Redevelopment of residential structures within the 1% Annual Chance Floodplain that meets the provisions of 15A NCAC 02H .1002(14) is allowed provided that less than one acre is disturbed during the redevelopment activity. Redevelopment of non-residential structures within the 1% Annual Chance Floodplain that meets the provisions of 15A NCAC 02H .1002(14) is allowed provided that less than ½ acre is disturbed during the redevelopment activity. Redevelopment activities outside of the 1% Annual Chance Floodplain that meet the provisions of 15A NCAC 02H .1002(14) shall not be required to comply with the requirements of this Paragraph.

(f) Structural stormwater controls required under Paragraphs (d) and (e) of this Rule shall meet the following criteria:

- (1) Remove an 85% average annual amount of Total Suspended Solids.
- (2) For wet detention ponds draw down the treatment volume no faster than 48 hours, but no slower than 120 hours.
- (3) Discharge the storage volume at a rate equal or less than the pre-development discharge rate for the 1-year, 24-hour storm.
- (4) Meet the General Engineering Design Criteria set forth in 15A NCAC 02H .1008(c).

(g) For the purposes of this Rule, a surface water shall be present if the feature is shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). Relief from this requirement shall be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 02B .0233(3)(a).

(h) Local governments that implement the Universal Stormwater Management Program shall require recorded deed restrictions and protective covenants that ensure development activities will maintain the project consistent with approved plans.

(i) Local governments that implement the Universal Stormwater Management Program shall require an operation and maintenance plan that ensures the operation of the structural stormwater control measures required by the program. The operation and maintenance plan shall require the owner of each structural control to submit a maintenance inspection report on each structural stormwater control measure annually to the local program.

(j) In addition to the other measures required in this Rule, all development activities located in one of the 20 Coastal Counties that disturb 5,000 square feet or more of land draining to SA waters shall:

- (1) Use stormwater control measures that result in fecal coliform die off and that control to the maximum extent practicable sources of fecal coliform while incorporating the requirements specified in Paragraph (f) of this Rule.
- (2) Prohibit new points of stormwater discharge to SA waters or expansion (increase in the

volume of stormwater flow through conveyances or increase in capacity of conveyances) of existing stormwater conveyance systems that drain to SA waters. Any modification or redesign of a stormwater conveyance system within the contributing drainage basin must not increase the net amount or rate of stormwater discharge through existing outfalls to SA waters. Diffuse flow of stormwater at a non-erosive velocity to a vegetated buffer or other natural area capable of providing effective infiltration of the runoff from the 1-year, 24-hour storm shall not be considered a direct point of stormwater discharge. Consideration shall be given to soil type, slope, vegetation, and existing hydrology when evaluating infiltration effectiveness.

(k) In addition to the other measures required in this Rule, development activities draining to trout (Tr) waters shall use stormwater control measures that avoid an increase in the receiving water temperature, while still incorporating the requirements specified in Paragraph (f) of this Rule.

(l) The Division, upon determination that a local government is failing to implement or enforce the approved local stormwater program, shall notify the local government in writing of the local program inadequacies. If the local government has not corrected the deficiencies within 90 days of receipt of written notification from the Division, then the Division shall implement and enforce the provisions of this Rule.

(m) Development activities conducted within a jurisdiction where the USMP has been implemented may take credit for the nutrient reductions achieved by utilizing diffuse flow in the 1% Annual Chance Floodplain to comply with the nutrient loading limits specified within NSW Rules where the 1% Annual Chance Floodplain exceeds the 50-foot Riparian Buffers. Development activities occurring where the USMP has been implemented but there is no delineated 1% Annual Chance Floodplain may take credit for the nutrient reductions achieved by utilizing diffuse flow into a vegetated filter strip that exceeds the 50-foot Riparian Buffer by at least 30 feet and has a slope of five degrees, or less.

(n) Implementation of this Universal Stormwater Management Program does not affect any other rule or requirement not specifically cited in this Rule.

Authority G.S. 143-214.1; 143-214.7; 143-215.1; 143-215.3(a).

TITLE 21 – OCCUPATIONAL LICENSING BOARD

CHAPTER 10 – BOARD OF CHIROPRACTIC EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Chiropractic Examiners intends to amend the rule cited as 21 NCAC 10 .0208.

Proposed Effective Date: July 1, 2006

Public Hearing:

Date: April 6, 2006

Time: 10:00 a.m.

Location: Board Office, 174 Church Street North, Concord, NC

Reason for Proposed Action: *The proposed amendment would increase the minimum educational requirement imposed upon chiropractors who perform acupuncture from 100 hours of specialized training to 200 hours. However, chiropractors who have already met the current educational requirements would be "grandfathered" and would not be obligated to obtain additional training. The reason for the amendment is to better protect health care consumers.*

Procedure by which a person can object to the agency on a proposed rule: *Any person wishing to file an objection to the proposed amendment may do so by written submission to Dr. Dennis L. Hall, Secretary of the Board of Chiropractic Examiners, P.O. Box 312, Concord, NC 28026.*

Comments may be submitted to: *Dr. Dennis L. Hall, Secretary of the Board of Chiropractic Examiners, P.O. Box 312, Concord, NC 28026*

Comment period ends: *May 15, 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

SECTION .0200 - PRACTICE OF CHIROPRACTIC

21 NCAC 10 .0208 ACUPUNCTURE

Until July 1, 2008, in ~~in~~ order to perform acupuncture, a licentiate or applicant for licensure must first certify to the Board that he has completed a minimum of 100 hours' coursework in acupuncture-meridian therapy, including sterile needle technique, theory of acupuncture and differential diagnosis of clinical indications. This coursework must be offered as either part of the curriculum leading to the Doctor of Chiropractic

degree or at the post-doctoral level, and by a college accredited pursuant to G.S. 90-143(b). Beginning July 1, 2008, in order to perform acupuncture, a licentiate or applicant for licensure must first certify to the Board that he has completed a minimum of 200 hours of the above-described coursework; provided, that this requirement of 200 hours' coursework shall apply only to a licentiate or applicant for licensure whose initial certification date falls on or after July 1, 2008. Any licentiate certified prior to July 1, 2008 may continue to perform acupuncture without obtaining additional education.

Authority G.S. 90-142; 90-143; 90-151.

CHAPTER 36 – BOARD OF NURSING

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Board of Nursing intends to adopt the rule cited as 21 NCAC 36 .0406 and to amend the rule cited as 21 NCAC 36 .0403.

Proposed Effective Date: *July 1, 2006*

Public Hearing:

Date: *May 19, 2006*

Time: *1:00 p.m.*

Location: *North Carolina Board of Nursing Office, 3724 National Drive, Ste. 201, Raleigh, NC 27612*

Reason for Proposed Action:

21 NCAC 36 .0403: *Legislation enacted by the 2005 General Assembly for the use of medication aides to perform technical aspects of medication administration in skilled nursing facilities beginning July 1, 2006. A new section was added to Article 9C – Nurse Aides Registry Act which defines the Board's responsibilities.*

21 NCAC 36 .0406: *Establish standards for faculty requirements for medication aide training. Legislation enacted by the 2005 General Assembly for the use of medication aides.*

Procedure by which a person can object to the agency on a proposed rule: *Persons may submit objections to these rules by contacting Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602-2129, fax (919) 781-9461, or email: jeans@ncbon.com or polly@ncbon.com.*

Comments may be submitted to: *Jean H. Stanley, APA Coordinator, NC Board of Nursing, P.O. Box 2129, Raleigh, NC 27602-2129, phone (919) 782-3211 ext 252, fax (919) 781-9461, email jeans@ncbon.com*

Comment period ends: *May 19, 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

SECTION .0400 - UNLICENSED PERSONNEL: NURSE AIDES

21 NCAC 36 .0403 QUALIFICATIONS

(a) The nurse aide I performs basic nursing skills and personal care activities after successfully completing an approved nurse aide I training and competency evaluation or competency evaluation program. ~~program~~. These activities will be delegated only after considering the variables defined in Rule .0401(b) and (c) of this Section. Pursuant to G.S. 90-171.55, as of April 1, 1992 no individual may function as a nurse aide I, regardless of title, to provide nursing care activities, as identified in Rule .0401(a) of this Section, to clients or residents until:

- (1) the individual has successfully completed, in addition to an orientation program specific to the employing facility, a State approved ~~Level I~~ nurse aide I training and competency evaluation program or its equivalent; or a State approved competency evaluation program and the employing facility or agency has verified listing on the Division of Facility Services Nurse Aide Registry (DFS~~NAR~~); or
- (2) the employing agency or facility has assured that the individual is enrolled in a State approved nurse aide I training and competency evaluation program which the individual will successfully complete within four months of employment date. During the four month period, the individual is only assigned tasks for which he has demonstrated competence and performs under supervision.

(b) The nurse aide II performs more complex nursing skills with emphasis on sterile technique in elimination, oxygenation, and nutrition after successful completion of an approved nurse aide II training and competency evaluation program. These activities will be delegated to the nurse aide II only after consideration of the variables described in Rule .0401(b) and (c) of this Section. Pursuant to G.S. 90-171.55, as of January 1, 1991 no individual may function as a nurse aide II unless:

- (1) the individual has successfully completed, in addition to an orientation program specific to the employing agency, a Board of Nursing

approved ~~Level II~~ nurse aide II program or its equivalent as identified by the Board of Nursing;

- (2) the individual is listed as a ~~Level I~~ nurse aide I on the DFS Nurse Aide I Registry with no substantiated findings of abuse, neglect, or misappropriation of property; and
- (3) the agency has inquired of the Board of Nursing as to information in the Board of Nursing Nurse Aide II Registry concerning the individual and confirms with the Board of Nursing that the individual is listed on the Board of Nursing Nurse Aide II Registry (BONNAR) as a nurse aide Level II.

(c) Listing on a Nurse Aide Registry is not required if the care is performed by clients themselves, their families or significant others, or by caretakers who provide personal care to individuals whose health care needs are incidental to the personal care required.

(d) Pursuant to G.S. 131E-114.2 and G.S. 131E-270, the medication aide is limited to performing technical aspects of medication administration consistent with Rule .0401(b) and (c) of this Section, Rule 21 NCAC 36 .0221, and only after:

- (1) successful completion of a high school diploma or GED;
- (2) successful completion of a medication aide training program approved by the Board of Nursing;
- (3) successful completion of a state-approved competency evaluation program; and
- (4) listing on the Medication Aide Registry.

Authority G.S. 90-171.20(2)(4)(7)d., e.g.; 90-171.43(4); 90-171.55; 90-171.56; 131E-114.2; 131E-270.

21 NCAC 36 .0406 MEDICATION AIDE TRAINING REQUIREMENTS

(a) Faculty for the medication aide training program are required to:

- (1) have a current, unrestricted license to practice as a registered nurse in North Carolina;
- (2) have had at least two years of practice experience as a registered nurse that includes medication administration;
- (3) have successfully completed a Board-approved instructor training program; and
- (4) maintain Board of Nursing certification as a medication aide instructor.

(b) The medication aide instructor certification shall be renewed every two years provided the following requirements are met:

- (1) the individual has taught at least one medication aide training program within the preceding two years; and
- (2) the individual successfully completes a Board-approved review of the current medication aide training program.

(c) The applicant for a medication aide training program must have a high school diploma or GED.

Authority G.S. 90-171.56; 131E-114.2; 131E-270.

TITLE 23 – COMMUNITY COLLEGES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Community Colleges System intends to amend the rule cited as 23 NCAC 03A .0113.

Proposed Effective Date: July 1, 2006

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): To demand a public hearing, please send the written demand to David Sullivan, NC Community College System, 200 West Jones Street, MSC 5001, Raleigh, NC 27699-5001 or by e-mailing the demand to sullivanand@nccommunitycolleges.edu. Demands must be received within 15 days of the publication of the proposed rule in the North Carolina Register.

Reason for Proposed Action: To extend the time during which a student of a Proprietary School is entitled to a partial tuition refund upon the student's withdrawal from the class.

Procedure by which a person can object to the agency on a proposed rule: Written objections shall 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, NC Community College System Office, 5001 MSC, Raleigh, NC 27699-5001

Comment period ends: May 15, 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 03 - MISCELLANEOUS PROGRAMS

SUBCHAPTER 03A - PROPRIETARY SCHOOLS

SECTION .0100 - BUSINESS, TRADE AND TECHNICAL SCHOOLS

23 NCAC 03A .0113 STUDENT REFUND

(a) Any proprietary school that is licensed by the State Board of Community Colleges is subject to the following refund policies. A refund shall not be made except under the following circumstances:

- (1) A 100 percent refund shall be made if the student officially withdraws prior to the first day of class(es) as noted in the school calendar. Also, a student is eligible for a 100 percent refund if the class(es) in which the student is officially registered is cancelled due to insufficient enrollment.
(2) A 75 percent refund shall be made for semester courses if the student officially withdraws from class(es) prior to or on the official 10 percent point of the semester. For a student who officially withdraws from class(es) prior to completing 25 percent of the period of enrollment for which he or she has been charged, the school shall refund at least 75% of the tuition charged for that period of enrollment.
(3) A 75 percent refund shall be made up to the 25 percent point of any term defined by quarters or clock hours for a student who officially withdraws from class(es).
(4) Refunds for multi entry classes will be based on the percentage of class requirements completed.
(5) To comply with applicable federal regulations regarding refunds; federal regulations regarding refunds will supercede state refund regulations in this Rule.

(b) Proprietary schools are not required to deposit funds collected for tuition with the State Treasurer's Office.

Authority G.S. 115D-90.

RULES REVIEW COMMISSION

This Section contains information for the meeting of the Rules Review Commission on Thursday March 16, 2006, 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

March 16, 2006 April 20, 2006
May 18, 2006 June 15, 2006

**RULES REVIEW COMMISSION
FEBRUARY 16, 2006
MINUTES**

The Rules Review Commission met on Thursday, February 16, 2006, in the Assembly Room of the Methodist Building, 1307 Glenwood Avenue, Raleigh, North Carolina. Commissioners present were: Jim Funderburk, Jeffrey Gray, Jennie Hayman; Thomas Hilliard; Robert Saunders, Lee Settle, and John Tart.

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

The following people attended:

Barry Gupton	Building Code Council
Mike Page	Building Code Council
Ellie Sprenkel	Department of Insurance
Frank Folger	Department of Insurance
Dedra Alston	DHHS/Child Care Commission
Lorie Pugh	DHHS/Child Care Commission
Hattie Malone	Golden Rule of Charlotte
Dathan Bodie	Golden Rule of Charlotte
Cindy Kornegay	Division of Mental Health
Stacy Silvia-Overcash	Division of Mental Health
Andy Ellen	NC Retail Merchants
Lisa Martin	NC Home Builders Association
Denise Stanford	Attorney for Pharmacy Board/Dental Board
Nathan Knuffman	Office State Budget and Management
Sandra Alley	Real Estate Commission
Diane Miller	Department of Justice
Roberta Ouellette	Appraisal Board
Nancy Pate	DENR
Jack Nichols	Allen & Pinnix/Board of Nursing
Joe Moore	General Assembly
Erin Gould	Department of Labor
Jennifer Chrisohon	Department of Labor
John Hoomani	Department of Labor

Greg Lundberb	Department of Labor
Bobby White	Dental Board
Jean Stanley	Board of Nursing
Barbara Knopp	Board of Nursing
Jim Chavis	RDI
Richard Alston	Meadow's Place
Dana Sholes	OAH
Julie Brincefield	OAH
Lauren Curtis	OAH
Brooks Skinner	Department of Administration
Gretchen Aycock	Department of Administration
David Ferrell	Vanderventer Black
Jonathan Charleston	The Charleston Group
Wanda Edwards	Department of Insurance
Kathy Williams	Department of Insurance
Sheila Coneen	Department of Administration
Delan Clark	NCARTP
Rick Zechini	Association of Realtors
Tom Miller	Attorney General's Office
Floyd Boyer	Respiratory Care Board
Karen Cochran Brown	General Assembly

APPROVAL OF MINUTES

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

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the January 19, 2006 meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

1 NCAC 30I .0309: Department of Administration – The Commission approved the rewritten rule submitted by the agency.

10A NCAC 09 .1701: Child Care Commission – The Commission returned the rule to the agency at the agency's request.

10A NCAC 09 .1718: Child Care Commission – The Commission approved the rewritten rule submitted by the agency.

11 NCAC 8 .0713; .0718: Code Officials Qualification Board – The Commission approved the rewritten rules submitted by the agency.

12 NCAC 7D .0405: Private Protective Services Board – No response has been received, so no action was taken.

21 NCAC 26 .0207: Board of Landscape Architects – No response has been received, so no action was taken.

21 NCAC 36 .0303: Board of Nursing – The Commission approved the rewritten rule submitted by the agency.

21 NCAC 36 .0317: Board of Nursing – The Commission approved the rule.

21 NCAC 46 .1607; .1612; .2511; .2601: Board of Pharmacy – The Commission approved the rewritten rules submitted by the agency.

21 NCAC 46 .2502: Board of Pharmacy – The Rules Review Commission received a request from Andy Ellen that the N.C. Retail Merchants Association be allowed to withdraw their request to have this rule referred to OSBM for a determination whether the rule had a substantial economic impact. They did this based on their belief that they would be able to continue to negotiate with the Board over the contents of this rule. Denise Stanford, counsel for the Pharmacy Board concurred by letter in this arrangement and agreed that the rule should be withdrawn from OSBM and then the agency be allowed to withdraw the rule for further revisions. The RRC and OSBM both agreed to this disposition of the rule. The agency should be allowed to continue its rulemaking on this rule. Based on the previous staff opinion concerning proposed portions of this rule and possible objections to those portions, the agency may rewrite those portions and re-file the rule with RRC as part of this same rulemaking.

041214 Item B-2, B-1, B-2D1 903.2.7: Building Code Council – No response has been received, so no action was taken.

051213 Item D-3 10.10; Article 100: Building Code Council – No response has been received, so no action was taken.

LOG OF FILINGS

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

10A NCAC 27G .1301; .1701-.1708: Commission for Mental Health – The Commission approved these rules with Commissioners Gray and Hilliard opposed. Ten letters have been received requesting legislative review.

Commissioner Gray did not participate in either the discussion or vote concerning rules from the Alarm Systems Licensing Board.

15A NCAC 7K .0209: Coastal Resources Commission – The Commission approved this rule with Commissioner Tart opposed.

21 NCAC 16B .0406: Board of Dental Examiners – The Commission objected to this rule based on ambiguity. The meaning of paragraph (e) is not immediately clear, especially the second sentence. But even the first sentence is unclear in that it seems self-evident – “failure of the examination ... constitutes a failure of the examination.” Is the sentence necessary? It is unclear what it adds to the rule. It is unclear whether the second sentence actually means that if you have “failed” the written portion only once or twice, that you have not really failed it. It is also unclear what the consequences of failing it only once or twice are as compared to three times. If there is some different outcome based on how many times an applicant has failed the exam that is not set out in (a) – (d), that is not clear.

21 NCAC 16M .0101: Board of Dental Examiners – The Commission objected to this rule based on lack of authority for the rule.

There is no authority cited for the Board to charge a \$1,400 processing fee for Board conducted examinations in item (13). They are authorized under (1) of G.S. 90-39 to charge up to \$1,200 for “each application for ... examination.” Presumably this would include any “application for ... examination” as well as any “examination processing fee” for a Board conducted examination. That would mean that any fees under the authority of this paragraph sub-item would all be added together. They are amending this rule to charge in item (1) a \$395 application fee. That would leave them a balance of \$805 for which they could assess an “examination processing fee,” not the \$1,400 they have adopted in item (13).

21 NCAC 57A .0201: Appraisal Board – The Commission objected to this rule based on ambiguity because of an apparent conflict between this rule and rule .0301. In rule .0201 paragraphs (a)(2), lines 21 – 23; (a)(3), line 36 and page 2 line 37; and (a)(4), lines 51 – 53 all propose to amend this rule to require or allow an applicant to complete the appropriate examination “within the two year period immediately preceding the date application [for licensure or certification] is made.” However the proposed amendment to Rule .0301(d), lines 17 and 18, specifies that approval to take the examination “will be issued” only when the applicant has “completed both the education and experience requirements.” The Submission for Permanent Rule filing form specifically states that at least part of the reason for this rulemaking is that “applicants should be able to take it any time after they complete their education. The ambiguity arises because it takes a minimum of 18 months (in (a)(2)) and two years in the other two cases to complete the experience requirement. Based on the language in rule .0201, that would seem to indicate that a person could apply for and take the examination prior to completing the experience requirement. However the language in .0301(d) requires the applicant to have completed the experience component prior to taking the exam.

21 NCAC 57A .0301: Appraisal Board – The Commission objected to this rule based on ambiguity within the rule and because of an apparent conflict between this rule and rule .0201. Even though Rule .0301(d) does not take effect until January 1, 2008, it is unclear what will happen at that time. The rules appear to conflict if they were both in effect. It is not clear what the board intends to do about this potential ambiguity. The problem of this potential conflict is obvious in comparing these two portions. However, it appears that the conflict exists in the current rules. Rule .0301(b), lines 13 and 14, specifies that the applicant “shall be scheduled for examination based on their successful completion of ... requirements stated in G.S. 93E-1-6.” (Emphasis added.) That statute has requirements for licensure or certification to include both the course and the experience requirements to be completed prior to being licensed or certified (along with passing an examination). By extension to rule .0301 this means that the applicant must have completed these two components, or they would not have met the “successful completion of ... requirements” in the statute before scheduling the examination. So the conflict within these rules would exist now if the amendments to rule .0201 are approved.

21 NCAC 58A .0902: Real Estate Commission – The Commission objected to the rule due to ambiguity. In (b)(5), it is not clear when the Commission would determine that a declaratory ruling is undesirable. G.S. 150B-4 allows an agency to decline to issue a declaratory ruling when it finds for good cause that the issuance is undesirable; however, the agency is required to prescribe in its rules the circumstances where a ruling will or will not be issued. This would require the agency to state in its rules the circumstances that would amount to good cause for finding the issuance undesirable. Items (1) through (4) do this, but it is not clear what item (5) adds to the list.

21 NCAC 58A .1902: Real Estate Commission – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (a), it is not clear what courses have been prescribed by the Commission. There is no authority cited to set the requirements outside rulemaking.

21 NCAC 58C .0103: Real Estate Commission – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (a)(1), it is not clear what information is required by the Commission. There is no authority cited to set the

requirements outside rulemaking. In (b), it is not clear what would constitute a field closely related to real estate. This objection applies to existing language in the rule.

21 NCAC 58C .0302: Real Estate Commission – The Commission objected to the rule due to lack of statutory authority and ambiguity. In (c), it is not clear what three courses are prescribed by the Commission. There is no authority cited to prescribe them outside rulemaking.

21 NCAC 58F .0102: Real Estate Commission – The Commission objected to the rule due to lack of statutory authority and ambiguity. It is not clear what other subjects are required to be taught in the broker transition course. There is no authority cited for setting the requirements by syllabus rather than rule.

21 NCAC 61 .0202: Respiratory Care Board – The Commission objected to this rule due to lack of authority or ambiguity. There is no authority for some of the provisions in this rule that seem to restrict what certain persons can legally do. Under the statutory scheme, in G.S. 90-664 there is an exemption from the requirement for licensure for a “person who performs only support activities as defined in G.S. 90-648(13).” That next statute gives the definition of “support activities” which includes several activities that appear to be restricted by this rule. Those activities and prohibitions that seem to conflict with the definitions and exemptions under the statute are as follows: (3), line 30, “instructions to the patient ... regarding the clinical use of the equipment;” (3)(a), lines 35 – 37, restricting an unlicensed individual from providing delivery or setup of equipment for patients under the age of 18 unless certain restrictions are complied with; and (3)(b), lines 45 – 47, where an unlicensed person may deliver or set up equipment for those age 18 or older as long as someone, presumably a licensed person, has performed an assessment. This seems to restrict application of the exception found in the definition of “support activities.” In (3)(a) and (b) the restrictions that must be complied with are the responsibility of a licensed professional. However the rule puts the burden on the unlicensed person to know whether the rule has been complied with by that licensed person, and then restricts his performance, in apparent violation of the statutory exemption, if the licensed person has not complied with the restrictions. The Board may legitimately require that respiratory care practitioners supervise or otherwise oversee the delivery or setup of equipment or any other support activity, but it does not seem to have the authority to restrict the ability of an unlicensed person to provide those very support activities. If these prohibitions are not the intent of the rule, then the rule is unclear.

COMMISSION PROCEDURES AND OTHER BUSINESS

Joe DeLuca updated the Commission on the APO Meeting he attended on February 9th. Chairman Hayman attended that meeting also and encouraged the Commission members to attend future meetings. Judge Julian Mann also requested that up to three members were encouraged to attend future meetings. The next meeting of the APO is March 9, 2006 at 10:00 a.m. in Room 544 of the Legislative Office Building.

The meeting adjourned at 12:15 p.m.

The next scheduled meeting of the Commission is Thursday, March 16, 2006 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

AGENDA
RULES REVIEW COMMISSION
March 16, 2006, 10:00 A.M.

- I. Reminder of Governor’s Executive Order #1
- II. Review of minutes of last meeting
- III. Follow-Up Matters
 - A. Private Protective Services Board – 12 NCAC 7D .0405 (DeLuca)
 - B. Board of Dental Examiners – 21 NCAC 16B .0406 (DeLuca)
 - C. Board of Dental Examiners – 21 NCAC 16M .0101 (DeLuca)
 - D. Board of Landscape Architects – 21 NCAC 26 .0207 (DeLuca)

- E. Appraisal Board – 21 NCAC 57A .0201; .0301 (DeLuca)
- F. Real Estate Commission – 21 NCAC 58A .0902; .1902 (Bryan)
- G. Real Estate Commission – 21 NCAC 58C .0103; .0302 (Bryan)
- H. Real Estate Commission – 21 NCAC 58F .0102 (Bryan)
- I. Respiratory Care Board – 21 NCAC 61 .0202 (DeLuca)
- J. Building Code Council – 041214 Items B-2, B-1, B-2D1 903.2.7
- K. Building Code Council – 051213 Item D-3 10.10 and Article 100 (Bryan)
 - Board of Pharmacy – 21 NCAC 46 .2502 (DeLuca)
- IV. Review of Rules (Log Report)
- V. Review of Temporary Rules
 - 1. Medical Care Commission – 10A NCAC 13J .0903; .1003; .1110
 - 2. Pharmacy Board – 21 NCAC 46 .3301
 - 3. Plumbing, Heating and Fire Sprinkler Contractors – 21 NCAC 50 .0301
- VI. Commission Business
- VII. Next meeting: April 20, 2006

Commission Review/Permanent Rules
Log of Filings
January 21, 2006 through February 20, 2006

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 (.02000); 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>Definitions</u>	10A	NCAC	09	.0102
Amend/*				
<u>On-Going Requirements for a Permit</u>	10A	NCAC	09	.0304
Amend/*				
<u>Requirements for a One Star Rated License for a Child Car...</u>	10A	NCAC	09	.0305
Amend/*				
<u>Administrative Policies Required</u>	10A	NCAC	09	.1601
Repeal/*				

RULES REVIEW COMMISSION

<u>Operational and Personnel Policies</u> Repeal/*	10A	NCAC	09	.1602
<u>Space Requirements</u> Repeal/*	10A	NCAC	09	.1604
<u>Staff/Child Ratios</u> Repeal/*	10A	NCAC	09	.1606
<u>Caregiving Activities for Preschool-Aged Children</u> Repeal/*	10A	NCAC	09	.1612
<u>Parent Participation</u> Repeal/*	10A	NCAC	09	.1613
<u>Night Care</u> Repeal/*	10A	NCAC	09	.1615
<u>Scope</u> Amend/*	10A	NCAC	09	.2801
<u>Application for a Voluntary Rated License</u> Amend/*	10A	NCAC	09	.2802
<u>Program Standards for a Three Component Rated License for...</u> Amend/*	10A	NCAC	09	.2803
<u>Administrative Policies</u> Amend/*	10A	NCAC	09	.2804
<u>Operational and Personnel Policies</u> Amend/*	10A	NCAC	09	.2805
<u>Caregiving Activities for Preschool-aged Children</u> Amend/*	10A	NCAC	09	.2806
<u>Parent Participation</u> Amend/*	10A	NCAC	09	.2807
<u>Night Care</u> Amend/*	10A	NCAC	09	.2808
<u>Space Requirements</u> Amend/*	10A	NCAC	09	.2809
<u>Staff/Child Ratios</u> Amend/*	10A	NCAC	09	.2810
<u>Program Standards for a Two Component Rated License for C...</u> Adopt/*	10A	NCAC	09	.2817
<u>Staff/Child Ratios for a Two Component Rated License for ...</u> Adopt/*	10A	NCAC	09	.2818
<u>Education Standards for a Two Component Rated License for...</u> Adopt/*	10A	NCAC	09	.2819
<u>Education Standards for a Two Component Rated License for...</u> Adopt/*	10A	NCAC	09	.2820
<u>Program Standards for a Two Component Rated License for F...</u> Adopt/*	10A	NCAC	09	.2821
<u>Education Standards for a Two Component Rated License for...</u> Adopt/*	10A	NCAC	09	.2822
<u>Quality Point Options</u> Adopt/*	10A	NCAC	09	.2823
<u>How an Operator May Request or Appeal a Change in Rating</u> Amend/*	10A	NCAC	09	.2825

MEDICAL CARE COMMISSION

The rules in chapter 13 are from the NC Medical Care Commission.

The rules in Subchapter 13B set standards for the licensing of hospitals including supplemental rules for the licensure of skilled intermediate, adult care home beds in a hospital (.1900); specialized rehabilitative and rehabilitative services (.2000); general information (.3000); procedure (.3100); general requirements (.3200); patients' bill of rights (.3300); supplemental rules for the licensure of critical care hospitals (.3400); grievance and management (.3500); management and administration of operations (.3600); medical staff (.3700); nursing services (.3800); medical record services (.3900); outpatient services (.4000); emergency services (.4100); special care units (.4200); maternal-neonatal services (.4300); respiratory care services (.4400); pharmacy services and medication administration (.4500); surgical and anesthesia services (.4600); nutrition and dietetic services (.4700); diagnostic imaging (.4800); laboratory services and pathology (.4900); physical rehabilitation services (.5000); infection control (.5100); psychiatric services (.5200); nursing and adult care beds (.5300); comprehensive inpatient rehabilitation (.5400); supplemental rules for hospitals providing living organ donation transplant services (.5500); physical plant (.6000); general requirements (.6100); and construction requirements (.6200).

<u>Applicability of Rules</u>	10A	NCAC	13B	.5501
Adopt/*				
<u>Independent Donor Advocate Team</u>	10A	NCAC	13B	.5502
Adopt/*				
<u>Informed Choice</u>	10A	NCAC	13B	.5503
Adopt/*				
<u>Evaluation Protocol for Living Organ Donors</u>	10A	NCAC	13B	.5504
Adopt/*				
<u>Perioperative Care and Facility Support</u>	10A	NCAC	13B	.5505
Adopt/*				
<u>Discharge Planning</u>	10A	NCAC	13B	.5506
Adopt/*				

MENTAL HEALTH, COMMISSION OF

The rules in Chapter 27 are mental health rules about community facilities and services.

The rules in Subchapter 27G are from either the department or the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services including general information (.0100); operation and management rules (.0200); physical plant rules (.0300); licensing procedures (.0400); area program requirements; over-authority on county program monitoring of facilities and services (.0600); accreditation of area programs and services (.0700); waivers and appeals (.0800); general rules for infants and toddlers (.0900); partial hospitalization for individuals who are mentally ill (.1100); psychological rehabilitation facilities for individuals with severe and persistent mental illness (.1200); residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1300); day treatment for children and adolescents with emotional or behavioral disturbances (.1400); intensive residential treatment for children and adolescents who are emotionally disturbed or who have a mental illness (.1500); residential treatment staff secure facilities for children or adolescents (.1700); intensive residential treatment for children or adolescents (.1800); psychiatric residential treatment facilities for children and adolescents (.1900); specialized community residential centers for individuals with developmental disabilities (.2100); before/after school and summer developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2200); adult developmental and vocational programs for individuals with developmental disabilities (.2300); developmental day services for children with or at risk for developmental delays or disabilities, or atypical development (.2400); early childhood intervention services (ECIS) for children with an at risk for developmental delays or disabilities, or atypical development and their families (.2500); nonhospital medical detoxification for individuals who are substance abusers (.3100); social setting detoxification for substance abuse (.3200); outpatient detoxification for substance abuse (.3300); residential treatment/rehabilitation for individuals with substance abuse disorders (.3400); outpatient facilities for individuals with substance abuse disorders (.3500); outpatient opioid treatment (.3600); day treatment facilities for individuals with substance abuse disorders (.3700); substance abuse services for DWI offenders (.3800); drug education schools (DES) (.3900); treatment alternatives to street crimes (TASC) (.4000); substance abuse primary prevention services (.4200); therapeutic community (.4300); substance abuse intensive outpatient programs (.4400); substance abuse comprehensive outpatient treatment programs (.4500); facility based crises services for individual of all disability groups (.5000); community respite services for individuals of all disability groups (.5100); residential therapeutic (habilitative) camps for children and adolescents of all disability groups (.5200); day activity for individuals of all disability groups (.5400); sheltered workshops for individuals of all disability groups (.5500); supervised living for individuals of

all disability groups (.5600); assertive community treatment service (.5700); supportive employment for individuals of all disability groups (.5800); case management for individuals of all disability groups (.5900); inpatient hospital treatment for individuals who have mental illness or substance abuse disorders (.6000); emergency services for individuals of all disability groups (.6100); outpatient services for individuals of all disability groups (.6200); companion respite services for individuals of all disability groups (.6300); personal assistants for individuals of all disabilities groups (.6400); employment assistance programs (.6500); specialized foster care services (.6600); forensic screening and evaluation services for individuals of all disability groups (.6700); prevention services (.6800); and consultation and education services (.6900).

<u>Scope</u> Adopt/*	10A NCAC 27G .1801
<u>Requirements of Licensed Professionals</u> Adopt/*	10A NCAC 27G .1802
<u>Requirements of Qualified Professionals</u> Adopt/*	10A NCAC 27G .1803
<u>Minimum Staffing Requirements</u> Adopt/*	10A NCAC 27G .1804
<u>Operations</u> Adopt/*	10A NCAC 27G .1805
<u>Transfer or Discharge</u> Adopt/*	10A NCAC 27G .1806
<u>Scope</u> Adopt/*	10A NCAC 27G .4401
<u>Staff</u> Adopt/*	10A NCAC 27G .4402
<u>Operations</u> Adopt/*	10A NCAC 27G .4403
<u>Scope</u> Adopt/*	10A NCAC 27G .4501
<u>Staff</u> Adopt/*	10A NCAC 27G .4502
<u>Operations</u> Adopt/*	10A NCAC 27G .4503

HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 39 are adult health rules.

The rules in Subchapter 39A deal with chronic disease issues including migrant health (.0100); home health services (.0200); chronic renal disease control program (.0300); adult health promotion and disease prevention program (.0500); medication assistance program for the disabled (.0600); health care services in the home demonstration program (.0700); home and community-based HIV health services program (.0800), Ryan White HIV care program (.0900), HIV medications program (.1000), cancer diagnostic and treatment program (.1100); breast cervical cancer screening and follow-up program (.1200); and prescription drug assistance program (.1300).

<u>Application Process</u> Amend/*	10A NCAC 39A .1005
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The rules in Chapter 41 are Health and Epidemiology rules adopted by the Commission for Health Services.

The rules in Subchapter 41A concern communicable disease control including rules about reporting (.0100); control measures (.0200 and .0300); immunizations (.0400); purchase and distribution of vaccine (.0500); special program and project funding (.0600); licensed nursing home services (.0700); grants and contracts (.0800); and the biological agent registry (.0900).

<u>Control Measures Tuberculosis</u>	10A NCAC 41A .0205
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Amend/*

The rules in Subchapter 41F establish standards for reporting chemical related illnesses or injuries that are harmful to the public's health.

<u>General Definitions</u> Adopt/*	10A	NCAC	41F	.0101
<u>Reporting of Chemical-Related Illness or Injury</u> Adopt/*	10A	NCAC	41F	.0102
<u>Method of Reporting</u> Adopt/*	10A	NCAC	41F	.0103

MANUFACTURED HOUSING BOARD

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

<u>Complaints</u> Amend/*	11	NCAC	08	.1202
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JUSTICE, DEPARTMENT OF

The rules in Chapter 2 are from the Office of the Attorney General.

The rules in Subchapter 2J regulate campus police including general provisions (.0100); rules about commissioning (.0200) and the conduct of commissioned policemen (.0300).

<u>Location</u> Adopt/*	12	NCAC	02J	.0101
<u>Purposes</u> Adopt/*	12	NCAC	02J	.0102
<u>Administrative Staff</u> Adopt/*	12	NCAC	02J	.0103
<u>Definitions</u> Adopt/*	12	NCAC	02J	.0104
<u>Minimum Standards for Campus Police Officers</u> Adopt/*	12	NCAC	02J	.0201
<u>Application for Campus Police Agency</u> Adopt/*	12	NCAC	02J	.0202
<u>Application for Campus Police</u> Adopt/*	12	NCAC	02J	.0203
<u>Background Investigation</u> Adopt/*	12	NCAC	02J	.0204
<u>Fee</u> Adopt/*	12	NCAC	02J	.0205
<u>Oath</u> Adopt/*	12	NCAC	02J	.0206
<u>Liability Insurance</u> Adopt/*	12	NCAC	02J	.0207

<u>Suspension, Revocation or Denial of Agency Certification</u> Adopt/*	12	NCAC	02J	.0208
<u>Suspension, Revocation or Denial of Officer</u> Adopt/*	12	NCAC	02J	.0209
<u>Period of Suspension, Revocation or Denial</u> Adopt/*	12	NCAC	02J	.0210
<u>Summary Suspensions</u> Adopt/*	12	NCAC	02J	.0211
<u>Tenure</u> Adopt/*	12	NCAC	02J	.0301
<u>Prohibited Acts</u> Adopt/*	12	NCAC	02J	.0302
<u>Transfers</u> Adopt/*	12	NCAC	02J	.0303
<u>Badges, Uniforms, Vehicles and Officer Identification</u> Adopt/*	12	NCAC	02J	.0304

ENVIRONMENT AND NATURAL RESOURCES, DEPARTMENT OF

The rules in Chapter 2 are from the Environmental Management Commission.

The rules in Subchapter 2G concern water resources programs and include state participation in civil works projects (.0100); beach project revolving fund advances (.0300); floodway establishment (.0400); allocation of Jordan Lake water supply storage (.0500); and aquatic weed control (.0600).

<u>The Aquatic Weed Control Act</u> Repeal/*	15A	NCAC	02G	.0601
<u>Noxious Aquatic Weed List</u> Amend/*	15A	NCAC	02G	.0602

HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 13 are from the Commission for Health Services and cover hazardous and solid waste management, inactive hazardous substances, and waste disposal sites.

The rules in Subchapter 13A cover hazardous waste management, and specifically HWTSD (hazardous waste treatment, storage, or disposal) facilities.

<u>Stds for the Mgmt of Specific HW/Types</u> Amend/*	15A	NCAC	13A	.0111
<u>The Hazardous Waste Permit Program-Part 270</u> Amend/*	15A	NCAC	13A	.0113

REVENUE, DEPARTMENT OF

The rules in Chapter 7 pertain to the sales and use tax. They cover divisional rules, State sales and use tax, and local government sales and use tax.

The rules in Subchapter 7B pertain to the State sales and use tax including general provisions (.0100); the applicability of the State sales and use tax to manufacturing and industrial processing (.0200); application of the sales and use taxes to specific tangible personal property classified for use by industrial users (.0300); application of the taxes to specific industries (.0400); sales to manufacturers that are exempt from the taxes (.0500); taxes to sales of mill machinery and accessories (.0600); application of the taxes to purchases made by specific industries (.0700); how the taxes apply in situations where there are adjustments, replacements, alterations and installment sales (.0800); how the taxes apply to advertising and advertising agencies (.0900); applying the taxes to

bankers, beauty shop operators, shoe repairmen, and watch repairmen (.1000); applying the taxes to sales of bulk tobacco barns and farm machines and machinery (.1100); applying the taxes to hotels, motels, tourist camps, and tourist cabins (.1200); applying the taxes to sales in interstate commerce (.1300); applying the taxes to sales of medicine, drugs, and medical supplies (.1400); applying the taxes to sales to or by hospitals (.1600); how the taxes apply to sales by or to the State, counties, or other political subdivisions (.1700); how the taxes apply to hospitals and sanitariums (.1800); how the sales and use tax and scrap tire disposal tax apply to tire recappers and retreaders (.1900); how the taxes apply to sales and gifts by employers to employees or other users (.2000); how the taxes apply to electricity, piped natural gas, bottled gas, coal, coke, fuel oil, oxygen, acetylene, hydrogen, liquefied petroleum gas and other combustibles (.2100); how the taxes apply to sales of food and food products for human consumption (.2200); how the taxes apply to sales to out-of-state merchants for resale (.2300); how the taxes apply to sales to and by veterinarians (.2400); how the taxes apply to furniture and storage warehousemen (.2500); the liability of contractors, the use tax on equipment brought into the State, and building materials (.2600); how the taxes apply to dentists, dental laboratories and dental supply houses (.2700); how the taxes apply to florists, nurserymen, greenhouse operators and farmers (.2800); how the taxes apply to sales of and through vending machines (.2900); how the sales and use tax applies to articles taken in trade, trade-ins, repossessions, returned merchandise, and used or second hand merchandise (.3000); how the taxes apply to radio and television stations, and motion picture theatres (.3100); how the taxes apply to telephone and telegraph companies (.3200); how the taxes apply to orthodontic appliances (.3300); how the taxes apply to memorial stone and monument dealers and manufacturers (.3400); how the taxes apply to machinists, foundrymen and pattern makers (.3500); how the taxes apply to funeral expenses (.3600); how the taxes apply to premiums and gifts and trading stamps (.3800); how the taxes apply to containers, wrapping, and packing and shipping materials (.3900); how the taxes apply to fertilizers, seeds, feed and insecticides (.4000); how the taxes apply to such persons as artists, art dealers and photographers (.4100); how the taxes apply to sales to the United States Government or its agencies (.4200), refunds to interstate carriers (.4300); how the taxes apply to leases and rentals (.4400); how the taxes apply to laundries, dry cleaning plants, launderettes, linen rentals, and to solicitors for such businesses (.4500); how the taxes apply to motor vehicles and boats (.4600); how the taxes apply to printers and newspaper or magazine publishers (.4700); the basis for reporting the taxes (.4800); transportation charges (.4900); how the taxes apply to eyeglasses and other ophthalmologic aids and supplies (.5000); how the taxes apply to leased departments and transient sellers (.5100); how the taxes apply to baby chicks and poults (.5200); the requirements for posting bond and obtaining a certificate of authority (.5300); and the forms used for sales and use tax purposes (.5400).

<u>Returns</u>	17	NCAC	07B	.0104
Amend/*				
<u>Certificates of Exemption Sales for Resale</u>	17	NCAC	07B	.0106
Amend/*				
<u>Application of Tax to Fish Bait</u>	17	NCAC	07B	.0109
Amend/*				
<u>Stamps, Coins, Etc.</u>	17	NCAC	07B	.0111
Amend/*				
<u>Auctioneers and Auction Sales</u>	17	NCAC	07B	.0113
Amend/*				
<u>Research Services</u>	17	NCAC	07B	.0115
Amend/*				
<u>Commercial Fishermen Certificate of Exemption</u>	17	NCAC	07B	.0123
Amend/*				
<u>Adjustments and Replacements</u>	17	NCAC	07B	.0801
Amend/*				
<u>Cabinetmakers</u>	17	NCAC	07B	.0803
Amend/*				
<u>Sign Fabricating and Painting</u>	17	NCAC	07B	.0805
Amend/*				
<u>Repairs and Alterations Generally</u>	17	NCAC	07B	.0806
Amend/*				
<u>Fire Extinguishers Recharging</u>	17	NCAC	07B	.0811
Amend/*				
<u>Advertising and Advertising Agencies</u>	17	NCAC	07B	.0901
Amend/*				
<u>Advertising Artists</u>	17	NCAC	07B	.0902
Amend/*				

RULES REVIEW COMMISSION

<u>Public Relations Firms</u> Amend/*	17	NCAC	07B	.0904
<u>Barber and Beautician Supplies</u> Amend/*	17	NCAC	07B	.1001
<u>Shoe Repairmen</u> Amend/*	17	NCAC	07B	.1002
<u>Watch Clock and Jewelry Repairmen</u> Amend/*	17	NCAC	07B	.1003
<u>In-State Deliveries</u> Amend/*	17	NCAC	07B	.1302
<u>Deliveries to Donees</u> Amend/*	17	NCAC	07B	.1303
<u>Sales to or by Nonprofit Entities</u> Amend/*	17	NCAC	07B	.1601
<u>Refunds to Nonprofit Entities</u> Amend/*	17	NCAC	07B	.1602
<u>Sales to Employees</u> Amend/*	17	NCAC	07B	.2001
<u>Gifts to Employees</u> Amend/*	17	NCAC	07B	.2002
<u>Interstate Sale</u> Amend/*	17	NCAC	07B	.2302
<u>Moving and Packing Materials</u> Amend/*	17	NCAC	07B	.2502
<u>Secondhand Furniture</u> Amend/*	17	NCAC	07B	.2503
<u>Sales Through Vending Machines</u> Amend/*	17	NCAC	07B	.2901
<u>Sales of Vending Machines</u> Amend/*	17	NCAC	07B	.2902
<u>Printing of Containers</u> Repeal/*	17	NCAC	07B	.4702
<u>Printing Surface Supplies</u> Repeal/*	17	NCAC	07B	.4705
<u>Offset Printing Equipment</u> Repeal/*	17	NCAC	07B	.4706
<u>Printing Chemicals</u> Amend/*	17	NCAC	07B	.4707
<u>Postage Charges by Printers</u> Amend/*	17	NCAC	07B	.4708
<u>Bookbinders</u> Amend/*	17	NCAC	07B	.4710
<u>Gas Sold to Printers</u> Repeal/*	17	NCAC	07B	.4711
<u>Metal for Making Type</u> Repeal/*	17	NCAC	07B	.4712
<u>Typewriters Sold to Printers</u> Amend/*	17	NCAC	07B	.4713
<u>Mounting Tape Sold to Printers</u> Repeal/*	17	NCAC	07B	.4714
<u>Newspaper Publishers Machinery</u> Amend/*	17	NCAC	07B	.4715

<u>Typesetting</u>	17	NCAC	07B	.4716
Amend/*				
<u>Photographs Newspaper</u>	17	NCAC	07B	.4717
Repeal/*				

GENERAL CONTRACTORS, LICENSING BOARD FOR

The rules of the Licensing Board for General Contractors include the board's organization (.0100); licensing requirements (.0200); application procedures (.0300); examinations (.0400); licenses (.0500); disciplinary procedures (.0700); contested cases (.0800); and home-owners recovery fund (.0900).

<u>Eligibility</u>	21	NCAC	12	.0204
Amend/*				
<u>Filing Deadline/App Seeking Qual/Emp/Another</u>	21	NCAC	12	.0205
Amend/*				
<u>Request</u>	21	NCAC	12	.0302
Amend/*				
<u>Person Taking Examination</u>	21	NCAC	12	.0408
Amend/*				
<u>Charge for Status of Licensure Affidavit</u>	21	NCAC	12	.0506
Amend/*				
<u>Improper Practice</u>	21	NCAC	12	.0701
Amend/*				

MEDICAL BOARD

The rules in Subchapter 32S regulate physician assistants.

<u>Definitions</u>	21	NCAC	32S	.0101
Amend/*				
<u>Qualifications for License</u>	21	NCAC	32S	.0102
Amend/*				
<u>Temporary License</u>	21	NCAC	32S	.0103
Repeal/*				
<u>Inactive License Status</u>	21	NCAC	32S	.0104
Amend/*				
<u>Scope of Practice</u>	21	NCAC	32S	.0108
Amend/*				
<u>Supervision of Physician Assistants</u>	21	NCAC	32S	.0110
Amend/*				
<u>Supervising Physicians</u>	21	NCAC	32S	.0111
Amend/*				
<u>Notification of Intent to Practice</u>	21	NCAC	32S	.0112
Amend/*				
<u>Practice During A Disaster</u>	21	NCAC	32S	.0118
Amend/*				

FUNERAL SERVICE, BOARD OF

The rules in Chapter 34 are from the North Carolina Board of Funeral Service. The rules in Subchapter 34C concern crematories including general provisions (.0100); equipment and processing (.0200); and authorizations, reports, records (.0300).

<u>Election to Crematory Authority</u>	21	NCAC	34C	.0101
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NURSING, BOARD OF

The rules in Chapter 36 are the rules of the Board of Nursing including rules relating to general provisions (.0100); licensure (.0200); approval of nursing programs (.0300); unlicensed personnel and nurses aides (.0400); professional corporations (.0500); and articles of organization (.0600).

<u>Definitions</u>	21	NCAC	36	.0120
Amend/*				
<u>Continuing Competence</u>	21	NCAC	36	.0232
Adopt/*				
<u>Facilities</u>	21	NCAC	36	.0322
Amend/*				

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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>.

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*Chief Administrative Law Judge
JULIAN MANN, III*

*Senior Administrative Law Judge
FRED G. MORRISON JR.*

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beecher R. Gray

Beryl E. Wade

Melissa Owens Lassiter

A. B. Elkins II

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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	
Queen Thompson v. State Treasurer's Office	05 DST 2187	Lassiter	03/03/06	
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East Winston Primary School Corporation v. State Board of Education	03 EDC 0029	Chess	09/02/05	
Harry Talmadge Englebert v. State Board of Education	03 EDC 1548	Gray	01/06/06	
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	
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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	
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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	
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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
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Brenda Severt, David and Nancie Wilson v. DENR	04 EHR 0383	Gray	10/25/05	
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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	
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Glenda Daniel v. Halifax Co Health Dept, Env Health Division	04 EHR 1583	Conner	07/27/05	
Matthew 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	
Cathy Epps v. DENR, Div. of Air Quality	05 EHR 0130	Wade	12/07/05	
Clegg's Termite and Pest Control., Inc., v. DENR, Div Waste Management	05 EHR 0328	Lassiter	12/13/05	
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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	
Ronald G. Overcash v. DENR, Div. of Waste Management, UST Section	05 EHR 0883	Elkins	01/31/06	
Robert W Hudson v. Division of Marine Fisheries	05 EHR 0886	Morrison	07/05/05	
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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	
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Anne B. Hooper v. Teachers' and State Employees' Comprehensive Major Medical Plan	93 INS 0989	Gray	01/09/06	
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	
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Aaron Lewis v. General Court of Justice, District Court, Div-Small Claims Chris Hardison, Magistrate	06 MIS 0037	Morrison	03/02/06	
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Charles D Bailey v Department of Cultural Resources	02 OSP 0002 ⁴	Conner	09/12/05	
Leavander J. Cheeks v Department of Cultural Resources	02 OSP 0002 ⁴	Conner	09/12/05	
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Kathy Sledge v. Department of Corrections	03 OSP 1092	Conner	06/27/05	
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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	
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Edward Todd Suttles v. Crime Control and Public Safety State Highway Patrol	04 OSP 0711	Wade	01/03/06	
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Donald E. Cline, PH.D v. J.H. Lyall, PH.D, O'Berry Center	04 OSP 1247	DeLuca	10/05/05	
Loretta G Hooks v. Department of Corrections	04 OSP 1266	Wade	07/11/05	
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Clayton R. Richardson v. Winston-Salem State University	05 OSP 1343	Lassiter	01/18/06	
Melvin G. Cline., Jr., v. J. Iverson Riddle Development Center and the NC Department of Health and Human Services	04 OSP 1360	Wade	12/15/05	
Wayne Pettit v Department of Correction	04 OSP 1458	Gray	08/04/05	
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Jacqueline Hightower v Wayne Co Dept of Social Services	04 OSP 1563	Lassiter	09/09/05	
Michael A. Kelly v. DENR	04 OSP 1572	Gray	12/28/05	
Steven Wayne Mobley v. DENR	04 OSP 1573	Gray	12/28/05	
Shelli Henderson Rice v. ESC of NC	04 OSP 1574	Gray	06/27/05	
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David J. Savage v. DOI	04 OSP 1773	Lassiter	01/18/06
Robert D Jones v Henderson 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
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Alan Bradford v. Avery Co.	05 OSP 0493	Wade	10/06/05
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Deborah Faye Murray v NW Peidmont Council of Governments	05 OSP 0802	Chess	07/13/05
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Sandra Thomas v Department of Correction	05 OSP 0824	Wade	07/21/05
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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
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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
Melanie Caudle Pitrolo v. Western NC Regional Air Quality Agency	05 OSP 1075	Conner	12/21/05
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
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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
Tommy Frank Sykes v. Nash County Government	05 OSP 1334	Chess	12/15/05
Debra D Moore v. Irene Wortham Center	05 OSP 1445	Gray	11/02/05
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William J. Pendleton v. Butner Public Safety MW Hobgood	05 OSP 1720	Lassiter	01/09/06
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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
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Curtis Eugene Haynes v. Department of Secretary of State	05 SOS 1031	Wade	10/28/05
Curtis C. Lyons v. Dept. of Secretary of State	05 SOS 1129	Chess	12/12/05
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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
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Margarida Goulart v UNC Hospitals	05 UNC 0683	Conner	07/26/05
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Robert C. Green v. UNC Hospitals	05 UNC 0751	Wade	01/06/06
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Josephine Perdue v. WRC	05 WRC 1440	Gray	11/18/05
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- 1 – Combined Cases
- 2 – Combined Cases
- 3 – Combined Cases
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- 5 – Combined Cases