

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	
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15A	ENVIRONMENT & NATURAL RESOURCES	20 Foresters	
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Note: Title 21 contains the chapters of the various occupational licensing boards and Title 24 contains the chapters of independent agencies.

NORTH CAROLINA REGISTER
 Publication Schedule for January 2006 – December 2006

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

EXPLANATION OF THE PUBLICATION SCHEDULE

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

GENERAL

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

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

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

FILING DEADLINES

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

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

NOTICE OF TEXT

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

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

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

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

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

DEPARTMENT OF THE SECRETARY OF STATE

NOTICE OF PUBLIC HEARING

Pursuant to G.S. 150B-21.2(e), the Department will conduct a public hearing regarding proposed administrative rules concerning regulation of lobbying filed with the Office of Administrative Hearings on April 24, 2006, cited as 18 NCAC 12 .0101-.0117 and 18 NCAC 13 .0101-.0116. The public hearing will be held as follows:

Date: Monday, June 19, 2006
Time: 9:00 a.m.
Location: Department of Commerce's Utilities Commission Hearing Room (#2115), Dobbs Building
(enter on Mall side of Dobbs Building)

Comments may be submitted to: *Joal Broun, Secretary of State's Office, 2 South Salisbury Street, Raleigh, NC 27601-2903 or P.O. Box 29622, Raleigh, NC, telephone (919) 807-2005, fax (919) 807-2010, e-mail jbroun@sosnc.com*

Comment period ends: *July 14, 2006*

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

Imperial Centre Partners, LP

Pursuant to N.C.G.S. § 130A-310.34, Imperial Centre Partners, LP has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Rocky Mount, Nash County, North Carolina. The Property consists of the former sites of the Imperial Tobacco Plant at 270 Gay Street and the former Braswell Memorial Library at 344 Falls Road and comprises approximately 3.6 acres. Environmental contamination exists on the Property in the soil and groundwater. Imperial Centre Partners, LP has committed itself to redevelopment of the Property for no use other than as a cultural arts center for the City of Rocky Mount. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and Imperial Centre Partners, LP, 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 Braswell Library, 727 North Grace Street, Rocky Mount by contacting Phillip Whitford at (252) 442-1951, extension 255 or by email at PWhitford@Braswell-Library.org; or at NC Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411, where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents.

Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. Thus, if Imperial Centre Partners, LP, 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 June 2, 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

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

Town of Forest City

Pursuant to N.C.G.S. § 130A-310.34, the Town of Forest City has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Forest City, Rutherford County, North Carolina. The Property, known as the former Cone Mill site, consists of 9.2 acres and is located at 186 Mill Street; 108, 110 and 112 East Main Street; 125 Depot Street and 139 Depot Street. Environmental contamination exists on the Property in the soil and groundwater. The Town of Forest City has committed itself to limit redevelopment of the Property to commercial, retail, office, residential, storage, hotel, public gathering and open space uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and RiverLink, Incorporated, 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.

During the 60-day public comment period, the full Notice of Intent to Redevelop a Brownfields Property may be reviewed at Forest City's utility bill payments desk, 128 North Powell Street, Forest City, NC 28043 by contacting Danielle Withrow at that address or at (828) 248-5200; at Forest City's public library, 240 East Main Street, Forest City, NC 28043 by contacting Mary Sandra Costner at that address or at (828) 248-5224; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 by contacting Shirley Liggins at that address (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 60 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 30 days after the period for written public comments begins. Thus, if the Town of Forest City, 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 June 2, 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

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

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to adopt the rules cited as 10A NCAC 14C .3901-.3906, .4001-.4005; amend the rules cited as 10A NCAC 14C .0203, .1501-.1505, .1601-.1603, .1605, .1901, .2101, .2103, .2203, .2502-.2503, .2505, .2602, .2701-.2705, .2801, .3702-.3704; and repeal the rules cited as 10A NCAC 14C .2806, .3501-.3502, .3504-.3505.

Fiscal Impact:

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

Proposed Effective Date: October 1, 2006

CHAPTER 14 – DIRECTOR, DIVISION OF FACILITY SERVICES

Public Hearing:

Date: July 27, 2006

Time: 10:00 a.m.

Location: Room 201, Council Building, 701 Barbour Drive, Dorothea Dix Campus, Raleigh, North Carolina, 27603

SUBCHAPTER 14C – CERTIFICATE OF NEED REGULATIONS

SECTION .2000 – CRITERIA AND STANDARDS FOR HOME HEALTH SERVICES

Reason for Proposed Action: Several subject matters are addressed in the State Medical Facilities Plan (SMFP). Changes to existing Certificate of Need rules are required to ensure consistency with the SMFP that became effective January 1, 2006.

10A NCAC 14C .0203 FILING APPLICATIONS

(a) An application shall not be reviewed by the agency until it is filed in accordance with this Rule.

(b) An original and a copy of the application shall be file-stamped as received by the agency no later than 5:30 p.m. on the 15th day of the month preceding the scheduled review period. In instances when the 15th of the month falls on a weekend or holiday, the filing deadline is 5:30 p.m. on the next business day. An application shall not be included in a scheduled review if it is not received by the agency by this deadline. Each applicant shall transmit, with the application, a fee to be determined according to the following formula:

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.

(1) With each application proposing the addition of a sixth bed to an existing or approved five bed intermediate care facility for the mentally retarded, the proponent shall transmit a fee in the amount of two thousand dollars (\$2,000).

(2) With each application, other than those referenced in Subparagraph (b)(1) of this Rule, proposing no capital expenditure or a capital expenditure of up to, but not including, one million dollars (\$1,000,000), the proponent shall transmit a fee in the amount of three thousand five hundred dollars (\$3,500).

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

Comment period ends: July 31, 2006

(3) With each application, other than those referenced in Subparagraph (b)(1) of this Rule, proposing a capital expenditure of one million dollars (\$1,000,000) or greater, the proponent shall transmit a fee in the amount of three thousand five hundred dollars (\$3,500), plus an additional fee equal to .003 of the amount of the proposed capital expenditure in excess of one million dollars (\$1,000,000). The additional fee shall be rounded to the nearest

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

whole dollar. In no case shall the total fee exceed seventeen thousand five hundred dollars (\$17,500).

(c) After an application is filed, the agency shall determine whether it is complete for review. An application shall not be considered complete if:

- (1) the requisite fee has not been received by the agency; or
- (2) a signed original and copy of the application have not been submitted to the agency on the appropriate application form.

(d) If the agency determines the application is not complete for review, it shall mail notice of such determination to the applicant within five business days after the application is filed and shall specify what is necessary to complete the application. If the agency determines the application is complete, it shall mail notice of such determination to the applicant prior to the beginning of the applicable review period.

(e) Information requested by the agency to complete the application must be received by the agency no later than 5:30 p.m. on the last working day before the first day of the scheduled review period. The review of an application shall commence in the next applicable review period that commences after the application has been determined to be complete.

Authority G.S. 131E-177; 131E-182.

SECTION .1500 - CRITERIA AND STANDARDS FOR HOSPICES

10A NCAC 14C .1501 DEFINITIONS

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

- (1) "Bereavement counseling" means counseling provided to a hospice patient's family or significant others to assist them in dealing with issues of grief and loss.
- (2) "Caregiver" means the person whom the patient designates to provide the patient with emotional support, physical care, or both.
- (3) "Care plan" means a plan as defined in 10A NCAC 13K .0102 of the Hospice Licensing Rules.
- (4) "Continuous care" means care as defined in 42 CFR 418.204, the Hospice Medicare Regulations.
- ~~(5) "Home like" means furnishings of a hospice inpatient facility or a hospice residential care facility as defined in 10A NCAC 13K .1110 or .1204 of the Hospice Licensing Rules.~~
- ~~(6)~~(5) "Homemaker services" means services provided to assist the patient with personal care, maintenance of a safe and healthy environment and implementation of the patient's care plan.
- ~~(7)~~(6) "Hospice" means any coordinated program of home care as defined in G.S. 131E-176(13a).
- ~~(8)~~(7) "Hospice inpatient facility" means a facility as defined in G.S. 131E-176(13b).
- ~~(9) "Hospice residential care facility" means a facility as defined in G.S. 131E-176(13c).~~

~~(10) "Hospice service area" means for residential care facilities, the county in which the hospice residential care facility will be located and the contiguous counties for which the hospice residential care facility will provide services.~~

~~(11)~~(8) "Hospice services" means services as defined in G.S. 131E-201(5b).

~~(12)~~(9) "Hospice staff" means personnel as defined in 10A NCAC 13K .0102 of the Hospice Licensing Rules.

~~(13)~~(10) "Interdisciplinary team" means personnel as defined in G.S. 131E-201(6).

~~(14)~~(11) "Palliative care" means treatment as defined in G.S. 131E-201(8).

~~(15)~~(12) "Respite care" means care provided as defined in 42 CFR 418.98.

Authority G.S. 131E-177(1).

10A NCAC 14C .1502 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to develop a hospice shall complete the application form for Hospice Services. ~~An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall complete the application form for Hospice Inpatient and Hospice Residential Care Services.~~

(b) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall provide the following information:

- (1) the annual unduplicated number of hospice patients projected to be served in each of the first two years following completion of the project and the methodology and assumptions used to make the projections;
- (2) the projected number of duplicated hospice patients to be served by quarter for the first 24 months following completion of the project and the methodology and assumptions used to make the projections;
- (3) the projected number of patient care days, by level of care (i.e., routine home care, respite care, and inpatient care), by quarter, to be provided in each of the first two years of operation following completion of the project and the methodology and assumptions used to make the projections shall be clearly stated;
- (4) the projected number of hours of continuous care to be provided in each of the first two years of operation following completion of the project and the methodology and assumptions used to make these projections;
- (5) the projected average annual cost per hour of continuous care for each of the first two operating years following completion of the project and the methodology and assumptions used to make the projections;
- (6) the projected average annual cost per patient care day, by level of care (i.e., routine home care, respite care, and inpatient care), for each of the first two operating years following

completion of the project and the methodology and assumptions used to project the average annual cost; and

- (7) documentation of attempts made to establish working relationships with sources of referrals to the hospice services and copies of proposed agreements for the provision of inpatient care.

(c) An applicant proposing to develop a hospice shall commit that it shall comply with all certification requirements for participation in the Medicare program within one year after issuance of the certificate of need.

~~(d) An applicant proposing to develop hospice inpatient or hospice residential care facility beds shall also provide the following information:~~

- ~~(1) a description of the means by which hospice services shall be provided in the patient's own home;~~
- ~~(2) copies of the proposed contractual agreements, with a licensed hospice or a licensed home care agency with a hospice designation on its license, for the provision of hospice services in the patient's own home;~~
- ~~(3) a copy of the admission policies, including the criteria that shall be used to select persons for admission and to assure that terminally ill patients are served in their own homes as long as possible; and~~
- ~~(4) documentation that a home like setting shall be provided in the facility.~~

Authority G.S. 131E-177(1); 131E-183.

10A NCAC 14C .1503 PERFORMANCE STANDARDS

~~(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall demonstrate that:~~

- ~~(1) the average occupancy rate of the licensed hospice beds in the facility is projected to be at least 50% for the last six months of the first operating year following completion of the project;~~
- ~~(2) the average occupancy rate for the licensed hospice beds in the facility is projected to be at least 65% for the second operating year following completion of the project; and~~
- ~~(3) if the application is submitted to address the need for a hospice residential care facility, each existing facility which is located in the hospice service area and which has licensed hospice beds of the type proposed by the applicant attained an occupancy rate of at least 65% for the 12 month period reported on that facility's most recent Licensure Renewal Application Form.~~

~~(b) An applicant proposing to add beds to an existing hospice inpatient facility or hospice residential care facility shall document that the average occupancy of the licensed hospice inpatient and hospice residential care facility beds in its existing facility was at least 65% for the nine months immediately preceding the submittal of the proposal.~~

~~(e) An applicant proposing to develop a hospice shall demonstrate that no less than 80% of the total combined number of days of hospice care furnished to Medicaid and Medicare patients will be provided in the patients' residences in accordance with 42 CFR 418.302(f)(2).~~

Authority G.S. 131E-177(1).

10A NCAC 14C .1504 SUPPORT SERVICES

~~(a) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall demonstrate that the following core services will be provided directly by the applicant to the patient and the patient's family or significant others:~~

- ~~(1) nursing services;~~
- ~~(2) social work services;~~
- ~~(3) counseling services including dietary, spiritual, and family counseling;~~
- ~~(4) bereavement counseling services;~~
- ~~(5) volunteer services;~~
- ~~(6) physician services; and~~
- ~~(7) medical supplies.~~

~~(b) An applicant shall demonstrate that the nursing services listed in Paragraph (a) of this Rule will be available 24 hours a day, seven days a week.~~

~~(c) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall provide documentation that the following services, when ordered by the attending physician and specified in the care plan, shall either be provided directly by the hospice or provided through a contract arranged by the hospice:~~

- ~~(1) hospice inpatient care provided in a licensed hospice inpatient facility bed, licensed acute care bed or licensed nursing facility bed,~~
- ~~(2) physical therapy,~~
- ~~(3) occupational therapy,~~
- ~~(4) speech therapy,~~
- ~~(5) home health aide services,~~
- ~~(6) medical equipment,~~
- ~~(7) respite care,~~
- ~~(8) homemaker services, and~~
- ~~(9) continuous care.~~

~~(d) An applicant proposing to develop a hospice inpatient facility or a hospice residential care facility shall provide documentation that pharmaceutical services will be provided directly by the facility or by contract.~~

~~(e)(d) For each of the services listed in Paragraphs Paragraph (c) and (d) of this Rule which are proposed to be provided by contract, the applicant shall provide a copy of a letter from the proposed provider which expresses their interest in working with the proposed facility.~~

Authority G.S. 131E-177(1); 131E-183.

10A NCAC 14C .1505 STAFFING AND STAFF TRAINING

~~(a) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall document that staffing for hospice services will be provided in a manner consistent with G.S. 131E, Article 10.~~

(b) The applicant shall demonstrate that:

- (1) the staffing pattern will be consistent with licensure requirements as specified in 10A NCAC 13K, Hospice Licensing Rules;
- (2) training for all hospice staff and volunteers will meet the requirements as specified in 10A NCAC 13K .0400, Hospice Licensing Rules;
- (3) a volunteer program will be established and operated in accordance with 10A NCAC 13K .0400 and .0500 and 42 CFR 418.70;
- (4) an interdisciplinary team will be established which includes, at a minimum, a physician, a licensed nurse, a social worker, a clergy member, and a trained hospice volunteer, as specified in G.S. 131E-201;
- (5) a qualified health care professional will coordinate the hospice interdisciplinary team to assure implementation of an integrated care plan and the continuous assessment of the needs of the patient and the patient's family or significant others;
- (6) a written care plan will be developed by the attending physician, the medical director or physician designee, and the interdisciplinary team before care is provided to a patient and the patient's family or significant others;
- (7) meetings of the interdisciplinary care team and other appropriate personnel will be held on a frequent and regular basis, at least once every two weeks, for the purpose of care plan review and staff support; and
- (8) each interdisciplinary team member will be provided orientation, training, and continuing education programs appropriate to their responsibilities and to the maintenance of skills necessary for the physical care of the patient and the psychosocial and spiritual care of the patient and the patient's family or significant others.

- patient age 14 or under is valued at two diagnostic-equivalent procedures. All other procedures are valued at one diagnostic-equivalent procedure.
- ~~(3)~~ "Cardiac angioplasty equipment" shall have the same meaning as defined in G.S. 131E-176(2e).
- ~~(4)~~(3) "Cardiac catheterization equipment" shall have the same meaning as defined in G.S. 131E-176(2f).
- ~~(5)~~(4) "Cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a single episode of diagnostic or therapeutic catheterization which occurs during one visit to a cardiac catheterization room, whereby a flexible tube is inserted into the patient's body and advanced into the heart chambers to perform a hemodynamic or angiographic examination or therapeutic intervention of the left or right heart chamber, or coronary arteries. A cardiac catheterization procedure does not include a simple right heart catheterization for monitoring purposes as might be done in an electrophysiology laboratory, pulmonary angiography procedure, cardiac pacing through a right electrode catheter, temporary pacemaker insertion, or procedures performed in dedicated angiography or electrophysiology rooms.
- ~~(6)~~(5) "Cardiac catheterization room" means a room or a mobile unit in which there is cardiac catheterization or cardiac angioplasty equipment for the performance of cardiac catheterization procedures. Dedicated angiography rooms and electrophysiology rooms are not cardiac catheterization rooms.
- ~~(7)~~(6) "Cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 90 road miles from the facility, if the facility has a comprehensive cardiac services program; and not farther than 45 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the cardiac catheterization service area of an academic medical center teaching hospital designated in 10A NCAC 14B shall not be limited to 90 road miles.
- ~~(8)~~(7) "Cardiac catheterization services" means the provision of diagnostic cardiac catheterization procedures or therapeutic cardiac catheterization procedures performed utilizing cardiac catheterization equipment or cardiac angioplasty equipment in a cardiac catheterization room.
- ~~(9)~~(8) "Comprehensive cardiac services program" means a cardiac services program which provides the full range of clinical services associated with the treatment of cardiovascular

Authority G.S. 131E-177(1).

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

10A NCAC 14C .1601 DEFINITIONS

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

- (1) "Approved" means the equipment was not in operation prior to the beginning of the review period and had been issued a certificate of need.
- (2) "Capacity" of an item of cardiac catheterization equipment or cardiac angioplasty equipment means 1500 diagnostic-equivalent procedures per year. One therapeutic cardiac catheterization procedure is valued at 1.75 diagnostic-equivalent procedures. One cardiac catheterization procedure performed on a

- ~~(8)~~(7) "Cardiac catheterization services" means the provision of diagnostic cardiac catheterization procedures or therapeutic cardiac catheterization procedures performed utilizing cardiac catheterization equipment or cardiac angioplasty equipment in a cardiac catheterization room.
- ~~(9)~~(8) "Comprehensive cardiac services program" means a cardiac services program which provides the full range of clinical services associated with the treatment of cardiovascular

disease including community outreach, emergency treatment of cardiovascular illnesses, non-invasive diagnostic imaging modalities, diagnostic and therapeutic cardiac catheterization procedures, open heart surgery and cardiac rehabilitation services. Community outreach and cardiac rehabilitation services shall be provided by the applicant or through arrangements with other agencies and facilities located in the same city. All other components of a comprehensive cardiac services program shall be provided within a single facility.

- (10)(9) "Diagnostic cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a cardiac catheterization procedure performed for the purpose of detecting and identifying defects or diseases in the coronary arteries or veins of the heart, or abnormalities in the heart structure, but not the pulmonary artery.
- (11)(10) "Electrophysiology procedure" means a diagnostic or therapeutic procedure performed to study the electrical conduction activity of the heart and characterization of atrial ventricular arrhythmias.
- (12)(11) "Existing" means the equipment was in operation prior to the beginning of the review period.
- (13)(12) "High-risk patient" means a person with reduced life expectancy because of left main or multi-vessel coronary artery disease, often with impaired left ventricular function and with other characteristics as referenced in the American College of Cardiology/American Heart Association Guidelines for Cardiac Catheterization and Cardiac Catheterization Laboratories (1994) American College of Cardiology/ Society for Cardiac Angiography and Interventions Clinical Expert Consensus Document on Cardiac Catheterization Laboratory Standards (June 2001) report.
- (14)(13) "Mobile equipment" means ~~cardiac angioplasty equipment~~ or cardiac catheterization equipment and transporting equipment which is moved to provide services at two or more host facilities.
- (15)(14) "Percutaneous transluminal coronary angioplasty (PTCA)" is one type of therapeutic cardiac catheterization procedure used to treat coronary artery disease in which a balloon-tipped catheter is placed in the diseased artery and then inflated to compress the plaque blocking the artery.
- (16)(15) "Primary cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 45 road miles from the facility, if the facility has a comprehensive cardiac

services program; and not farther than 23 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the primary cardiac catheterization service area of an academic medical center teaching hospital designated in 10A NCAC 14B shall not be limited to 45 road miles.

- (16)(16) "Therapeutic cardiac catheterization procedure", for the purpose of determining utilization in a certificate of need review, means a cardiac catheterization procedure performed for the purpose of treating or resolving anatomical or physiological conditions which have been determined to exist in the heart or coronary arteries or veins of the heart, but not the pulmonary artery.

Authority G.S. 131E-177(1); 131E-183.

10A NCAC 14C .1602 INFORMATION REQUIRED OF APPLICANT

- (a) An applicant that proposes to acquire cardiac catheterization ~~or cardiac angioplasty equipment~~ shall use the acute care facility/medical equipment application form.
- (b) The applicant shall provide the following additional information based on the population residing within the applicant's proposed cardiac catheterization service area:
 - (1) the projected annual number of cardiac catheterization procedures, by CPT or ICD-9-CM codes, classified by adult diagnostic, adult therapeutic and pediatric cardiac catheterization procedure, to be performed in the facility during each of the first three years of operation following completion of the proposed project, including the methodology and assumptions used for these projections;
 - (2) documentation of the applicant's experience in treating cardiovascular patients at the facility during the past 12 months, including:
 - (A) the number of patients receiving stress tests;
 - (B) the number of patients receiving intravenous thrombolytic therapies;
 - (C) the number of patients presenting in the Emergency Room or admitted to the hospital with suspected or diagnosed acute myocardial infarction;
 - (D) the number of patients referred to other facilities for cardiac catheterization procedures or open heart surgery procedures, by type of procedure; and
 - (E) the number of diagnostic and therapeutic cardiac catheterization procedures performed during the twelve month period reflected in the

- (3) most recent licensure form on file with the Division of Facility Services; the number of cardiac catheterization patients, classified by adult diagnostic, adult therapeutic and pediatric, from the proposed cardiac catheterization service area that the applicant proposes to serve by patient's county of residence in each of the first three years of operation, including the methodology and assumptions used for these projections;
- (4) documentation of the applicant's projected sources of patient referrals that are located in the proposed cardiac catheterization service area, including letters from the referral sources that demonstrate their intent to refer patients to the applicant for cardiac catheterization procedures;
- (5) evidence of the applicant's capability to communicate with emergency transportation agencies and with an established comprehensive cardiac services program;
- (6) the number and composition of cardiac catheterization teams available to the applicant;
- (7) documentation of the applicant's in-service training or continuing education programs for cardiac catheterization team members;
- (8) a written agreement with a comprehensive cardiac services program that specifies the arrangements for referral and transfer of patients seen by the applicant and that includes a process to alleviate the need for duplication in cardiac catheterization procedures;
- (9) a written description of patient selection criteria including referral arrangements for high-risk patients;
- (10) a copy of the contractual arrangements for the acquisition of the proposed cardiac catheterization ~~equipment or cardiac angioplasty~~ equipment including itemization of the cost of the equipment; and
- (11) documentation that the cardiac catheterization equipment ~~and cardiac angioplasty equipment~~ and the procedures for operation of the equipment are designed and developed based on the ~~American College of Cardiology/American Heart Association Guidelines for Cardiac Catheterization Laboratories (1991)~~ American College of Cardiology/ Society for Cardiac Angiography and Interventions Clinical Expert Consensus Document on Cardiac Catheterization Laboratory Standards (June 2001) report.

- (1) ~~each proposed item of cardiac catheterization equipment or cardiac angioplasty~~ equipment, including mobile equipment but excluding shared fixed cardiac catheterization ~~or angioplasty~~ equipment, shall be utilized at an annual rate of at least 60 percent of capacity excluding procedures not defined as cardiac catheterization procedures in 10A NCAC 14C .1601(5), measured during the fourth quarter of the third year following completion of the project;
 - (2) if the applicant proposes to perform therapeutic cardiac catheterization procedures, each of the applicant's therapeutic cardiac catheterization teams shall be performing at an annual rate of at least 100 therapeutic cardiac catheterization procedures, during the third year of operation following completion of the project;
 - (3) if the applicant proposes to perform diagnostic cardiac catheterization procedures, each diagnostic cardiac catheterization team shall be performing at an annual rate of at least 200 diagnostic-equivalent cardiac catheterization procedures by the end of the third year following completion of the project;
 - (4) at least 50 percent of the projected cardiac catheterization procedures shall be performed on patients residing within the primary cardiac catheterization service area;
- (b) An applicant proposing to acquire mobile cardiac catheterization ~~or mobile cardiac angioplasty~~ equipment shall:
- (1) demonstrate that each existing item of cardiac catheterization ~~equipment and cardiac angioplasty~~ equipment, excluding mobile equipment, located in the proposed primary cardiac catheterization service area of each host facility shall have been operated at a level of at least 80 percent of capacity during the 12 month period reflected in the most recent licensure form on file with the Division of Facility Services;
 - (2) demonstrate that the utilization of each existing or approved item of cardiac catheterization ~~equipment and cardiac angioplasty~~ equipment, excluding mobile equipment, located in the proposed primary cardiac catheterization service area of each host facility shall not be expected to fall below 60 percent of capacity due to the acquisition of the proposed ~~cardiac catheterization, cardiac angioplasty, or mobile cardiac catheterization~~ equipment;
 - (3) demonstrate that each item of existing mobile equipment operating in the proposed primary cardiac catheterization service area of each host facility shall have been performing at least an average of four diagnostic-equivalent cardiac catheterization procedures per day per site in the proposed cardiac catheterization

Authority G.S. 131E-177(1); 131E-183.

10A NCAC 14C .1603 PERFORMANCE STANDARDS

(a) An applicant shall demonstrate that the project is capable of meeting the following standards:

service area in the 12 month period preceding the submittal of the application;

- (4) demonstrate that each item of existing or approved mobile equipment to be operating in the proposed primary cardiac catheterization service area of each host facility shall be performing at least an average of four diagnostic-equivalent cardiac catheterization procedures per day per site in the proposed cardiac catheterization service area in the applicant's third year of operation; and
- (5) provide documentation of all assumptions and data used in the development of the projections required in this Rule.

(c) An applicant proposing to acquire cardiac catheterization ~~or cardiac angioplasty~~ equipment excluding shared fixed and mobile cardiac catheterization ~~or cardiac angioplasty~~ equipment shall:

- (1) demonstrate that its existing items of cardiac catheterization ~~and cardiac angioplasty~~ equipment, except mobile equipment, located in the proposed cardiac catheterization service area operated at an average of at least 80% of capacity during the twelve month period reflected in the most recent licensure renewal application form on file with the Division of Facility Services;
- (2) demonstrate that its existing items of cardiac catheterization ~~equipment or cardiac angioplasty~~ equipment, except mobile equipment, shall be utilized at an average annual rate of at least 60 percent of capacity, measured during the fourth quarter of the third year following completion of the project; and
- (3) provide documentation of all assumptions and data used in the development of the projections required in this Rule.

(d) An applicant proposing to acquire shared fixed cardiac catheterization ~~or cardiac angioplasty~~ equipment as defined in the applicable State Medical Facilities Plan shall:

- (1) demonstrate that each proposed item of shared fixed cardiac catheterization ~~or cardiac angioplasty~~ equipment shall perform a combined total of at least 225 cardiac catheterization and angiography procedures during the fourth quarter of the third year following completion of the project; and
- (2) provide documentation of all assumptions and data used in the development of the projections required in this Rule.

(e) If the applicant proposes to perform cardiac catheterization procedures on patients age 14 and under, the applicant shall demonstrate that it meets the following additional criteria:

- (1) the facility has the capability to perform diagnostic and therapeutic cardiac catheterization procedures and open heart surgery services on patients age 14 and under; and
- (2) the proposed project shall be performing at an annual rate of at least 100 cardiac

catheterization procedures on patients age 14 or under during the fourth quarter of the third year following initiation of the proposed cardiac catheterization procedures for patients age 14 and under.

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .1605 STAFFING AND STAFF TRAINING

(a) The applicant shall provide documentation to demonstrate that the following staffing requirements shall be met:

- (1) one physician licensed to practice medicine in North Carolina who has been designated to serve as director of the cardiac catheterization service and who has all of the following special credentials:
 - (A) board-certified in internal medicine, pediatrics or radiology;
 - (B) subspecialty training in cardiology, pediatric cardiology, or cardiovascular radiology; and
 - (C) current clinical experience in performing physiologic procedures, angiographic procedures, or both;

(2) at least one specialized team to perform cardiac catheterizations, composed of at least the following professional and technical personnel:

- (A) one physician licensed to practice medicine in North Carolina with evidence of training and current experience specifically in cardiovascular disease and radiation sciences;
- (B) one nurse with training and current experience specifically in critical care of cardiac patients, cardiovascular medication, and catheterization equipment; and
- (C) at least ~~three~~ two technicians with training specifically in cardiac care who are capable of performing the duties of a radiologic technologist, cardiopulmonary technician, monitoring and recording technician, and darkroom technician.

(b) The applicant shall provide documentation to demonstrate that the following staff training shall be provided for members of cardiac catheterization teams:

- (1) certification in cardiopulmonary resuscitation and advanced cardiac life support; and
- (2) an organized program of staff education and training which is integral to the cardiac services program and ensures improvements in technique and the proper training of new personnel.

Authority G.S. 131E-177(1); 131E-183(b).

SECTION .1900 – CRITERIA AND STANDARDS FOR RADIATION THERAPY EQUIPMENT

10A NCAC 14C .1901 DEFINITIONS

These definitions shall apply to all rules in this Section:

- (1) "Approved linear accelerator" means a linear accelerator which was not operational prior to the beginning of the review period.
- (2) "Complex Radiation treatment" is equal to 1.0 ESTV and means: treatment on three or more sites on the body; use of special techniques such as tangential fields with wedges, rotational or arc techniques; or use of custom blocking.
- (3) "Equivalent Simple Treatment Visit [ESTV]" means one basic unit of radiation therapy which normally requires up to fifteen (15) minutes for the uncomplicated set-up and treatment of a patient on a megavoltage teletherapy unit including the time necessary for portal filming.
- (4) "Existing linear accelerator" means a linear accelerator in operation prior to the beginning of the review period.
- (5) "Intermediate Radiation treatment" means treatment on two separate sites on the body, three or more fields to a single treatment site or use of multiple blocking and is equal to 1.0 ESTV.
- (6) "Linear accelerator" ~~means MRT equipment which is used to deliver a beam of electrons or photons in the treatment of cancer patients.~~ shall have the same meaning as defined in G.S. 131E-176(14g).
- (7) "Linear accelerator service area" means a single or multi-county area as used in the development of the need determination in the applicable State Medical Facilities Plan.
- (8) "Megavoltage unit" means MRT equipment which provides a form of teletherapy that involves the delivery of energy greater than, or equivalent to, one million volts by the emission of x-rays, gamma rays, electrons, or other radiation.
- (9) "Megavoltage radiation therapy (MRT)" means the use of ionizing radiation in excess of one million electron volts in the treatment of cancer.
- (10) "MRT equipment" means a machine or energy source used to provide megavoltage radiation therapy including linear accelerators and other particle accelerators.
- (11) "Radiation therapy equipment" means medical equipment which is used to provide radiation therapy services.
- (12) "Radiation therapy services" means those services which involve the delivery of controlled and monitored doses of radiation to a defined volume of tumor bearing tissue within a patient. Radiation may be delivered to

the tumor region by the use of radioactive implants or by beams of ionizing radiation or it may be delivered to the tumor region systemically.

- (13) "Radiation therapy service area" means a single or multi-county area as used in the development of the need determination in the applicable State Medical Facilities Plan.
- (14) "Simple Radiation treatment" means treatment on a single site on the body, single treatment field or parallel opposed fields with no more than simple blocks and is equal to 1 ESTV.
- (15) ~~"Simulator" means a machine that reproduces the geometric relationships of the MRT equipment to the patient.~~ shall have the same meaning as defined in G.S. 131E-176(24b).
- (16) "Special technique" means radiation therapy treatments that may require increased time for each patient visit including:
 - (a) total body irradiation (photons or electrons) which equals 2.5 ESTVs;
 - (b) hemi-body irradiation which equals 2.0 ESTVs;
 - (c) intraoperative radiation therapy which equals 10.0 ESTVs;
 - (d) neutron and proton radiation therapy which equals 2.0 ESTVs;
 - (e) intensity modulated radiation treatment (IMRT) which equals ~~2.0~~ ESTVs; 1.0 ESTV;
 - (f) limb salvage irradiation at lengthened SSD which equals 1.0 ESTV;
 - (g) additional field check radiographs which equals .50 ESTV;
 - (h) stereotactic radiosurgery treatment management with linear accelerator or gamma knife which equals 3.0 ESTVs; and
 - (i) pediatric patient under anesthesia which equals 1.5 ESTVs.

Authority G.S. 131E-177(1); 131E-183(b).

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

10A NCAC 14C .2101 DEFINITIONS

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

- (1) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1b).
- (2) "Operating room" means an inpatient operating room, an outpatient or ambulatory surgical operating room, or a shared operating room, or an endoscopy procedure room in a licensed health service facility. room.
- (3) "Ambulatory surgical program" means a program as defined in G.S. 131E-176(1c).
- (4) "Existing operating rooms" means those operating rooms in ambulatory surgical facilities and hospitals which were reported in

the License Application for Ambulatory Surgical Facilities and Programs and in Part III of Hospital Licensure Renewal Application Form submitted to the Licensure Section of the Division of Facility Services and which were licensed and certified prior to the beginning of the review period.

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

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .2103 PERFORMANCE STANDARDS

- (a) In projecting utilization, the existing, approved and proposed operating rooms shall be considered to be available for use five days per week and 52 weeks a year.
- (b) A proposal to establish a new ambulatory surgical facility, to increase the number of operating rooms (excluding dedicated C-section operating rooms), to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall not be approved unless the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4

surgical cases per day for each inpatient operating ~~room, room~~ (excluding dedicated open-heart and dedicated C-Section operating rooms), 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, ~~7.2 cases per day for each endoscopy procedure room,~~ and 3.2 surgical cases per day for each shared operating room during the third year of operation following completion of the project.

- (c) A proposal to develop an additional operating room to be used as a dedicated C-section operating room shall not be approved unless the applicant documents that the average number of surgical cases per operating room to be performed in each facility owned by the applicant in the proposed service area, is reasonably projected to be at least 2.4 surgical cases per day for each inpatient operating room (excluding dedicated open-heart and dedicated C-section operating rooms), 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room and 3.2 surgical cases per day for each shared operating room during the third year of operation following completion of the project.
- (d) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty area as proposed in the application is currently operating at 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, 7.2 gastrointestinal endoscopy cases per day for each gastrointestinal endoscopy procedure room, and 3.2 surgical cases per day for each shared operating room.
- (e) An applicant proposing to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide documentation to show that each existing and approved ambulatory surgery program in the service area that performs ambulatory surgery in the same specialty areas as proposed in the application is reasonably projected to be operating at 4.8 surgical cases per day for each outpatient or ambulatory surgical operating room, 7.2 gastrointestinal endoscopy cases per day for each gastrointestinal endoscopy procedure room, and 3.2 surgical cases per day for each shared surgical operating room prior to the completion of the proposed project.
- (f) The applicant shall document the assumptions and provide data supporting the methodology used for each projection in this Rule.

Authority G.S. 131E-177; 131E-183(b).

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

10A NCAC 14C .2203 PERFORMANCE STANDARDS

- (a) An applicant proposing to establish a new End Stage Renal Disease facility shall document the need for at least 10 stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the ~~facility.~~ facility, with the exception that the performance standard shall be waived for a need in the State Medical Facilities Plan that is based on an adjusted need determination.

(b) An applicant proposing to increase the number of dialysis stations in an existing End Stage Renal Disease facility shall document the need for the additional stations based on utilization of 3.2 patients per station per week as of the end of the first operating year of the additional stations with the exception that the performance standard shall be waived for a need in the State Medical Facilities Plan that is based on an adjusted need determination. stations.

(c) An applicant shall provide all assumptions, including the specific methodology by which patient utilization is projected.

Authority G.S. 131E-177(1); 131E-183(b).

SECTION .2500 – CRITERIA AND STANDARDS FOR SUBSTANCE ABUSE/CHEMICAL DEPENDENCY TREATMENT BEDS

10A NCAC 14C .2502 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish new intensive treatment beds or detoxification beds shall project resident origin by percentage by county of residence. All assumptions and the methodology for projecting occupancy shall be clearly stated.

(b) An applicant proposing to establish new intensive treatment beds or detoxification beds shall project an occupancy level for the entire facility for the first eight calendar quarters following the completion of the proposed project, including the average length of stay. All assumptions and the methodology for projecting occupancy shall be clearly stated.

(c) If the applicant is an existing chemical dependency treatment facility, the applicant shall document the percentage of patients discharged from the facility that are readmitted to the facility at a later date.

(d) An applicant shall document that the following items are currently available or will be made available following completion of the project:

- (1) admission criteria for clinical admissions to the facility or unit, including procedure for accepting emergency admissions;
- (2) client evaluation procedures, including preliminary evaluation and establishment of an individual treatment plan;
- (3) procedures for referral and follow-up of clients to necessary outside services;
- (4) procedures for involvement of family in counseling process;
- (5) provision of an aftercare plan; and
- (6) quality assurance/utilization review plan.

~~(e) An applicant proposing to establish new detoxification beds shall identify the location of each referral source for follow up outpatient, residential and rehabilitation services located in the proposed service area for clients who have completed detoxification.~~

~~(f)(e) An applicant shall document the attempts made to establish working relationships with the health care providers and others that are anticipated to refer clients to the proposed intensive treatment and detoxification beds.~~

~~(g)(f) An applicant shall provide copies of any current or proposed contracts or agreements or letters of intent to develop~~

contracts or agreements for the provision of any services to the clients served in the chemical dependency treatment facility.

~~(h) An applicant shall identify the Area Authority that will serve as the Single Portal of Entry/Exit for the facility.~~

~~(i)(g) An applicant shall document the provisions that will be made to obtain services for patients with a dual diagnosis of chemical dependency and psychiatric problems.~~

~~(j)(h) An applicant proposing to establish new intensive treatment beds or detoxification beds shall specify the primary site on which the facility will be located. If such site is neither owned by nor under option by the applicant, the applicant shall provide a written commitment to diligently pursue acquiring the site if and when a certificate of need application is approved, shall specify at least one alternate site on which the facility could be located should acquisition efforts relative to the primary site ultimately fail, and shall demonstrate that the primary site and alternate sites are available for acquisition.~~

~~(k)(i) An applicant proposing to establish new intensive treatment beds or detoxification beds shall document that the services will be provided in a physical environment that conforms with the requirements in 10A NCAC 27G .0300 which are incorporated by reference including all subsequent amendments.~~

Authority G.S. 131E-177(1); 131E-183.

10A NCAC 14C .2503 PERFORMANCE STANDARDS

(a) An applicant shall not be approved unless the overall occupancy, over the nine months immediately preceding the submittal of the application, of the total number of intensive treatment beds and detoxification beds within the facility in which the beds are to be located, located except in facilities with only detoxification beds, has been:

- (1) 75 percent for facilities with a total of 1-15 intensive treatment beds and detoxification beds; or
- (2) 85 percent for facilities with a total of 16 or more intensive treatment beds and detoxification beds.

(b) An applicant shall not be approved unless the overall occupancy of the total number of intensive treatment beds and detoxification beds to be operated in the facility is projected, projected except in facilities with only detoxification beds, by the fourth quarter of the third year of operation following completion of the project, to be:

- (1) 75 percent for facilities with a total of 1-15 intensive treatment beds and detoxification beds; or
- (2) 85 percent for facilities with a total of 16 or more intensive treatment beds and detoxification beds.

~~(c) An applicant proposing to add detoxification beds to an existing facility that includes only detoxification beds shall not be approved unless the overall occupancy of the total number of detoxification beds in the facility has been at least 75 percent for the nine months immediately preceding the submittal of the application.~~

~~(d) An applicant proposing to establish a new detoxification facility or add detoxification beds to an existing facility that includes only detoxification beds shall demonstrate that the~~

overall occupancy of the total number of detoxification beds in the facility is reasonably projected to be 75 percent by the fourth quarter of the third year of operation following completion of the project.

~~(e)~~(c) The applicant shall document the specific methodology and assumptions by which occupancies are projected, including the average length of stay and anticipated recidivism rate.

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .2505 STAFFING AND STAFF TRAINING

(a) An applicant proposing to establish new intensive treatment beds ~~or detoxification beds~~ shall document that clinical staff members will be:

- (1) currently licensed or certified by the appropriate state licensure or certification boards; or
- (2) supervised by staff who are licensed or certified by the appropriate state licensure or certification boards.

(b) An applicant proposing to establish new intensive treatment beds ~~or detoxification beds~~ shall document that the staffing pattern in the facility is consistent with the staffing requirements contained in 10A NCAC 27G .3102, .3202, or .3402, which are incorporated by reference including all subsequent amendments.

Authority G.S. 131E-177(1); 131E-183.

SECTION .2600 – CRITERIA AND STANDARDS FOR PSYCHIATRIC BEDS

10A NCAC 14C .2602 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish new psychiatric beds shall project resident origin by percentage by county of residence. All assumptions and the methodology for projecting occupancy shall be clearly stated.

(b) An applicant proposing to establish new psychiatric beds shall project an occupancy level for the entire facility for the first eight calendar quarters following the completion of the proposed project, including average length of stay. All assumptions and the methodology for projecting occupancy shall be clearly stated.

(c) The applicant shall provide documentation of the percentage of patients discharged from the facility that are readmitted to the facility at a later date.

(d) An applicant proposing to establish new psychiatric beds shall describe the general treatment plan that is anticipated to be used by the facility and the support services to be provided, including provisions that will be made to obtain services for patients with a dual diagnosis of psychiatric and chemical dependency problems.

(e) The applicant shall document the attempts made to establish working relationships with the health care providers and others that are anticipated to refer clients to the proposed psychiatric beds.

(f) The applicant shall provide copies of any current or proposed contracts or agreements or letters of intent to develop contracts

or agreements for the provision of any services to the clients served in the psychiatric facility.

~~(g) The application shall identify the Area Authority that will serve as the Single Portal of Entry/Exit for the facility.~~

~~(h)~~(g) The applicant shall document that the following items are currently available or will be made available following completion of the project:

- (1) admission criteria for clinical admissions to the facility or unit;
- (2) emergency screening services for the targeted population which shall include services for handling emergencies on a 24-hour basis or through formalized transfer agreements;
- (3) client evaluation procedures, including preliminary evaluation and establishment of an individual treatment plan;
- (4) procedures for referral and follow-up of clients to necessary outside services;
- (5) procedures for involvement of family in counseling process;
- (6) comprehensive services which shall include individual, group and family therapy; medication therapy; and activities therapy including recreation;
- (7) educational components if the application is for child or adolescent beds;
- (8) provision of an aftercare plan; and
- (9) quality assurance/utilization review plan.

~~(i)~~(h) An applicant proposing to establish new psychiatric beds shall specify the primary site on which the facility will be located. If such site is neither owned by nor under option by the applicant, the applicant shall provide a written commitment to diligently pursue acquiring the site if and when a certificate of need application is approved, shall specify at least one alternate site on which the facility could be located should acquisition efforts relative to the primary site ultimately fail, and shall demonstrate that the primary site and alternate sites are available for acquisition.

~~(j)~~(i) An applicant proposing to establish new psychiatric beds shall provide documentation to show that the services will be provided in a physical environment that conforms with the requirements in 10A NCAC 27G .0300.

Authority G.S. 131E-177(1); 131E-183.

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

10A NCAC 14C .2701 DEFINITIONS

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

- (1) "Approved MRI scanner" means an MRI scanner which was not operational prior to the beginning of the review period but which had been issued a certificate of need.
- (2) "Capacity of fixed MRI scanner" means 100% of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or

- physician delays and no MRI procedures outside the norm. Annual capacity of a fixed MRI scanner is 6,864 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 66 hours per week, 52 weeks per year.
- (3) "Capacity of mobile MRI scanner" means 100% of the procedure volume that the MRI scanner is capable of completing in a year, given perfect scheduling, no machine or room downtime, no cancellations, no patient transportation problems, no staffing or physician delays and no MRI procedures outside the norm. Annual capacity of a mobile MRI scanner is 4,160 weighted MRI procedures, which assumes two weighted MRI procedures are performed per hour and the scanner is operated 40 hours per week, 52 weeks per year.
- (4) "Dedicated breast MRI scanner" means an MRI scanner that is configured to perform only breast MRI procedures and is not capable of performing other types of non-breast MRI procedures.
- ~~(4)(5)~~ "Existing MRI scanner" means an MRI scanner in operation prior to the beginning of the review period.
- (6) "Extremity MRI scanner" means an MRI scanner that is utilized for the imaging of extremities and is of open design with a field of view no greater than 25 centimeters.
- ~~(5)(7)~~ "Fixed MRI scanner" means an MRI scanner that is not a mobile MRI scanner.
- ~~(6)(8)~~ "Magnetic Resonance Imaging" (MRI) means a non-invasive diagnostic modality in which electronic equipment is used to create tomographic images of body structure. The MRI scanner exposes the target area to nonionizing magnetic energy and radio frequency fields, focusing on the nuclei of atoms such as hydrogen in the body tissue. Response of selected nuclei to this stimulus is translated into images for evaluation by the physician.
- ~~(7)(9)~~ "Magnetic resonance imaging scanner" (MRI Scanner) is defined in G.S. 131E-176(14e).
- ~~(8)(10)~~ "Mobile MRI region" means either the eastern part of the State which includes the counties in Health Service Areas IV, V and ~~VI~~, VI (Eastern Mobile MRI Region), or the western part of the State which includes the counties in Health Service Areas I, II, and ~~III~~, III (Western Mobile MRI Region). The counties in each Health Service Area are identified in Appendix A of the State Medical Facilities Plan.
- ~~(9)(11)~~ "Mobile MRI scanner" means an MRI scanner and transporting equipment which is moved at least weekly to provide services at two or more host facilities.
- ~~(10)(12)~~ "MRI procedure" means a single discrete MRI study of one patient.
- ~~(11)(13)~~ "MRI service area" means the Magnetic Resonance Imaging Planning Areas, as defined in the applicable State Medical Facilities Plan, except for proposed new mobile MRI scanners for which the service area is a mobile MRI region.
- ~~(12)(14)~~ "MRI study" means one or more scans relative to a single diagnosis or symptom.
- ~~(13)~~ "Pediatric MRI patient" means a patient requiring an MRI scan who is under the age of 12 years or who is a special needs patient and is under the age of 21 years.
- ~~(14)(15)~~ "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50% or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).
- ~~(15)~~ "Special Needs patient" means a patient who has cerebral palsy, encephalomyelopathy, central nervous system injuries, genetic and metabolic disorders, autism, and mental retardation.
- (16) "Temporary MRI scanner" means ~~a~~ an MRI scanner that the Certificate of Need Section has approved to be temporarily located in North Carolina at a facility that holds a certificate of need for a new fixed MRI scanner, but which is not operational because the project is not yet complete.
- (17) "Weighted MRI procedures" means MRI procedures which are adjusted to account for the length of time to complete the procedure, based on the following weights: one outpatient MRI procedure without contrast or sedation is valued at 1.0 weighted MRI procedure, one outpatient MRI procedure with contrast or sedation is valued at 1.4 weighted MRI procedures, one inpatient MRI procedure without contrast or sedation is valued at 1.4 weighted MRI procedures; and one inpatient MRI procedure with contrast or sedation is valued at 1.8 weighted MRI procedures.
- ~~(18)~~ "Weighted breast MRI procedures" means MRI procedures which are performed on a dedicated breast MRI scanner and are adjusted to account for the length of time to complete the procedure, based on the following weights: one diagnostic breast MRI procedure is valued at 1.0 weighted MRI procedure (based on an average of 60 minutes per procedure), one MRI-guided breast needle localization MRI procedure is valued at 1.1 weighted MRI procedure (based on an average of 66 minutes per procedure), and one MRI-guided breast

biopsy procedure is valued at 1.6 weighted MRI procedures (based on an average of 96 minutes per procedure).

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .2702 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to acquire an MRI scanner, including a mobile MRI scanner, shall use the Acute Care Facility/Medical Equipment application form.

(b) Except for proposals to acquire mobile MRI scanners that serve two or more host facilities, both the applicant and the person billing the patients for the MRI service shall be named as co-applicants in the application form.

(c) An applicant proposing to acquire a magnetic resonance imaging scanner, including a mobile MRI scanner, shall provide the following information:

- (1) documentation that the proposed fixed MRI scanner, excluding fixed extremity and breast MRI scanners, shall be available and staffed for use at least 66 hours per week;
- (2) documentation that the proposed mobile MRI scanner shall be available and staffed for use at least 40 hours per week;
- (3) documentation that the proposed fixed extremity or dedicated breast MRI scanner shall be available and staffed for use at least 40 hours per week;
- ~~(3)~~(4) the average charge to the patient, regardless of who bills the patient, for each of the 20 most frequent MRI procedures to be performed for each of the first three years of operation after completion of the project and a description of items included in the charge; if the professional fee is included in the charge, provide the dollar amount for the professional fee;
- ~~(4)~~(5) if the proposed MRI service will be provided pursuant to a service agreement, the dollar amount of the service contract fee billed by the applicant to the contracting party for each of the first three years of operation;
- ~~(5)~~(6) letters from physicians indicating their intent to refer patients to the proposed magnetic resonance imaging scanner and their estimate of the number of patients proposed to be referred per ~~year~~; year, which is based on the physicians' historical number of referrals;
- (7) for each location at which the applicant or a related entity will provide MRI services, utilizing existing, approved, or proposed MRI scanners, projections of the annual number of unweighted MRI procedures to be performed for each of the four types of MRI procedures, as identified in the SMFP, for each of the first three years of operation after completion of the project;
- ~~(6)~~(8) for each location at which the ~~service will be provided~~, applicant or a related entity will

provide services, utilizing existing, approved, or proposed MRI scanners, projections of the annual number of weighted MRI procedures to be performed for each of the four types of ~~weighted~~ MRI procedures, as identified in the SMFP, for each of the first three years of operation after completion of the project;

~~(7)~~(9) a detailed description of the methodology and assumptions used to project the number of unweighted ~~weighted~~ MRI procedures to be ~~performed;~~ performed at each location, including the number of contrast versus non-contrast procedures, sedation versus non-sedation procedures, and inpatient versus outpatient procedures;

~~(8)~~(10) ~~documentation to support each assumption used in projecting the number of procedures to be performed;~~ a detailed description of the methodology and assumptions used to project the number of weighted MRI procedures to be performed at each location;

~~(9)~~(11) for each existing fixed or mobile MRI scanner owned by the applicant or a related entity and operated in North Carolina in the month the application is submitted, the vendor, tesla strength, serial number or vehicle identification number, CON project identification number, physical location for fixed MRI scanners, and host sites for mobile MRI scanners;

~~(10)~~(12) for each approved fixed or mobile MRI scanner to be owned by the applicant or a related entity and approved to be operated in North Carolina, the proposed vendor, proposed tesla strength, CON project identification number, physical location for fixed MRI scanners, and host sites for mobile MRI scanners;

~~(11)~~(13) if proposing to acquire a mobile MRI scanner, an explanation of the basis for selection of the proposed host sites if the host sites are not located in MRI service areas that lack a fixed MRI scanner; and

(14) identity of the accreditation authority the applicant proposes to use.

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

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

~~(1) provide a copy of a contract or working agreement with a radiologist or practice group that has experience interpreting images and is trained to interpret images produced by an MRI scanner configured exclusively for mammographic studies;~~

~~(2) document that the applicant performed mammograms without interruption in the~~

- provision of the service during the last year; and
- (3) ~~document that the applicant's existing mammography equipment is in compliance with the U.S. Food and Drug Administration Mammography Quality Standards Act.~~
- (1) it has an existing and ongoing working relationship with a specialized breast-imaging radiologist or radiology practice group that has experience interpreting breast images provided by mammography, ultrasound, and MRI scanner equipment, and that is trained to interpret images produced by a MRI scanner configured exclusively for mammographic studies;
- (2) for the last 12 months it has performed the following services, without interruption in the provision of these services: breast MRI procedures on a fixed MRI scanner with a breast coil, mammograms, breast ultrasound procedures, breast needle core biopsies, breast cyst aspirations, and pre-surgical breast needle localizations;
- (3) its existing mammography equipment, breast ultrasound equipment, and the proposed dedicated breast MRI scanner is in compliance with the federal Mammography Quality Standards Act;
- (4) it is part of an existing healthcare system that provides comprehensive cancer care, including radiation oncology, medical oncology, surgical oncology and an established breast cancer treatment program that is based in the geographic area proposed to be served by the applicant; and
- (5) it has an existing relationship with an established collaborative team for the treatment of breast cancer that includes, radiologists, pathologists, radiation oncologists, hematologists/oncologists, surgeons, obstetricians/gynecologists, and primary care providers.
- (f) An applicant proposing to acquire a dedicated fixed pediatric an extremity MRI scanner, pursuant to a need determination in the State Medical Facilities Plan for a demonstration project, shall:
- (1) ~~provide a copy of a contract or working agreement with two pediatric radiologists qualified as described in 10A NCAC 14C .2705(f)(1);~~
- (2) ~~provide a copy of the facility's emergency plan for pediatric and special needs patients that outline all emergency procedures including acute care transfers and a copy of a contract with an ambulance service for transportation during any emergencies;~~
- (3) ~~commit that the proposed MRI scanner shall be used exclusively to perform procedures on pediatric MRI patients;~~
- (4) ~~provide a description of the scope of the research studies that shall be conducted to develop protocols related to MRI scanning of pediatric MRI patients; which includes special needs patients, and~~
- (5) ~~commit to prepare an annual report, to be submitted to the Medical Facilities Planning Section and the Certificate of Need Section, which shall include the protocols for scanning pediatric MRI patients and the annual volume of weighted MRI procedures performed, by type:~~
- (1) provide a detailed description of the scope of the research studies that shall be conducted to demonstrate the convenience, cost effectiveness and improved access resulting from utilization of extremity MRI scanning;
- (2) provide projections of estimated cost savings from utilization of an extremity MRI scanner based on comparison of "total dollars received per procedure" performed on the proposed scanner in comparison to "total dollars received per procedure" performed on whole body scanners;
- (3) provide projections of estimated cost savings to the patient from utilization of an extremity MRI scanner;
- (4) commit to prepare an annual report at the end of each of the first three operating years, to be submitted to the Medical Facilities Planning Section and the Certificate of Need Section, that shall include:
- (A) a detailed description of the research studies completed,
- (B) a description of the results of the studies,
- (C) the cost per procedure to the patient and billing entity,
- (D) the cost savings to the patient attributed to utilization of an extremity MRI scanner,
- (E) an analysis of "total dollars received per procedure" performed on the extremity MRI scanner in comparison to "total dollars received per procedure" performed on whole body scanners; and
- (F) the annual volume of unweighted and weighted MRI procedures performed, by CPT code;
- (5) identify the operating hours of the proposed scanner;
- (6) provide a description of the capabilities of the proposed scanner;
- (7) provide documentation of the capacity of the proposed scanner based on the number of days to be operated each week, the number of days to be operated each year, the number of hours to be operated each day, and the average

- (8) number of unweighted MRI procedures the scanner is capable of performing each hour; identify the types of MRI procedures by CPT code that are appropriate to be performed on an extremity MRI scanner as opposed to a whole body MRI scanner;
- (9) provide copies of the operational and safety requirements set by the manufacturer; and
- (10) describe the specific criteria and methodology to be implemented for utilization review to ensure the medical necessity of the procedures performed.

- (2) demonstrate that each existing mobile MRI scanner which the applicant or a related entity owns a controlling interest in and operates in the proposed ~~mobile MRI region,~~ MRI service area except temporary MRI scanners, performed 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has data. [Note: This is not the average number of weighted MRI procedures performed on all of the applicant's mobile MRI scanners.];

- (3) demonstrate that the average annual utilization of the existing, approved and proposed fixed MRI scanners which the applicant or a related entity owns a controlling interest in and locates in the proposed MRI service area are reasonably expected to perform the following number of weighted MRI procedures, whichever is applicable, in the third year of operation following completion of the proposed project:

- (A) 1,716 weighted MRI procedures in MRI service areas in which the SMFP shows no fixed MRI scanners are located,
- (B) 3,775 weighted MRI procedures in MRI service areas in which the SMFP shows one fixed MRI scanner is located,
- (C) 4,118 weighted MRI procedures in MRI service areas in which the SMFP shows two fixed MRI scanners are located,
- (D) 4,462 weighted MRI procedures in MRI service areas in which the SMFP shows three fixed MRI scanners are located, or
- (E) 4,805 weighted MRI procedures in ~~MH MRI~~ MRI service areas in which the SMFP shows four or more fixed MRI scanners are located;

- (4) if the proposed MRI scanner will be located at a different site from any of the existing or approved MRI scanners owned by the applicant or a related entity, demonstrate that the annual utilization of the proposed fixed MRI scanner is reasonably expected to perform the following number of weighted MRI procedures, whichever is applicable, in the third year of operation following completion of the proposed project:

- (A) 1,716 weighted MRI procedures in MRI service areas in which the SMFP shows no fixed MRI scanners are located,
- (B) 3,775 weighted MRI procedures in MRI service areas in which the SMFP shows one fixed MRI scanner is located,

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .2703 PERFORMANCE STANDARDS

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

- (1) demonstrate that each existing mobile MRI scanner which the applicant or a related entity owns a controlling interest in and operates in the mobile MRI region in which the proposed equipment will be located, except temporary MRI scanners, performed 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has ~~data.~~ data [Note: This is not the average number of weighted MRI procedures performed on all of the applicant's mobile MRI scanners.]; with the exception that in the event an existing mobile MRI scanner has been in operation less than 12 months at the time the application is filed, the applicant shall demonstrate that this mobile MRI scanner performed an average of at least 277 weighted MRI procedures per month for the period in which it has been in operation;
- (2) demonstrate annual utilization in the third year of operation is reasonably projected to be at least 3328 weighted MRI procedures on each of the existing, approved and proposed mobile MRI scanners owned by the applicant or a related entity to be operated in the mobile MRI region in which the proposed equipment will be located. [Note: This is not the average number of weighted MRI procedures performed on all of the applicant's mobile MRI scanners.];
- (3) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(b) An applicant proposing to acquire a fixed magnetic resonance imaging (MRI) scanner, except for fixed MRI scanners described in Paragraphs (c) and (d) of this Rule, shall:

- (1) demonstrate that the existing fixed MRI scanners which the applicant or a related entity owns a controlling interest in and locates in the proposed MRI service area performed an average of 3,328 weighted MRI procedures in the most recent 12 month period for which the applicant has data;

- (C) 4,118 weighted MRI procedures in MRI service areas in which the SMFP shows two fixed MRI scanners are located.
- (D) 4,462 weighted MRI procedures in MRI service areas in which the SMFP shows three fixed MRI scanners are located, or
- (E) 4,805 weighted MRI procedures in MRI service areas in which the SMFP shows four or more fixed MRI scanners are located;

- (4)(5) demonstrate that annual utilization of each existing, approved and proposed mobile MRI scanner which the applicant or a related entity owns a controlling interest in and locates in the proposed MRI service area is reasonably expected to perform 3,328 weighted MRI procedures in the third year of operation following completion of the proposed project. [Note: This is not the average number of weighted MRI procedures to be performed on all of the applicant's mobile MRI scanners.];
- (5)(6) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(c) An applicant proposing to acquire a fixed dedicated breast magnetic resonance imaging (MRI) scanner for which the need determination in the State Medical Facilities Plan was based on an approved petition for an adjustment to the need determination shall:

- (1) demonstrate annual utilization of the proposed MRI scanner in the third year of operation is reasonably projected to be at least 4,716 1,664 weighted MRI procedures per year; which is .80 X 1 procedure per hour X 40 hours per week X 52 weeks per year; and
- (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

(d) An applicant proposing to acquire a dedicated fixed pediatric a fixed extremity MRI scanner for which the need determination in the State Medical Facilities Plan was based on an approved petition for an adjustment to the need determination shall:

- (1) demonstrate annual utilization of the proposed MRI scanner in the third year of operation is reasonably projected to be at least 2746 weighted MRI procedures (i.e., 80 percent of one procedure per hour, 66 hours per week, 52 weeks per year); 80 percent of the capacity defined by the applicant in response to 10A NCAC 14C .2702(f)(6), and
- (2) document the assumptions and provide data supporting the methodology used for each projection required in this Rule.

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .2704 SUPPORT SERVICES

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

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

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

~~(d)(b)~~ An applicant proposing to acquire a fixed or mobile MRI scanner shall obtain accreditation from the Joint Commission for the Accreditation of Healthcare Organizations, the American College of Radiology or a comparable accreditation authority, as determined by the Certificate of Need Section, for magnetic resonance imaging within two years following operation of the proposed MRI scanner.

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .2705 STAFFING AND STAFF TRAINING

(a) An applicant proposing to acquire an MRI scanner, including extremity and breast MRI scanners, shall demonstrate that one diagnostic radiologist certified by the American Board of Radiologists shall be available to ~~provide the proposed services~~ interpret the images who has had:

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

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

- (1) the radiologist is trained and has specific expertise in breast imaging, including mammography, breast ultrasound and breast MRI procedures; and
- (2) two full time MRI technologists or two mammography technologists are available with specialized training in breast MRI imaging and that one of these technologists shall be present during the hours operation of the dedicated breast MRI scanner.

(c) An applicant proposing to acquire a MRI scanner, including extremity but excluding dedicated breast MRI scanners, shall provide evidence of the availability of two full-time MRI technologist-radiographers and that one of these technologists shall be present during the hours of operation of the MRI scanner.

(d) An applicant proposing to acquire an MRI scanner, including extremity and breast MRI scanners, shall demonstrate that the following staff training is provided:

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

(e) An applicant proposing to acquire a mobile MRI scanner shall document that the requirements in ~~Paragraphs~~ Paragraph (a) and (e) of this Rule shall be met at each host ~~facility~~ facility, and that one full time MRI technologist-radiographer shall be present at each host facility during all hours of operation of the proposed mobile MRI scanner.

(f) An applicant proposing to acquire ~~a dedicated fixed pediatric an extremity MRI scanner scanner, pursuant to a need determination in the State Medical Facilities Plan for a demonstration project, also shall provide:~~

- ~~(1) provide documentation of the availability of at least two radiologists, certified by the American Board of Radiology, with a pediatric fellowship or two years of specialized training in pediatrics;~~
- ~~(2)(1) provide evidence that the applicant will have at least one licensed physician shall be on-site during the hours of operation of the proposed MRI scanner;~~
- ~~(3) provide documentation that the applicant will employ at least two licensed registered nurses and that one of these nurses shall be present during the hours of operation of the proposed MRI scanner;~~
- ~~(4)(2) provide a description of a research group for the project including a radiologist, neurologist, pediatric sedation specialist, orthopaedic surgeon, and research coordinator; and~~
- ~~(5) provide documentation of the availability of the research group to conduct research studies on the proposed MRI scanner; and~~
- ~~(6)(3) provide letters from the proposed members of the research group indicating their qualifications, experience and willingness to participate on the research team.~~

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

Authority G.S. 131E-177(1); 131E-183(b).

SECTION .2800 - CRITERIA AND STANDARDS FOR REHABILITATION SERVICES

10A NCAC 14C .2801 DEFINITIONS

The definitions in this Rule will apply to all rules in this Section.

- (1) "Rehabilitation Facility" means a facility as defined in G.S. 131E-176.
- (2) "Rehabilitation" means the process to maintain, restore or increase the function of disabled individuals so that an individual can live in the least restrictive environment, consistent with his or her objective.
- (3) "Outpatient Rehabilitation Clinic" is defined as a program of coordinated and integrated outpatient services, evaluation, or treatment with emphasis on improving the functional level of the person in coordination with the patient's family.
- (4) "Rehabilitation Beds" means inpatient beds for which a need determination is set forth in ~~40 NCAC 14B~~ the current State Medical Facilities Plan and which are located in a hospital licensed pursuant to ~~G.S. 131E-77~~ or a nursing facility licensed pursuant to G.S. 131E-102, G.S. 131E-77.
- (5) "Traumatic Brain Injury" is defined as an insult to the brain that may produce a diminished or altered state of consciousness which results in impairment of cognitive abilities or physical functioning. It can also result in the disturbance of behavioral or emotional functioning. These impairments may be either temporary or permanent and cause partial or total functional disability or psychological maladjustment.
- (6) "Stroke" (cerebral infarction, hemorrhage) is defined as the sudden onset of a focal neurologic deficit due to a local disturbance in the blood supply to the brain.
- (7) "Spinal Cord Injury" is defined as an injury to the spinal cord that results in the loss of motor or sensory function.
- (8) "Pediatric Rehabilitation" is defined as inpatient rehabilitation services provided to persons 14 years of age or younger.

Authority G.S. 131E-177; 131E-183(b).

10A NCAC 14C .2806 QUALITY OF SERVICES

~~A proposal to add rehabilitation beds to an existing facility shall document that the facility has not operated on a provisional license beyond the effective date of the initial provisional license issued for a new operator, received an administrative penalty or had its admissions suspended within the 18 month period immediately preceding the submittal of the certificate of need application.~~

Authority G.S. 131E-177; 131E-183(b).

SECTION .3500 - CRITERIA AND STANDARDS FOR ONCOLOGY TREATMENT CENTERS

10A NCAC 14C .3501 DEFINITIONS

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

- (1) ~~"Major medical equipment" is defined in G.S. 131E-176(14f).~~
- (2) ~~"Medical equipment" means equipment used by the oncology treatment center to diagnose or treat disease or injury in patients, including major medical equipment.~~
- (3) ~~"Medical oncologist" is a physician with a special interest in and competence in managing patients with cancer.~~
- (4) ~~"Medicine Oncology" means a clinical medical specialty with a specific involvement with the treatment of tumors.~~
- (5) ~~"Oncology diagnostic services" means those services which include, but are not limited to, procedures using diagnostic radiology and imaging techniques, clinical and pathological laboratory tests, or physical examination to obtain information from which a diagnosis is established.~~
- (6) ~~"Oncology evaluation services" means the compilation of all diagnostic test results and consultation reports for the development of a patient specific treatment plan to provide curative or palliative cancer treatment.~~
- (7) ~~"Oncology treatment center" is defined in G.S. 131E-176(18a).~~
- (8) ~~"Oncology treatment center service area" means the geographic area defined by the applicant from which patients will originate who will receive the health services proposed.~~
- (9) ~~"Oncology treatment services" means curative or palliative services provided to cancer patients which involve the use of radiation therapy, chemotherapy or other treatment techniques.~~
- (10) ~~"Radiation oncologist" means a medical physician with a special interest, training and competence in managing patients with cancer who is certified by the American Board of Radiology or its equivalent.~~
- (11) ~~"Radiology Oncology" means a clinical medical specialty involving the treatment of tumors, particularly as they relate to treatment with ionizing radiation.~~

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .3502 INFORMATION REQUIRED OF APPLICANT

- (a) ~~An applicant proposing to develop a new oncology treatment center shall use the Acute Care Facility/Medical Equipment application form.~~
- (b) ~~An applicant shall also submit the following additional information:~~

- (1) ~~documentation of the number of existing oncology treatment centers and other health service facilities which provide similar services in the proposed oncology treatment center's service area;~~
- (2) ~~a list of the medical/surgical specialties in the existing oncology treatment centers and other health service facilities which provide similar services in the proposed oncology treatment center service area, such as Radiation Oncology, Medicine Oncology, and surgical specialties;~~
- (3) ~~a list of the medical equipment that is proposed to be acquired;~~
- (4) ~~documentation verifying the actual cost or market value of each item of medical equipment, whichever is greater;~~
- (5) ~~documentation that the proposed services shall result in an integrated multidisciplinary effort to diagnose and treat patients' clinical and psychosocial needs;~~
- (6) ~~a list of all oncology diagnostic, oncology evaluation, and oncology treatment services that shall be available, and documentation demonstrating the means by which these services shall be provided;~~
- (7) ~~documentation that coordination and referral agreements exist with a hospital, referring physicians, and surgical and medical specialists and subspecialists; and~~
- (8) ~~documentation that the services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies.~~
- (c) ~~An applicant proposing to acquire radiation therapy equipment shall document compliance with 10A NCAC 14C .1900, Criteria and Standards for Radiation Therapy Equipment.~~
- (d) ~~An applicant proposing to develop a new oncology treatment center shall provide:~~
 - (1) ~~the number of patients that are projected to use the service, by diagnosis;~~
 - (2) ~~the number of patients that are projected to use the service, by county of residence;~~
 - (3) ~~documentation of the maximum number of procedures that the equipment in the facility is capable of performing and the assumptions used to determine the maximum number of procedures;~~
 - (4) ~~quarterly projected utilization of the applicant's new equipment for each of the first three years after the completion of the project;~~
 - (5) ~~documentation of the effect the new oncology treatment center may have on existing oncology treatment centers and other health service facilities which provide similar services in the proposed oncology treatment center service area; and~~
 - (6) ~~all the assumptions and data supporting the methodology used to make the above projections.~~

Authority G.S. 131E-177(1); 131E-183.

10A NCAC 14C .3504 SUPPORT SERVICES

(a) ~~An applicant proposing to develop an oncology treatment center shall document that the following services will be available to the center:~~

- ~~(1) medical oncology services;~~
- ~~(2) radiation oncology services;~~
- ~~(3) diagnostic radiology services;~~
- ~~(4) nuclear medicine services;~~
- ~~(5) hospice and home health services;~~
- ~~(6) psychology and social services;~~
- ~~(7) pharmaceutical services;~~
- ~~(8) pathology services;~~
- ~~(9) transportation services; and~~
- ~~(10) tumor registry services.~~

~~(b) An applicant proposing to develop an oncology treatment center shall specify whether any services other than those listed in Paragraph (a) of this Rule will be available to the center and shall list those additional services.~~

~~(c) An applicant proposing to develop an oncology treatment center shall list the types of surgical specialties which will be available to the center.~~

~~(d) An applicant proposing to develop an oncology treatment center for the provision of medical oncology services shall document that the following services will be available in the center:~~

- ~~(1) pharmaceutical services; and~~
- ~~(2) pathology services.~~

~~(e) An applicant proposing to develop an oncology treatment center for the provision of radiation oncology services shall document that diagnostic radiology services will be available in the center.~~

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .3505 STAFFING AND STAFF TRAINING

~~An applicant proposing to establish a new oncology treatment center shall provide the following information:~~

- ~~(1) the medical specialties and board certification status of each physician who will provide services in the proposed center. An applicant shall also provide documentation of at least the following types of physicians:

 - ~~(a) if proposing radiation therapy services, a radiation oncologist;~~
 - ~~(b) if proposing radiation therapy services, access to a medical oncologist;~~~~
- ~~(2) a description of the special training and specialty certification which will be required of all registered nurses who will be employed by the center;~~
- ~~(3) documentation to show the types and numbers of staff, particularly qualified medical technologists and medical staff, that shall be available to support the services and an~~

~~explanation as to why these staff are adequate to provide the proposed services; and~~

- ~~(4) documentation to demonstrate that a formal training program exists to ensure the continued proficiency of the professional and technical staff.~~

Authority G.S. 131E-177(1); 131E-183(b).

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

10A NCAC 14C .3702 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall provide the following information for each facility where the PET scanner will be operated:

- (1) The projected number of procedures to be performed and the projected number of patients to be served for each of the first three years following completion of the proposed project. Projections shall be listed by clinical area (e.g., oncology, cardiology), and all methodologies and assumptions used in making the projections shall be provided.
- (2) Documentation that all of the following services were provided, at each facility where the PET scanner will be operated, continuously throughout the 12 months immediately prior to the date on which the application is filed:
 - (A) nuclear medicine imaging services;
 - (B) single photon emission computed tomography (including brain, bone, liver, gallium and thallium stress);
 - (C) magnetic resonance imaging scans;
 - (D) computerized tomography scans;
 - (E) cardiac angiography;
 - (F) cardiac ultrasound; and
 - (G) neuroangiography.
- (3) Documentation that the facility will:
 - (A) establish the clinical PET unit, and any accompanying equipment used in the manufacture of positron-emitting radioisotopes, as a regional resource that will have no administrative, clinical or charge requirements that would impede physician referrals of patients for whom PET testing would be appropriate; and
 - (B) provide scheduled hours of operation for the PET scanner of a minimum of 12 hours per day, six days a week, except for mobile scanners; and scanners.
 - ~~(C) implement a referral system which shall include a feedback mechanism~~

~~of providing patient information to the referring physician and facility.~~

~~(4) A description of the protocols that will be established to assure that all clinical PET procedures performed are medically necessary and cannot be performed using other, less expensive, established modalities.~~

(c) An applicant proposing to acquire a mobile PET scanner shall provide copies of letters of intent from and proposed contracts with all of the proposed host facilities at which the mobile PET scanner will be operated.

(d) An applicant proposing to acquire a mobile PET scanner shall demonstrate that each host facility offers or contracts with a hospital that offers comprehensive cancer services including radiation oncology, medical oncology, and surgical oncology.

(e) An applicant shall document that all equipment, supplies and pharmaceuticals proposed for the service have been certified for use by the U.S. Food and Drug Administration or will be used under an institutional review board whose membership is consistent with U.S. Department of Health and Human Services' regulations.

(f) An applicant shall document that each PET scanner and cyclotron shall be operated in a physical environment that conforms to federal standards, ~~manufacturers~~ manufacturer's specifications, and licensing requirements. The following shall be addressed:

- (1) quality control measures and assurance of radioisotope production of generator or cyclotron-produced agents;
- (2) quality control measures and assurance of PET ~~tomograph~~ tomography and associated instrumentation;
- (3) radiation protection and shielding;
- (4) radioactive emission to the environment; and
- (5) radioactive waste disposal.

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .3703 PERFORMANCE STANDARDS

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

- (1) the proposed dedicated PET scanner, including a proposed mobile dedicated PET scanner, shall be utilized at an annual rate of at least ~~3,200~~ 2,080 PET procedures by the end of the third year following completion of the project;
- (2) if an applicant operates an existing dedicated PET scanner, its existing dedicated PET scanners, excluding those used exclusively for research, performed an average of at least ~~3,200~~ 2,080 PET procedures per PET scanner in the last year; and
- (3) its existing and approved dedicated PET scanners shall perform an average of at least ~~3,200~~ 2,080 PET procedures per PET scanner during the third year following completion of the project.

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

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .3704 SUPPORT SERVICES

~~(a) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall document how medical emergencies within the PET scanner unit will be managed at each facility where the PET scanner will be operated.~~

~~(b)~~(a) An applicant proposing to acquire a PET scanner, including a mobile PET scanner, shall document that radioisotopes shall be acquired from one or more of the following sources and shall identify the sources which will be utilized by the applicant:

- (1) an off-site medical cyclotron and radioisotope production facility that is located within two hours transport time to each facility where the PET scanner will be operated;
- (2) an on-site rubidium-82 generator; or
- (3) an on-site medical cyclotron for radio nuclide production and a chemistry unit for labeling radioisotopes.

~~(e)~~(b) An applicant proposing to acquire an on-site cyclotron for radioisotope production shall document that these agents are not available or cannot be obtained in an economically cost effective manner from an off-site cyclotron located within 2 hours total transport time from the applicant's facility.

~~(d)~~(c) An applicant proposing to develop new PET scanner services, including mobile PET scanner services, shall establish a clinical oversight committee at each facility where the PET scanner will be operated before the proposed PET scanner is placed in service that shall:

- (1) develop screening criteria for appropriate PET scanner utilization;
- (2) review clinical protocols;
- (3) review appropriateness and quality of clinical procedures;
- (4) develop educational programs; and
- (5) oversee the data collection and evaluation activities of the PET scanning service.

Authority G.S. 131E-177(1); 131E-183(b).

SECTION .3900 - CRITERIA AND STANDARDS FOR GASTROINTESTINAL ENDOSCOPY PROCEDURE ROOMS IN LICENSED HEALTH SERVICE FACILITIES

10A NCAC 14C .3901 DEFINITIONS

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

- (1) "Ambulatory surgical facility" means a facility as defined in G.S. 131E-176(1b).
- (2) "Gastrointestinal (GI) endoscopy room" means a room as defined in G.S. 131E-176(7d) that is used to perform one or more GI endoscopy procedures.
- (3) "Gastrointestinal (GI) endoscopy procedure" means a single procedure, identified by CPT code or ICD-9-CM procedure code, performed

- on a patient during a single visit to the facility for diagnostic or therapeutic purposes.
- (4) "Operating room" means a room as defined in G.S. 131E-176(18c).
- (5) "Related entity" means the parent company of the applicant, a subsidiary company of the applicant (i.e., the applicant owns 50 percent or more of another company), a joint venture in which the applicant is a member, or a company that shares common ownership with the applicant (i.e., the applicant and another company are owned by some of the same persons).
- (6) "Service area" means the geographical area, as defined by the applicant using county lines, from which the applicant projects to serve patients.

Authority G.S. 131E-177(1); 131E-183(b).

10A NCAC 14C .3902 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall provide the following information:

- (1) the counties included in the applicant's proposed service area, as defined in 10A NCAC 14C .3906;
- (2) with regard to services provided in the applicant's GI endoscopy rooms, identify:
 - (A) the number of existing and proposed GI endoscopy rooms in the licensed health service facility in which the proposed rooms will be located;
 - (B) the number of existing or approved GI endoscopy rooms in any other licensed health service facility in which the applicant or a related entity has a controlling interest that is located in the applicant's proposed service area;
 - (C) the number of GI endoscopy procedures, identified by CPT code or ICD-9-CM procedure code, performed in the applicant's licensed or non-licensed GI endoscopy rooms in the last 12 months;
 - (D) the number of GI endoscopy procedures, identified by CPT code or ICD-9-CM procedure code, projected to be performed in the GI endoscopy rooms in each of the first three operating years of the project
 - (E) the number of procedures by type, other than GI endoscopy procedures, performed in the GI endoscopy rooms in the last 12 months;

- (F) the number of procedures by type, other than GI endoscopy procedures, projected to be performed in the GI endoscopy rooms in each of the first three operating years of the project;
- (G) the number of patients served in the licensed or non-licensed GI endoscopy rooms in the last 12 months; and,
- (H) the number of patients projected to be served in the GI endoscopy rooms in each of the first three operating years of the project;
- (3) with regard to services provided in the applicant's operating rooms identify:
 - (A) the number of existing operating rooms in the facility;
 - (B) the number of procedures by type performed in the operating rooms in the last 12 months; and
 - (C) the number of procedures by type projected to be performed in the operating rooms in each of the first three operating years of the project;
- (4) the days and hours of operation of the facility in which the GI endoscopy rooms will be located;
- (5) if an applicant is an existing facility, the type and average facility charge for each of the ten GI endoscopy procedures most commonly performed in the facility during the preceding 12 months;
- (6) the type and projected average facility charge for the 10 GI endoscopy procedures which the applicant projects will be performed most often in the facility;
- (7) a list of all services and items included in each charge, and a description of the bases on which these costs are included in the charge;
- (8) identification of all services and items (e.g., medications, anesthesia) that will not be included in the facility's charges;
- (9) if an applicant is an existing facility, the average reimbursement received per procedure for each of the ten GI endoscopy procedures most commonly performed in the facility during the preceding 12 months; and
- (10) the average reimbursement projected to be received for each of the ten GI endoscopy procedures which the applicant projects will be performed most frequently in the facility.

(b) An applicant proposing to establish a new licensed ambulatory surgical facility for provision of GI endoscopy procedures shall submit the following information:

- (1) a copy of written administrative policies that prohibit the exclusion of services to any patient on the basis of age, race, religion, disability or the patient's ability to pay;
- (2) a written commitment to participate in and comply with conditions of participation in the

- Medicare and Medicaid programs within three months after licensure of the facility;
- (3) a description of strategies to be used and activities to be undertaken by the applicant to assure the proposed services will be accessible by indigent patients without regard to their ability to pay;
- (4) a written description of patient selection criteria including referral arrangements for high-risk patients;
- (5) the number of GI endoscopy procedures performed by the applicant in any other existing licensed health service facility in each of the last 12 months, by facility;
- (6) if the applicant proposes reducing the number of GI endoscopy procedures it performs in existing licensed facilities, the specific rationale for its change in practice pattern.

Authority G.S. 131E-177; 131E-183(b).

10A NCAC 14C .3903 PERFORMANCE STANDARDS

(a) In providing projections for operating rooms, as required in this rule, the operating rooms shall be considered to be available for use 250 days per year, which is five days per week, 52 weeks per year, excluding ten days for holidays.

(b) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall reasonably project to perform an average of at least 1,500 GI endoscopy procedures only per GI endoscopy room in each licensed facility the applicant or a related entity owns in the proposed service area, during the second year of operation following completion of the project.

(c) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall demonstrate that at least the following types of GI endoscopy procedures will be provided in the proposed facility or GI endoscopy room: upper endoscopy procedures, esophagoscopy procedures, and colonoscopy procedures.

(d) If an applicant, which proposes to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility, or a related entity to the applicant owns operating rooms located in the proposed service area, the applicant shall meet one of the following criteria:

- (1) if the applicant or a related entity performs GI endoscopy procedures in any of its surgical operating rooms in the proposed service area, reasonably project that during the second operating year of the project the average number of surgical and GI endoscopy cases per operating room, for each category of operating room in which these cases will be performed, shall be at least: 4.8 cases per day for each facility for the outpatient or ambulatory surgical operating rooms and 3.2

- cases per day for each facility for the shared operating rooms; or
- (2) demonstrate that GI endoscopy procedures were not performed in the applicant's or related entity's inpatient operating rooms, outpatient operating rooms, or shared operating rooms in the last 12 months and will not be performed in those rooms in the future.

(e) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop an additional GI endoscopy room in an existing licensed health service facility shall describe all assumptions and the methodology used for each projection in this Rule.

Authority G.S. 131E-177; 131E-183(b).

10A NCAC 14C .3904 SUPPORT SERVICES

(a) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall provide a copy of an agreement between the applicant and a pathologist for provision of pathology services.

(b) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall provide a copy of the guidelines it shall follow in the administration of conscious sedation or any type of anesthetic to be used, including procedures for tracking and responding to adverse reactions and unexpected outcomes.

(c) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall provide a copy of the policies and procedures it shall utilize for cleaning and monitoring the cleanliness of scopes, other equipment, and the procedure room between cases.

(d) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall provide:

- (1) evidence that physicians utilizing the proposed facility will have practice privileges at an existing hospital in the county in which the proposed facility will be located or in a contiguous county;
- (2) documentation of an agreement to transfer and accept referrals of GI endoscopy patients from a hospital where physicians utilizing the facility have practice privileges; and
- (3) documentation of a transfer agreement with a hospital in case of an emergency.

Authority G.S. 131E-177; 131E-183(b).

10A NCAC 14C .3905 STAFFING AND STAFF TRAINING

(a) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall identify the number of staff to be utilized in the following areas:

- (1) administration;
- (2) pre-operative;
- (3) post-operative;
- (4) procedure rooms;
- (5) equipment cleaning, safety, and maintenance;
and
- (6) other.

(b) The applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall identify the number of physicians by specialty and board certification status that currently utilize the facility and that are projected to utilize the facility.

(c) The applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall provide the criteria to be used by the facility in extending privileges to medical personnel that will provide services in the facility.

(d) If the facility is not accredited by The Joint Commission on Accreditation of Healthcare Organizations, The Accreditation Association for Ambulatory Health Care, or The American Association for Accreditation of Ambulatory Surgical Facilities at the time the application is submitted, the applicant shall demonstrate that each of the following staff requirements will be met in the facility:

- (1) a Medical director who is a board certified gastroenterologist, colorectal surgeon or general surgeon, is licensed to practice medicine in North Carolina and is directly involved in the routine direction and management of the facility;
- (2) all physicians performing GI endoscopy procedures in the facility shall be board eligible or board certified gastroenterologists by American Board of Internal Medicine, colorectal surgeons by American Board of Colon and Rectal Surgery or general surgeons by American Board of Surgery;
- (3) all physicians with privileges to practice in the facility will be active members in good standing at a general acute care hospital within the proposed service area;
- (4) at least one registered nurse shall be employed per procedure room;
- (5) additional staff or patient care technicians shall be employed to provide assistance in procedure rooms, as needed; and,
- (6) a least one health care professional who is present during the period the procedure is performed and during postoperative recovery shall be ACLS certified; and, at least one other health care professional who is present in the facility shall be BCLS certified.

Authority G.S. 131E-177; 131E-183(b).

10A NCAC 14C .3906 FACILITY

(a) An applicant proposing to establish a licensed ambulatory surgical facility that will be physically located in a physician's office or within a general acute care hospital shall demonstrate reporting and accounting mechanisms exist that confirm the licensed ambulatory surgery facility is a separately identifiable entity physically and administratively, and is financially independent and distinct from other operations of the facility in which it is located.

(b) An applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall commit to obtain accreditation and to submit documentation of accreditation of the facility by The Accreditation Association for Ambulatory Health Care, The Joint Commission on Accreditation of Healthcare Organizations, or The American Association for Accreditation of Ambulatory Surgical Facilities within one year of completion of the proposed project.

(c) If the facility is not accredited at the time the application is submitted, an applicant proposing to establish a new licensed ambulatory surgical facility for performance of GI endoscopy procedures or develop a GI endoscopy room in an existing licensed health service facility shall:

- (1) document that the physical environment of the facility conforms to the requirements of federal, state, and local regulatory bodies.
- (2) provide a floor plan of the proposed facility identifying the following areas:
 - (A) receiving/registering area;
 - (B) waiting area;
 - (C) pre-operative area;
 - (D) procedure room by type; and
 - (E) recovery area.
- (3) demonstrate that the procedure room suite is separate and physically segregated from the general office area; and,
- (4) document that the applicant owns or otherwise has control of the site on which the proposed facility or GI endoscopy rooms will be located.

Authority G.S. 131E-177; 131E-183(b).

SECTION .4000 - CRITERIA AND STANDARDS FOR HOSPICE INPATIENT FACILITIES AND HOSPICE RESIDENTIAL CARE FACILITIES

10A NCAC 14C .4001 DEFINITIONS

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

- (1) "Bereavement counseling" means counseling provided to a hospice patient's family or significant others to assist them in dealing with issues of grief and loss.
- (2) "Caregiver" means the person whom the patient designates to provide the patient with emotional support, physical care, or both.

- (3) "Care plan" means a plan as defined in 10A NCAC 13K .0102 of the Hospice Licensing Rules.
- (4) "Home-like" means furnishings of a hospice inpatient facility or a hospice residential care facility as defined in 10A NCAC 13K .1110 or .1204 of the Hospice Licensing Rules.
- (5) "Hospice" means any coordinated program of home care as defined in G.S. 131E-176(13a).
- (6) "Hospice inpatient facility" means a facility as defined in G.S. 131E-176(13b).
- (7) "Hospice residential care facility" means a facility as defined in G.S. 131E-176(13c).
- (8) "Hospice service area" means for residential care facilities, the county in which the hospice residential care facility will be located and the contiguous counties for which the hospice residential care facility will provide services.
- (9) "Hospice services" means services as defined in G.S. 131E-201(5b).
- (10) "Hospice staff" means personnel as defined in 10A NCAC 13K .0102 of the Hospice Licensing Rules.

Authority G.S. 131E-177(1).

10A NCAC 14C .4002 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall complete the application form for Hospice Inpatient and Hospice Residential Care Services.

(b) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall provide the following information:

- (1) the projected number of hospice patients, by level of care (i.e., hospice residential care and hospice inpatient care), to be served in the facility by quarter for the first 24 months following completion of the project and the methodology and assumptions used to make the projections;
- (2) the projected number of patient care days, by level of care (i.e., hospice residential care and hospice inpatient care), by quarter, to be provided in each of the first two years of operation following completion of the project and the methodology and assumptions used to make the projections shall be stated;
- (3) the projected average annual cost per patient care day, by level of care (i.e., hospice residential care and hospice inpatient care) for each of the first two operating years following completion of the project and the methodology and assumptions used to project the average annual cost; and
- (4) documentation of attempts made to establish working relationships with sources of referrals to the hospice facility including copies of

proposed agreements for the provision of inpatient care and residential care.

(c) An applicant proposing to develop hospice inpatient or hospice residential care facility beds shall also provide the following information:

- (1) copies of the proposed contractual agreements, if the applicant is not a licensed hospice, with a licensed hospice or a licensed home care agency with a hospice designation on its license, for the provision of hospice services;
- (2) documentation of the projected payor mix from the referring hospices, if the applicant is not a licensed hospice;
- (3) a copy of the admission policies, including the criteria that shall be used to select persons for admission; and
- (4) documentation that a home-like setting shall be provided in the facility.

Authority G.S. 131E-177(1); 131E-183.

10A NCAC 14C .4003 PERFORMANCE STANDARDS

(a) An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall demonstrate that:

- (1) the average occupancy rate of the licensed hospice beds in the facility is projected to be at least 50 percent for the last six months of the first operating year following completion of the project;
- (2) the average occupancy rate for the licensed hospice beds in the facility is projected to be at least 65 percent for the second operating year following completion of the project; and
- (3) if the application is submitted to address the need for a hospice residential care facility, each existing facility which is located in the hospice service area and which has licensed hospice beds of the type proposed by the applicant attained an occupancy rate of at least 65 percent for the 12 month period reported on that facility's most recent Licensure Renewal Application Form.

(b) An applicant proposing to add beds to an existing hospice inpatient facility or hospice residential care facility shall document that the average occupancy of the licensed hospice inpatient and hospice residential care facility beds in its existing facility was at least 65 percent for the nine months immediately preceding the submittal of the proposal.

Authority G.S. 131E-177(1).

10A NCAC 14C .4004 SUPPORT SERVICES

(a) An applicant proposing to develop a hospice inpatient facility beds or hospice residential care facility beds shall demonstrate that the following services will be provided directly by the applicant or by a contracted hospice to the patient and the patient's family or significant others:

- (1) nursing services;
- (2) social work services;

- (3) counseling services including dietary, spiritual, and family counseling;
- (4) bereavement counseling services;
- (5) volunteer services;
- (6) physician services; and
- (7) medical supplies.

(b) An applicant shall demonstrate that the nursing services listed in Paragraph (a) of this Rule will be available 24 hours a day, seven days a week.

(c) An applicant proposing to develop a hospice inpatient facility or a hospice residential care facility shall provide documentation that pharmaceutical services will be provided directly by the facility or by contract.

(d) For each of the services listed in Paragraphs (a) and (c) of this Rule which are proposed to be provided by contract, the applicant shall provide a copy of a letter from the proposed provider which expresses its interest in working with the proposed facility.

Authority G.S. 131E-177(1); 131E-183.

10A NCAC 14C .4005 STAFFING AND STAFF TRAINING

(a) An applicant proposing to develop a hospice inpatient facility beds or hospice residential care facility beds shall document that staffing will be provided in a manner consistent with G.S. 131E, Article 10.

(b) The applicant shall demonstrate that:

- (1) the staffing pattern will be consistent with licensure requirements as specified in 10A NCAC 13K, Hospice Licensing Rules;
- (2) training for all staff will meet the requirements as specified in 10A NCAC 13K .0400, Hospice Licensing Rules.

Authority G.S. 131E-177(1).

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Medical Care Commission intends to amend the rules cited as 10A NCAC 13J .0903, .1003, .1110.

Proposed Effective Date: *October 1, 2006*

Public Hearing:

Date: *July 26, 2006*

Time: *10:00 a.m.*

Location: *Room 201, Council Building, 701 Barbour Drive, Dorothea Dix Campus, Raleigh, North Carolina, 27603*

Reason for Proposed Action: *Change to existing Home Care rules are required to comply with the provisions of Senate Bill 622 (S.L. 2005-276) which was effective August 13, 2005. These rules address changes to the licensure process and the operation of Home Care Agencies. These changes to the rule are supported*

by the industry. The amendments to these rules have been in effect under temporary procedures since April 1, 2006.

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, NC Division of Facility Services, 2701 Mail Service Center, Raleigh, North Carolina, 27699-2701, phone (919) 855-3751, fax (919) 733-2757, email elizabeth.brown@ncmail.net*

Comment period ends: *July 31, 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 13 – NC MEDICAL CARE COMMISSION

SUBCHAPTER 13J – THE LICENSING OF HOME CARE AGENCIES

SECTION .0900 – GENERAL

10A NCAC 13J .0903 APPLICATION FOR AND ISSUANCE OF LICENSE

(a) An application for the operation of an agency premises shall be submitted to the Department prior to the scheduling of an initial licensure survey or the issuance of a license. The agency shall establish, maintain and make available for inspection such documents, records and policies as required in this Section and statistical data sufficient to complete the licensure application and upon request of the Department, to submit an annual data report, as noted in Rule .1002(b) of this Subchapter. If the applicant cannot demonstrate to the Division of Facility Services that he or she has ever owned or operated a home care agency prior to submission of the application, the Division shall not issue a license until the applicant has received training approved by the Division which shall include in the requirements for

licensure, the licensure process, and the rules pertaining to the operation of a home care agency.

(b) The Department shall issue a license to each agency premises. ~~Whether initial~~ Initial and ongoing licensure inspections may include all premises of an agency, ~~and whether they include on-site inspections shall be at the discretion of the Department.~~ Initial licensure shall be for a period of not more than one year. Unless the Department takes adverse action on a license as outlined in G.S. 131E-139, subsequent licensure shall extend for a minimum of one year and a maximum of three years, at the discretion of the Department. Each license shall expire at midnight on the expiration date on the license and is renewable upon application.

(c) The license shall be posted in a prominent location accessible to public view within the premises. The agency shall also post a sign at the public access door with the agency name.

(d) The license shall be issued for the premises and persons named in the application and shall not be transferable. The name and street address under which the agency operates shall appear on the license. The license shall reflect the services provided by the agency.

(e) Prior to change of ownership or the establishment of a new agency, the agency must be in compliance with all the applicable statutes and rules. If the agency is authorized to provide Medicare certified Home Health Services, it shall also be in compliance with ~~statutes, statutes and rules and policies~~ established under G.S. 131E, Article 9.

(f) The licensee shall notify the Department in writing of any proposed change in ownership or name at least 30 days prior to the effective date of the change.

(g) Any agency adding a new service category as outlined in G.S. 131E-136(3)(a) through (f) shall notify the Department in writing at least 30 days prior to the provision of that service to any clients. The Department shall approve the added service prior to its implementation.

(h) An agency shall notify the Department in writing if it discontinues or is unable to provide for a period of six continuous months any service category as outlined in G.S. 131E-136(3)(a) through (f) that is listed on the agency's license.

Authority G.S. 131E-140.

SECTION .1000 - ADMINISTRATION

10A NCAC 13J .1003 PERSONNEL

(a) Written policies shall be established and implemented by the agency regarding infection control and exposure to communicable diseases consistent with Subchapter 19A of Title 15A, North Carolina Administrative Code. These policies and procedures shall include provisions for compliance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. ~~Emphasis shall be placed on compliance with 29 CFR 1910.1030 (Airborne and Bloodborne Pathogens).~~ Copies of Title 29 Part 1910 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954 or by calling Washington, D.C. (202) 512-1800. The cost is twenty-one dollars (\$21.00) and may be purchased with a credit card. Hands-on care employees must have a baseline skin test for TB. Individuals who test

positive must demonstrate non-infectious status prior to assignment in a client's home. Individuals who have previously tested positive to the TB skin test shall obtain a baseline and subsequent annual verification that they are free of TB symptoms. This verification shall be obtained from the local health department, a private physician or health nurse employed by the agency. The Tuberculosis Control Branch of the North Carolina Department of Health and Human Services, Division of Public Health, 1902 Mail Service Center, Raleigh, NC 27699-1902 shall provide, free of charge, guidelines for conducting verification and Form DHHS 3405 (Record of Tuberculosis Screening). Employees identified by agency risk assessment, to be at risk for exposure ~~are required to~~ shall be subsequently tested at intervals prescribed by OSHA standards.

(b) The agency shall not hire any individual either directly or by contract who has a substantiated finding on the North Carolina Health Care Personnel Registry in accordance with G.S. 131E-256(a)(1).

~~(c)(b)~~ Written policies shall be established and implemented which include personnel record content, orientation and in-service education. Records on the subject of in-service education and attendance shall be maintained by the agency and retained for at least one year.

~~(d)(e)~~ Job descriptions for every position shall be established in writing which include qualifications and specific responsibilities. Individuals shall be assigned only to duties for which they are trained and competent to perform and when applicable for which they are properly licensed.

~~(e)(d)~~ Personnel records shall be established and maintained for each home care employee. When requested, the records shall be available on the agency premises for inspection by the Department. These records shall be maintained for at least one year after termination from agency employment. The records shall include the following:

- (1) an application or resume which lists education, training and previous employment that can be verified, including job title;
- (2) a job description with record of acknowledgment by the employee;
- (3) reference checks or verification of previous employment;
- (4) records of tuberculosis screening for employees for whom the test is necessary as described in Paragraph (a) of this Rule;
- (5) documentation of Hepatitis B immunization or declination for hands-on care employees in accordance with the agency's exposure control plan;
- (6) airborne and bloodborne pathogen training for hands on care employees, including annual updates, in compliance with 29 CFR 1910 and in accordance with the agency's exposure control plan;
- (7) performance evaluations according to agency policy and at least annually. These evaluations may be confidential pursuant to Rule .0905 of this Subchapter;
- (8) verification of employees' credentials as applicable; and

- (9) records of the verification of competencies by agency supervisory personnel of all skills required of home care services personnel to carry out client care tasks to which the employee is assigned. The method of verification shall be defined in agency policy.

Authority G.S. 131E-140.

SECTION .1100 - SCOPE OF SERVICES

10A NCAC 13J .1110 SUPERVISION AND COMPETENCY OF IN-HOME AIDES OR OTHER IN-HOME CARE PROVIDERS

(a) In-home aides or other allied health personnel subject to occupational licensing laws shall meet competency testing requirements consistent with the rules established by the ~~appropriate occupational licensing board to which they are subject~~. Each agency ~~is responsible for documenting~~ shall document that its in-home aides and other in-home care providers are competent to perform client care tasks or activities to which they are assigned. Such individuals shall perform delegated activities under the supervision of persons authorized by state law to provide such supervision.

(b) Those in-home aides and other in-home care providers who are not subject to occupational licensing laws, shall only be assigned client care activities for which they have demonstrated competency, the documentation of which is maintained by the agency. Meeting competency includes a correct demonstration of tasks to an appropriate professional. Each agency ~~is responsible for documenting~~ shall document that its in-home aides and other in-home care providers demonstrate competence for all assigned client care tasks or activities. Such individuals shall be supervised by the appropriate professional who may further delegate specific supervisory activities to a ~~competent, appropriately trained~~ paraprofessional as designated by agency policy, provided that the following criteria are met:

- (1) there is continuous availability of the appropriate professional for supervision and consultation; and
- (2) accountability for supervisory activities delegated is maintained by the appropriate professional.

(c) ~~Respiratory practitioners who are not subject to occupational licensing laws~~ Staff who are not licensed by the North Carolina Respiratory Care Board shall only be assigned duties for which they have demonstrated ~~competency~~. competency and shall not engage in providing Respiratory Care as that term is defined in the Respiratory Care Practice Act, G.S. 90-648(11). Agencies that are providing clinical respiratory care services must provide supervision ~~under the direction of a by a licensed respiratory care practitioner registered respiratory therapist, certified respiratory therapy assistant~~, or a registered nurse with sufficient education and clinical experience in the scope of the services offered.

(d) The appropriate supervisor shall supervise an in-home care provider as specified in Paragraph (a) or (b) of this Rule by making a supervisory visit to each client's place of residence at least every three months, with or without the in-home care

provider's presence, and at least annually, while the in-home care provider is providing care to each client.

(e) A quarterly supervisory visit to the home of each client, by the appropriate professional supervisor for each type of in-home care provider as specified in Paragraphs (a) and (b) of this Rule, shall meet the minimum requirement for supervision of any and all of the specified type of in-home care providers who have provided service to the client within the quarter. The supervisory visit shall include review of the client's general condition, progress and response to the services provided by the specified type of in-home care provider.

(f) Documentation of supervisory visits shall be maintained in the agency's records and shall contain, at a minimum:

- (1) date of visit;
- (2) findings of visit; and
- (3) signature of person performing the visit.

In order to assure effective supervision of services provided by in-home aides, geographic service areas for these services shall be limited to the area which includes the county where the agency is located, counties that are contiguous with the county where the agency is located or within 90 minutes driving time from the site where the agency is located, whichever is greater. Agencies providing services to any client prior to January 1, 2006 who resides in a geographic service areas which is beyond the counties that are contiguous with the county where the agency is located or greater than 90 minutes driving time from the site where the agency is located, may continue to provide services to the client until the client is discharged from the agency.

(g) When follow-up corrective action is needed for any or all of a specified type of in-home care provider based on findings of the supervisory visit, documentation of such corrective action by the appropriate supervisor shall be maintained in the employee(s) or other agency record.

(h) An appropriate professional conducting a supervisory visit for any and all of a specified type of in-home care provider may simultaneously conduct the quarterly case review as required in Rule .1202 of this Subchapter.

(i) The appropriate professional shall be continuously available for supervision, on-site where services are provided when necessary, during the hours that in-home care services are provided.

Authority G.S. 131E-140.

TITLE 13 – DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the Mine and Quarry Bureau intends to adopt the rule cited as 13 NCAC 06 .0601.

Proposed Effective Date: October 1, 2006

Instructions on How to Demand a Public Hearing: *(must be requested in writing within 15 days of notice): Requests for a public hearing concerning 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*

PROPOSED RULES

facsimile at (919) 733-4235. Objections shall include the specific rule citation(s) for which the hearing is being requested, the nature of the request, and the complete name(s) and contact information for the individual(s) submitting the request for public hearing.

Reason for Proposed Action: Effective September 1, 2005, Senate Bill 622 enacted G.S. 74-24 .16(d) which authorized the Commissioner of Labor to set fees for persons participating in education and training programs provided by the Department of Labor – Mine and Quarry Bureau. This legislation was passed by the North Carolina General Assembly on August 11, 2005 and signed by the Governor on August 12, 2005. The enactment of Senate Bill 622 reduced the 2005-2006 Budget of the Mine and Quarry Bureau by \$270,000.00 which resulted in the loss of one-half of it's Budget and caused an immediate transition to the bureau becoming a receipts funded or fee-based program. The ability to sustain an effective Bureau and minimize the inevitable Budget shortfall relied upon the immediate establishment and collection of fees for persons attending Mine and Quarry Education and Training Programs. Therefore, an emergency rule was adopted on September 13, 2005 and a temporary rule was adopted on November 1, 2005 in order to allow for immediate collection of the above referenced fees. This rule is being submitted prior to the expiration of the temporary rule in order to make those same fees permanent.

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 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 no later than 5:00 p.m. on July 31, 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: July 31, 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 06 – MINE AND QUARRY DIVISION
SECTION .0600 – FEES**

13 NCAC 06 .0601 MINE AND QUARRY BUREAU FEE SCHEDULE

Persons attending education and training classes offered by the N.C. Department of Labor – Mine and Quarry Bureau shall be assessed a fee as follows:

		<u>Class Description</u>				<u>Fee</u>
(1)	<u>First Aid and CPR:</u>					<u>\$50.00 per class</u>
	(a) <u>First Aid Only:</u>					<u>\$40.00 per class</u>
	(b) <u>CPR Only:</u>					<u>\$25.00 per class</u>
(2)	<u>Mine Safety and Health Law School and Supervisor Training – 3 Parts:</u>					<u>\$50.00 per part</u>
(3)	<u>Part 46 or Part 48 Instructors Institute – 3 Parts:</u>					<u>\$50.00 per part</u>
(4)	<u>Explosives Safety School – 3 Parts:</u>					<u>\$50.00 per part</u>
(5)	<u>New Miner and Experienced Mine Annual Refresher Training and additional generalized training programs – Fee established by length of training session (in hours) and class size as follows:</u>					
		<u>Class Size</u>				
		<u>0-4</u>	<u>5-20</u>	<u>21-40</u>	<u>41-60</u>	<u>61 and Over</u>
<u>Hours</u>	<u>Per Person Fee</u>					
<u>0-2</u>	<u>\$20.00</u>	<u>\$10.00</u>	<u>\$8.00</u>	<u>\$6.00</u>	<u>\$5.00</u>	
<u>2-4</u>	<u>\$30.00</u>	<u>\$20.00</u>	<u>\$16.00</u>	<u>\$12.00</u>	<u>\$9.00</u>	
<u>4-6</u>	<u>\$40.00</u>	<u>\$30.00</u>	<u>\$25.00</u>	<u>\$20.00</u>	<u>\$15.00</u>	
<u>6-8</u>	<u>\$50.00</u>	<u>\$40.00</u>	<u>\$35.00</u>	<u>\$30.00</u>	<u>\$25.00</u>	

Authority G.S. 74-24.16(d).

APPROVED RULES

*This Section includes the Register Notice citation to rules approved by the Rules Review Commission (RRC) at its meeting April 20, 2006 and reported to the Joint Legislative Administrative Procedure Oversight Committee pursuant to G.S. 150B-21.16. The full text of rules are published below when the rules have been approved by RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register. The rules published in full text are identified by an * in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

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

APPROVED RULE CITATION				REGISTER CITATION TO THE NOTICE OF TEXT
10A	NCAC	09	.2802*	20:07 NCR
10A	NCAC	09	.2825*	20:07 NCR
10A	NCAC	13B	.5502-.5504*	20:07 NCR
10A	NCAC	220	.0409*	20:12 NCR
10A	NCAC	70A	.0101	20:13 NCR
10A	NCAC	70A	.0102*	20:13 NCR
10A	NCAC	70A	.0104*	20:13 NCR
10A	NCAC	70A	.0107*	20:13 NCR
10A	NCAC	70A	.0110*	20:13 NCR
10A	NCAC	70A	.0112*	20:13 NCR
10A	NCAC	70A	.0114*	20:13 NCR
13	NCAC	15	.0705	20:13 NCR
15A	NCAC	10B	.0114*	20:10 NCR
15A	NCAC	10B	.0121	20:10 NCR
15A	NCAC	10B	.0124*	20:10 NCR
15A	NCAC	10B	.0202-.0203*	20:10 NCR
15A	NCAC	10B	.0206	20:10 NCR
15A	NCAC	10B	.0215	20:10 NCR
15A	NCAC	10B	.0221	20:10 NCR
15A	NCAC	10B	.0302*	20:10 NCR
15A	NCAC	10C	.0205*	20:10 NCR
15A	NCAC	10C	.0305*	20:10 NCR
15A	NCAC	10C	.0401-.0402*	20:10 NCR
15A	NCAC	10D	.0102-.0103*	20:10 NCR
15A	NCAC	10F	.0355*	20:12 NCR
15A	NCAC	10F	.0359	20:12 NCR
15A	NCAC	10F	.0372*	20:06 NCR
15A	NCAC	10J	.0102*	20:10 NCR
15A	NCAC	11	.0104	20:07 NCR
15A	NCAC	11	.0353*	20:07 NCR
15A	NCAC	11	.1604	20:07 NCR
15A	NCAC	18D	.0105*	20:12 NCR
15A	NCAC	18D	.0201*	20:12 NCR
15A	NCAC	18D	.0202	20:12 NCR
15A	NCAC	18D	.0301*	20:12 NCR
15A	NCAC	18D	.0302	20:12 NCR
15A	NCAC	18D	.0309	20:12 NCR
15A	NCAC	18D	.0405	20:12 NCR
15A	NCAC	18D	.0701*	20:12 NCR
17	NCAC	03C	.0108*	n/a G.S. 150B-1(d)(4)
17	NCAC	06B	.0107*	n/a G.S. 150B-1(d)(4)
17	NCAC	06B	.3206*	n/a G.S. 150B-1(d)(4)
17	NCAC	06B	.3902*	n/a G.S. 150B-1(d)(4)
17	NCAC	06D	.0102*	n/a G.S. 150B-1(d)(4)
17	NCAC	06D	.0201*	n/a G.S. 150B-1(d)(4)
17	NCAC	06D	.0210*	n/a G.S. 150B-1(d)(4)

21	NCAC	04B	.0103*	20:13 NCR
21	NCAC	04B	.0201*	20:13 NCR
21	NCAC	04B	.0301	20:13 NCR
21	NCAC	04B	.0401*	20:13 NCR
21	NCAC	04B	.0502*	20:13 NCR
21	NCAC	04B	.0602*	20:13 NCR
21	NCAC	04B	.0604-.0605*	20:13 NCR
21	NCAC	04B	.0606	20:13 NCR
21	NCAC	04B	.0607*	20:13 NCR
21	NCAC	04B	.0806*	20:13 NCR
21	NCAC	04B	.0819*	20:13 NCR
21	NCAC	12	.0302*	20:06 NCR
21	NCAC	12	.0506*	20:06 NCR
21	NCAC	32S	.0101-.0102*	20:09 NCR
21	NCAC	32S	.0104*	20:09 NCR
21	NCAC	36	.0120*	20:09 NCR
21	NCAC	36	.0232*	20:09 NCR
21	NCAC	50	.0301*	20:13 NCR
21	NCAC	50	.0512*	20:13 NCR
21	NCAC	50	.0515*	20:13 NCR
21	NCAC	50	.1401-.1402*	20:13 NCR
21	NCAC	66	.0301*	n/a G.S. 150B-21.5(a)(2)
23	NCAC	02C	.0503*	20:11 NCR
23	NCAC	02D	.0605*	20:11 NCR

TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES

10A NCAC 09 .2802 APPLICATION FOR A VOLUNTARY RATED LICENSE

(a) After a licensed child care center or home has been in operation for a minimum of six consecutive months, the procedures in this Rule shall apply to request an initial two-through five-star rated license or to request that a rating be changed to a two- through five-star rated license.

(b) The operator shall submit a completed application to the Division for a voluntary rated license on the form provided by the Division.

(c) An operator may apply for a star rating based on the total number of points achieved for each component of the voluntary rated license. In order to achieve a two- through five-star rating, for a three component license the minimum score achieved must be a least five points as follows:

TOTAL NUMBER OF POINTS	RATING
5 through 7	Two Stars
8 through 10	Three Stars
11 through 13	Four Stars
14 through 15	Five Stars

In order to achieve a two- through five-star rating, for a two component license the minimum score achieved must be a least four points as follows:

TOTAL NUMBER OF POINTS	RATING
4 through 6	Two Stars
7 through 9	Three Stars
10 through 12	Four Stars
13 through 15	Five Stars

(d) A Division representative shall assess the facility requesting a voluntary rated license to determine if all applicable requirements have been met to achieve the score for the

requested star rating. The assessment may include a review of Division records and site visits.

(e) The Division shall provide for Infant/Toddler Environment Rating Scale Revised edition, Early Childhood Environment Rating Scale - Revised edition, School-Age Care Environment Rating Scale, or Family Day Care Rating Scale assessments to be completed, as appropriate for the program, free of charge to operators requesting an initial three or more points for program standards.

(f) Upon completion of the Division's assessment:

- (1) If the assessment indicates all the applicable requirements to achieve the score for the requested rating have been met, the Division shall issue the rating.
- (2) If the assessment indicates all the applicable requirements to achieve the score for the requested rating are not met, the Division shall notify the operator of the requirements that were not met and the requested voluntary rating shall not be issued.
 - (A) Accept the rating for which the Division has found the operator to be eligible;
 - (B) Withdraw the request and reapply when the identified requirements to achieve the score for the requested rating have been met; or
 - (C) Appeal the denial of the requested rating as provided in G.S. 110-94.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Eff. April 1, 1999; Amended Eff. May 1, 2006.

10A NCAC 09 .2825 HOW AN OPERATOR MAY REQUEST OR APPEAL A CHANGE IN RATING

- (a) An operator may request a change in the star rating by following the procedures in Rule .2802 of this Section.
- (b) After an initial three- through five-star rating is issued, the Division shall provide for one evaluation of program standards using the environment rating scales referenced in Rule .2802(e) of this Section during each three year period thereafter at no cost to the operator. An operator may have extra rating scale assessments as referenced in Rule .2802(e) of this Section performed at his or her own expense in addition to the free one performed by the Division. The additional rating scale assessments shall be completed by individuals approved by the Division to perform them. Approval shall be based upon the individual's successful completion of training designated or authorized by the authors of the environment rating scales.
- (c) An operator may appeal the reduction of a star rating as provided in G.S. 110-94.

History Note: Authority G.S. 110-88(7); 110-90(4); 143B-168.3; Recodified from Rule .2810 Eff. May 1, 2006; Amended Eff. May 1, 2006.

10A NCAC 13B .5502 INDEPENDENT DONOR ADVOCATE TEAM

- (a) The facility shall appoint an Independent Donor Advocate Team (IDAT) whose sole purpose is to represent and ensure the well-being of the potential donor, making sure he or she is aware of the risks and benefits of donation and that the choice to donate is voluntary. The IDAT shall ensure the potential donor learns about the entire donation process. This would include the selection of recipients for the transplant, the procedures to be employed for both the donor and recipient, and possible outcomes. Sufficient time for the discussion, supplemented with written materials, must be allowed for comprehension and assimilation of the information about transplantation and the ramifications of donation. Written and verbal presentations shall be in language in accordance with the person's ability to understand.
- (b) The IDAT shall consist of a physician, a clinical transplant coordinator, and a social worker or qualified mental health professional as defined in Rule .5202(k) of this Subchapter. The physician shall be the leader of the IDAT. The IDAT members shall have experience in organ transplantation processes and programs and shall be able to act for the interests of the potential donor independent of any financial or facility influence. Based on the outcome of the evaluation of the potential donor pursuant to Rule .5504 of this Section, if the IDAT determines any potential donor is unsuitable for donation, it shall provide the reasons both verbally and in writing.
- (c) In order to ensure the well-being of the potential donor, the IDAT shall:
 - (1) Protect and represent the interests of the potential donor;
 - (2) Make it clear to the potential donor that the choice to donate is entirely his or hers;

- (3) Inform and discuss with the potential donor the medical, psychosocial and financial aspects related to the live donation;
- (4) Explain to the potential donor the evaluation process, what it means and his or her option to stop at any time;
- (5) Determine the intellectual and emotional ability of the potential donor to understand the legal and ethical aspects of informed choice;
- (6) Assess if the potential donor has understood the risks and the benefits and how they impact on his or her own core beliefs and values; and
- (7) Identify for the potential donor resources that will be available to provide continuous care during hospitalization and referrals in medicine, psychiatry or social work, which may be needed or required following discharge.

History Note: Authority G.S. 131E-75; 131E-79; 143B-165; Eff. May 1, 2006.

10A NCAC 13B .5503 INFORMED CHOICE

- (a) The potential donor must be free to make an informed independent decision, which has been termed informed choice. Informed choice addresses the decision process of the potential donor as he or she determines whether or not to donate. Informed choice has several aspects. First, the potential donor must know he or she has a choice, meaning he or she can freely decide either to donate or not to donate an organ. Second, the potential donor must be aware of both the risks and benefits of donation. The potential donor must be able to weigh the positive aspects of the donation as well as take into account the technical aspects such as the surgery, recovery, financial impact and any unexpected but potential consequences that may result such as a change in the patient's life, health, insurability, employment or emotional stability.
- (b) The person who consents to be a live organ donor shall be:
 - (1) Legally competent;
 - (2) Willing to donate;
 - (3) Free from coercion, including financial coercion, actual or implied;
 - (4) Medically suitable;
 - (5) Informed and able to express understanding of the risks and benefits of donation; and
 - (6) Informed of the risks, benefits and alternative treatment regimens available to the recipient.
- (c) A statement signed by the potential donor that his or her participation is completely voluntary and may be withdrawn at any time shall be placed in the medical record.
- (d) Understanding
 - (1) The potential donor shall be able to demonstrate that he or she understands the essential elements of the donation process with emphasis on the risks associated with the procedure;
 - (2) With the potential donor's permission, the donor's designee, family or next of kin shall be given the opportunity to openly discuss the

- donor's concerns in a safe and non-threatening environment; and
- (3) The potential donor shall understand, agree to, and commit to postoperative follow-up and testing by the facility performing the surgical removal of the organ and subsequent organ transplant.
- (e) Disclosure
- (1) The donor surgical team and the IDAT shall disclose any facility affiliations to the potential donor;
- (2) The potential donor shall have a period of reflection appropriate to the acuity of the clinical condition of the recipient and reaffirmation of the decision to donate subsequent to the completion of the medical work-up and final approval to proceed by the IDAT. After the period of reflection the potential donor may sign the consent for the donation procedure;
- (3) Non-English speaking candidates and hearing impaired candidates must be provided with a non-family interpreter who understands the donor's language and culture;
- (4) A member of the IDAT shall witness the potential donor signing the consent documents for removal of the donor organ; and
- (5) The overall donation process and experience shall be explained to the potential donor and shall be provided in writing to include:
- (A) Donor evaluation procedure;
- (B) Surgical procedure;
- (C) Recuperative period;
- (D) Short-term and long term follow-up care;
- (E) Alternative donation and transplant procedure;
- (F) Potential psychological benefits to donor;
- (G) Transplant facility and surgeon-specific statistics of donor and recipient outcomes;
- (H) Confidentiality of the donor's information and decisions;
- (I) Donor's ability to opt out at any point in the process;
- (J) Information about how the facility performing the transplant will attempt to follow the health of the donor; and
- (K) Need for the donor to review potential personal insurability for future insurance coverage.
- (f) The IDAT shall make the potential donor aware of the following risk factors:
- (1) Physical
- (A) Potential for surgical complications including risk of donor death;
- (B) Potential for organ failure and the need for future organ transplant for the donor;
- (C) Potential for other medical complications including long-term complications and complications currently unforeseen;
- (D) Scars;
- (E) Pain;
- (F) Fatigue; and
- (G) Abdominal or bowel symptoms such as bloating and nausea.
- (2) Psychosocial
- (A) Potential for problems with body image;
- (B) Possibility of transplant recipient death;
- (C) Possibility of transplant recipient rejection and need for re-transplantation;
- (D) Possibility of recurrent disease in a transplant recipient;
- (E) Possibility of post surgery adjustment problems;
- (F) Impact on the donor's family or next of kin;
- (G) Impact on the transplant recipient's family or next of kin; and
- (H) Potential impact of donation on the donor's lifestyle.
- (3) Financial
- (A) Out of pocket expenses;
- (B) Child care costs;
- (C) Possible loss of employment;
- (D) Potential impact on the ability to obtain future employment; and
- (E) Potential impact on the ability to obtain or afford health and life insurance.
- (g) The potential donor shall provide assurance and consent that the following areas have been addressed:
- (1) That there is no monetary profit to the potential donor. Coverage for expenses incurred as a result of the organ donation is not considered monetary profit;
- (2) That family members or others did not coerce the potential donor into making his or her decision;
- (3) That the potential donor has been provided with a general statement of unsuitability for donation if requested. Medical information regarding the potential donor shall not be falsified to provide the donor with an excuse to decline donation;
- (4) That the potential donor is intellectually and emotionally capable of participation in a discussion of potential risks and benefits;
- (5) That the potential donor has been provided adequate information to ensure his or her understanding regarding the risks of the donation;
- (6) That the potential donor has been educated regarding the recipient's options for organs

from deceased persons, including risks and outcomes; and

- (7) That the potential donor understands that he or she may decline to donate at any time.

(h) Documentation

- (1) A medical record, separate and distinct from the transplant recipient's record, shall be maintained to protect donor confidentiality; and
- (2) The informed choice process and evaluation protocol shall be documented and placed in the potential donor's medical record.

(i) Decision to Donate. Once the IDAT determines the suitability of the potential donor the IDAT shall discuss with the potential donor's surgical team and transplant team its decision prior to its presentation to the potential donor. If the potential donor wishes to donate, but the IDAT does not agree, the IDAT's opposition shall be so noted in a report to the donor surgeon, who shall document reasons for proceeding against the IDAT advice. The reason why the IDAT has objections shall be explained to the potential donor. For example, the potential donor may not have the ability to understand the information provided to him or her or the donor may be unable to integrate the degree of risk pertinent to his or her situation or there may be a lack of balance between the risks to the potential donor and potential benefits to the transplant recipient. Even if the potential donor is willing to donate his or her organ, the final review and decision whether or not to proceed with the donation rests with the donor surgical team and transplant team.

(j) In cases involving living liver donation, prior to reaching a decision to donate the potential donor shall be provided in writing the U.S. Department of Health and Human Services Advisory Committee on Organ Transplantation (ACOT) recommendations entitled "Living Liver Donor Initial Consent for Evaluation" which is hereby incorporated by reference with all subsequent amendments. The ACOT recommendations can be obtained free of charge via the internet at: <http://www.organdonor.gov/acotreccs.html>. The items contained in the ACOT recommendations must be explained to the potential donor in language and terms which he or she can understand and then be signed by the donor and the signature witnessed. Subsequent to this, if all the facts show that the potential donor is, in fact, in all respects a viable potential donor, then he or she shall execute the ACOT recommended form entitled "Living Liver Donor Informed Consent for Surgery" which is hereby incorporated by reference with all subsequent amendments. In addition, this form shall comply with G.S. 90-21.13 Informed Consent which is hereby incorporated by reference with all subsequent amendments.

History Note: Authority G.S. 131E-75; 131E-79; 143B-165; Eff. May 1, 2006.

10A NCAC 13B .5504 EVALUATION PROTOCOL FOR LIVING ORGAN DONORS

Hospitals shall complete the following evaluation protocols prior to living organ donation:

- (1) The facility shall confirm the potential donor's ABO blood type.

(2) Only individuals 18 years of age or older shall be considered for living organ donation. The facility shall complete a screening interview with the potential donor which confirms the donor's age, height, weight, demographic information, medical and surgical history, medications, drug or alcohol history, smoking history, and a family or social history. Insurance issues (health and life) shall also be discussed with the potential donor and an attempt shall be made to answer any questions asked by the donor. Written information on the living donor process shall be made available to the potential donor.

(3) The donor surgical team shall determine whether the potential donor shall be excluded based on the medical information or family history: for example, exclusionary criteria may include the presence of diabetes, uncontrolled hypertension, liver, pulmonary or cardiac disease, renal dysfunction or high Body Mass Index (BMI).

(4) An IDAT shall be assigned for the potential donor pursuant to Rule .5502(c) of this Section. The IDAT leader shall not be a physician who is the primary physician of the potential transplant recipient.

(5) The IDAT leader shall conduct a medical evaluation of the potential donor. The medical evaluation shall include a full and frank discussion of the risks associated with the evaluation tests with the potential donor and the donor's chosen designee. If the potential donor wishes to proceed, laboratory and diagnostic tests shall be ordered as necessary.

(6) An IDAT member shall conduct a psychosocial evaluation of the potential donor. The IDAT member shall also discuss financial considerations.

(7) The IDAT shall review the laboratory and diagnostic test results, as well as psychosocial evaluation and discuss them with the donor to decide whether to move forward with the potential donor's evaluation.

(8) The donor surgeon shall evaluate the mortality and morbidity risks associated with donation and disclose those risks to the potential donor with adequate time for any questions to be answered in detail. The donor's designee shall also be present at this appointment.

(9) The IDAT shall perform a final review and makes its recommendation as set out in Rule .5503(i) of this Section.

(10) The hospital shall schedule an appointment for pre-operative screening with the potential donor after the entire process of evaluation is complete. An informed consent as required in Rule .4605(c)(2) of this Subchapter is necessary for the donation and surgical procedure and shall be completed by this time.

In addition, where applicable, the potential donor shall be given ample time for autologous blood donation through the American Red Cross.

History Note: Authority G.S. 131E-75; 131E-79; 143B-165; Eff. May 1, 2006.

10A NCAC 220 .0409 THERAPEUTIC LEAVE

- (a) Each Medicaid eligible patient occupying a skilled nursing (SNF) or intermediate care (ICF or ICF-MR) bed shall be entitled to take therapeutic leave in accordance with G.S. 108-A-62.
(b) The taking of such leave must be for therapeutic purposes only, and must be ordered by the patient's attending physician.
(c) The therapeutic justification for such absence shall be subject to review by the state or its agent during scheduled on-site medical reviews.
(d) Facilities must reserve a therapeutically absent patient's bed for him and shall not derive any Medicaid revenue for that patient other than the reimbursement for that bed during the period of absence.
(e) A patient's 12-month entitlement period shall begin on January 1 and continue through December 31 of a calendar year.
(f) Facilities must keep a cumulative record of therapeutic leave days taken by each patient for reference and audit purposes.
(g) The official record of therapeutic leave days taken for each patient shall be maintained by the state or its agent.
(h) Entitlement to therapeutic leave is not applicable in cases when the therapeutic leave is for the purpose of receiving either inpatient or nursing services provided either elsewhere or at a different level of care in the facility of current residence when such services are or will be paid for by Medicaid.
(i) Transportation from a facility to the site of therapeutic leave is not considered to be an emergency; therefore, ambulance service for this purpose shall not be reimbursed by Medicaid.
(j) Entitlement to Therapeutic Leave is not applicable in the case of Medicaid Adult Care Home Personal Care Services (ACH-PCS).

History Note: Authority G.S. 108A-25(b); 108A-62; Eff. September 4, 1979; Amended Eff. May 1, 2006; August 1, 1991; April 1, 1987.

10A NCAC 70A .0102 CONFIDENTIALITY: CENTRAL

REGISTRY: RESPONSIBLE INDIVIDUALS LIST: ABUSE AND NEGLECT CASES

(a) Information submitted by county departments of social services to the central registry of abuse, neglect and dependency cases is confidential except as otherwise required by law. Non-identifying statistical information and general information about the scope, nature and extent of the child abuse, neglect and dependency problem in North Carolina is not subject to this Rule of confidentiality.

(b) Access to the central registry of child abuse, neglect and dependency cases is restricted to:

- (1) staff of the Division of Social Services and staff of the Office of the Secretary of the Department of Health and Human Services who require access in the course of performing duties pertinent to management, maintenance and evaluation of the central registry and evaluation of and research into abuse and neglect cases reported in accordance with Chapter 7B, Article 3.
(2) individuals who may receive approval to conduct studies of cases in the central registry. Such approval must be requested in writing to the Director of the Division of Social Services.
(A) an explanation of how the findings of the study have potential for expanding knowledge and improving professional practices in the area of prevention, identification and treatment of child abuse and neglect;
(B) a description of how the study will be conducted and how the findings will be used;
(C) a presentation of the individual's credentials in the area of critical investigation; and
(D) a description of how the individual will safeguard information.
(3) the county director in order to identify whether a child who is the subject of an abuse, neglect or dependency investigation has been previously reported as abused or neglected, or whether a child is a member of a family in which a child fatality due to suspected abuse or neglect has occurred in any county in the state. Information from the central registry

shall be shared with law enforcement or licensed physicians or licensed physician extenders when needed to assist the county director in facilitating the provision of child protective services to assure that the child and the child's family shall receive protective services as quickly as possible so that such child can be protected and further abuse, neglect or dependency prevented. Information shared from the central registry for child abuse and neglect shall be limited to:

- (A) the child's name, date of birth, sex, race;
- (B) the county that investigated the report;
- (C) the type of maltreatment that was reported;
- (D) the case decision;
- (E) the date of the case decision;
- (F) the type of maltreatment found; and
- (G) the relationship of the perpetrator to the victim child.

- (4) the Chief Medical Examiner's office and law enforcement in the event of a child fatality and there is a need to determine if their investigation or evaluation should consider child abuse, neglect or dependency as a factor in the death. Information shall be limited to that outlined in Subparagraphs (b)(3)(A) through (G) of this Rule.

(c) Information submitted by county departments of social services to the Responsible Individuals List of abuse and serious neglect cases is confidential except as otherwise required by law. The Responsible Individuals List shall identify parents, guardians, caretakers or custodians who have been identified as responsible individuals in substantiated cases of abuse or serious neglect. Information from this list shall be used exclusively for the purpose of determining current or prospective employability or fitness to care for or adopt children.

(d) Requests for information from the Responsible Individuals List shall be in writing and shall include a last name, first name, middle initial, date of birth, gender and social security number of the individual to be checked.

(e) Authorized persons, as defined in 10A NCAC 70A .0104(b)(1), must inform responsible individuals if the reason they are being denied is due to information obtained from the Responsible Individuals List.

History Note: Authority G.S. 7B-311; 143B-153; Eff. February 1, 1976; Readopted October 31, 1977; Amended Eff. June 1, 1990; January 1, 1983; Temporary Amendment Eff. July 10, 1991, For a Period of 180 Days to Expire on January 5, 1992; Amended Eff. May 1, 2006; July 1, 1993; December 1, 1991.

10A NCAC 70A .0104 DEFINITIONS

(a) Definitions relating to child abuse, neglect and dependency are found in G.S. 7B-101.

(b) Unless otherwise noted, the following definitions have the following meaning:

- (1) "Authorized persons" means persons authorized to receive data from the Responsible Individuals List. Individuals authorized to receive information from the Responsible Individuals List are:
 - (A) individuals whose job functions include administration of the Responsible Individuals List and provision of information from the List to other authorized persons, as identified by the Director of the North Carolina Division of Social Services;
 - (B) individuals as identified by the Directors of county Departments of Social Services;
 - (C) individuals as identified by the Director of the Division of Child Development for child caring institutions;
 - (D) any Executive Director or program administrator of a child placing agency licensed by the State of North Carolina or another state or that state's agency;
 - (E) individuals as identified by the Director of the Division of Facility Services for group home facilities;
 - (F) any Executive Director or program administrator of other providers of foster care, child care and adoption services determined by the Department of Health and Human Services;
 - (G) the Administrator for the State Guardian Ad Litem program; and
 - (H) any Executive Director or program administrator of other private or non-profit agencies that care for children.
- (2) "Personal written notice" means delivery in person of the case decision to the responsible individual by the social worker.
- (3) "Serious neglect" means conduct, behavior, or inaction that evidences a disregard of consequences of such magnitude as to constitute an unequivocal danger to a child's health, welfare or safety.

History Note: Authority G.S. 7B-311(d); G.S. 143B-153; Eff. January 1, 1980; Amended Eff. May 1, 2006; April 1, 2003; July 1, 1993; June 1, 1990; November 1, 1985.

10A NCAC 70A .0107 WHEN ABUSE, NEGLECT OR DEPENDENCY IS FOUND

(a) When an investigation reveals the presence of abuse, neglect, or dependency, the social worker who conducted the assessment shall make every effort to provide personal written notice to the following persons or agencies:

- (1) any responsible individual who was alleged to have abused or seriously neglected the child or children;
- (2) any parent or other individual with whom the child or children resided at the time the county director initiated the investigation; and
- (3) any agency with whom the court has vested legal custody.

(b) Personal written notice may be made by a social worker other than the social worker who conducted the assessment under G.S. 7B-302(a), if the social worker who conducted the assessment is unavailable. If the county department of social services is unable to provide the personal written notice to the responsible individual, there shall be documentation of efforts made to deliver the personal written notice to the responsible individual in the case record. In addition to fulfilling the requirements of G.S. 7B-320(b), the personal written notice shall also include:

- (1) a statement informing the responsible individual that employers may access the Responsible Individuals List to determine suitability for employment; and
- (2) a statement informing the responsible individual that the timeframes to request an expunction from the District Attorney or the District Court still apply, even if no notice is received from the Director after the Director has been requested to expunge.

(c) The county director shall complete structured decision making assessments of every family in which an investigation of abuse, neglect or dependency is conducted. The assessment findings shall be used to evaluate the need for services and to develop a case plan.

(d) In all cases in which abuse, neglect, or dependency is found, the county director shall determine whether protective services are needed and, if so, shall develop, implement, and oversee an intervention plan to ensure that there is adequate care for the victim child or children. The case plan shall:

- (1) be based on the findings of the structured decision making assessments;
- (2) contain goals representing the desired outcome toward which all case activities shall be directed;
- (3) contain objectives that:
 - (A) describe specific desired outcomes;
 - (B) are measurable;
 - (C) identify necessary behavior changes;
 - (D) are based on an assessment of the specific needs of the child or children and family;
 - (E) are time-limited; and
 - (F) are mutually accepted by the county director and the client.
- (4) specify all the activities needed to achieve each stated objective;
- (5) have stated consequences that will result from either successfully following the plan or not meeting the goals and objectives specified in the plan; and

- (6) shall include petitioning for the removal of the child or children from the home and placing the child or children in appropriate care when protection cannot be initiated or continued in the child's or children's own home.

(e) When an investigation leads a county director to find evidence that a child may have been abused or may have been physically harmed in violation of a criminal statute by a person other than the child's parent, guardian, custodian, or caretaker, the county director shall follow all procedures outlined in G.S. 7B-307 in making reports to the prosecutor and appropriate law enforcement agencies. The report shall include:

- (1) the name and address of the child, of the parents or caretakers with whom the child lives, and of the alleged perpetrator;
- (2) whether the abuse was physical, sexual or emotional;
- (3) the dates that the investigation was initiated and that the evidence of abuse was found;
- (4) whether law enforcement has been notified and the date of the notification;
- (5) what evidence of abuse was found; and
- (6) what plan to protect the child has been developed and what is being done to implement it.

(f) When an investigation reveals the presence of abuse, neglect, or dependency in an institution, the county director shall complete the following steps:

- (1) the child's or children's legal custodian shall be informed;
- (2) an intervention plan for the care and protection of the child or children shall be developed in cooperation with the institution and the legal custodian; and
- (3) when abuse is found, a written report shall be made to the prosecutor in the county where the institution is located.

History Note: Authority G.S. 7B-302; 7B-307; 7B-311; 7B-320(d); 143B-153; Eff. January 1, 1980; Amended Eff. May 1, 2006; April 1, 2003; February 1, 1995; September 1, 1994; July 1, 1993; June 1, 1990.

10A NCAC 70A .0110 ASSUMING TEMPORARY CUSTODY OF A CHILD

(a) A county department of social services worker may take a child into temporary custody without a court order and provide personal care and supervision for up to 12 hours, provided:

- (1) the county director concludes that there are reasonable grounds for believing the child is abused, neglected, or dependent and that he would be injured or could not be taken into custody if it were first necessary to obtain a court order. The county director shall document in the protective services case record as soon as possible the following:
 - (A) the grounds upon which the decision was made to take temporary custody without a court order; and

(B) information specific to successful or unsuccessful attempts to notify the child's parents, guardian or custodian that the child has been taken into temporary custody and that the parent, guardian or custodian has a right to be present with the child pending a determination of the need for non-secure custody.

(2) the county director files a petition for an immediate non-secure custody order unless he decides that temporary custody is no longer necessary and releases the child to his parents, guardian or custodian. To preserve a parent, guardian or custodian's right to due process, the county director shall not make an assessment case decision until after the court has adjudicated the petition.

(b) A county director of social services shall file all petitions which allege that a child is abused, neglected or dependent except those petitions resulting from review by the prosecutor.

History Note: Authority G.S. 7B-311; 7B- 403; 7B-404; 7B-500; 7B-501; 143B-153; Eff. January 1, 1980; Amended Eff. May 1, 2006.

10A NCAC 70A .0112 CASE RECORDS FOR PROTECTIVE SERVICES

(a) The county director shall maintain a separate case record or a separate section in a case record on a child for whom protective services are initiated or who is placed in the custody of the county department of social services by the court. The case record documentation shall be kept confidential. Information from the case record shall be released only in accordance with Chapter 7B, Subchapter I, of the North Carolina General Statutes and the Rules of this Subchapter.

(b) The protective services case record shall document the investigation. In addition, when applicable, the protective services case record shall include:

- (1) summary documentation of the results of the check of the central registry of abused, neglected, and dependent children whenever a report is accepted for investigation unless the agency has conducted such a check in the 60 days prior to the new report, or the agency is providing ongoing children's services to the family;
- (2) copies of all comprehensive family assessments, including safety assessments, risk assessments, assessments of family strengths and needs, re-assessments of family strengths and needs and assessments of the child's and family's progress or lack of progress in completing the items documented in the Family Services Case Plan;
- (3) documentation of any safety response plan that was developed to ensure the child's safety during the course of the investigation;

- (4) documentation of the case decision, the basis for the case decision, and the names of those participating in the decision;
- (5) documentation of notifications to parents, caretakers, the alleged perpetrator, or others specified in Rules .0107, .0108, .0109 and .0114 of this Section regarding the case decision;
- (6) documentation of contacts with and services provided to the family, current within seven days of service delivery. Documentation may be taped for transcription, typed or legibly handwritten, and shall include information about the family's response to and use of services, as well as any change in the assessment of safety or risk to the children;
- (7) the Family Services Case Plan developed at the beginning of the treatment phase, with any subsequent revisions to the plan;
- (8) documentation of reviews of the Family Services Case Plan, current within three months, which reflect an assessment of the plan's effectiveness, the family's use of services, and the need for continued agency involvement;
- (9) copies of the following:
 - (A) Intake/Screening Form provided by the Division for all reports concerning the family whether these reports have been received while a case was active or while a case was closed;
 - (B) notices to the reporter;
 - (C) requests made of other county departments of social services for information relating to prior contacts by that agency with the family, when applicable; and
 - (D) DSS 5104, Application/Report to the Central Registry.
- (10) copies of the following reports or documents, when applicable:
 - (A) petitions relating to the legal or physical custody of children while receiving child protective services;
 - (B) reports to the court;
 - (C) reports or notifications to prosecutors;
 - (D) reports to law enforcement agencies;
 - (E) Child Medical Evaluations and Child Mental Health Evaluation requests, consents, and reports;
 - (F) any other medical, psychological, or psychiatric reports;
 - (G) notifications to licensing agencies; and
 - (H) any other reports, notifications, or documents related to the provision of child protective services.
- (11) summaries of the following information, when not otherwise documented in the case record:

- (A) at the time treatment services begin, a summary of the reasons services are being provided;
- (B) when filing a petition for custody, the reasons custody is being sought; and
- (C) at the time treatment services are terminated, a summary of the basis for the decision.

History Note: Authority G.S. 7B-302; 7B-306; 7B-311; 7B-312; 7B-313; 7B-314; 7B-315; 7B-2901; 143B-153; Eff. January 1, 1980; Amended Eff. May 1, 2006; April 1, 2003; September 1, 1994; January 1, 1983.

10A NCAC 70A .0114 EXPUNCTION PROCESS

- (a) Expunction shall be in accordance with G.S. 7B, Article 3A.
- (b) During the expunction process, the county Department of Social Services shall continue to provide services to ensure the safety of the children identified as abused or seriously neglected. If the county Department of Social Services is unable to ensure safety, a juvenile petition shall be filed and legal intervention shall be sought.
- (c) Once an expunction request by the Director pursuant to G.S. 7B-320, the District Attorney pursuant to G.S. 7B-322, or the District Court pursuant to G.S. 7B-323, has been completed, the Director shall make written notice to the Department of Health and Human Services, directing the Department of Health and Human Services to modify or expunge the Responsible Individuals List, no later than five working days after the decision was made.

History Note: Authority G.S. 7B-311(d); 143B-153; Eff. May 1, 2006.

TITLE 15A – DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES

15A NCAC 10B .0114 DOG TRAINING AND FIELD TRIALS

- (a) Except as provided in Paragraphs (b) and (c) of this Rule, each person engaged in training or running a dog or dogs and each active participant in a field trial shall have obtained a North Carolina hunting license. The term "active participant" as used herein includes each person who owns or handles dogs, carries a firearm, or is a member of an organized group engaged in the conduct of a field trial, but does not include a person who is observing a field trial incidentally or who has stopped to witness a part of it.
- (b) A person serving as judge of a commission-sanctioned field trial and any nonresident participating therein may do so without having a North Carolina license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. A "commission-sanctioned" field trial is one which, pursuant to a written request from the sponsoring organization, has been authorized in writing and scheduled for occurrence by an authorized representative of the Wildlife Resources Commission.

(c) Persons without license may participate in commission-sanctioned field trials for beagles conducted without firearms on private field trial areas which are fenced in accordance with G.S. 113-276(k).

(d) Except as allowed by regulations pertaining to authorized field trials, it is unlawful to carry firearms, axes, saws or climbing irons while training or running dogs during closed season on game animals.

(e) Except as authorized in this Paragraph, no firearms or other hunting weapons may shall be possessed or used during any field trial for foxhounds or any field trial conducted during the closed hunting season for any other species of wildlife serving as the quarry or prey. On a commission-sanctioned field trial for retrievers or bird dogs, shotguns containing live ammunition or firearms using only blank ammunition may be used only when the application for and the authorization of the field trial so provide. No wild waterfowl, quail or pheasant shall be used in field trials when shotguns with live ammunition are permitted. All waterfowl, quail and pheasants so used shall be obtained from a licensed game bird propagator. Each specimen of waterfowl so obtained shall be marked by one of the methods provided by 50 C.F.R. 21.13. Each pheasant or quail so obtained shall be banded by the propagator prior to delivery with a leg band that is imprinted with the number of his or her propagation license. The purchaser of such birds shall obtain a copy of the receipt from the propagator showing the date and the number and species of birds purchased. The copy of the receipt shall be available for inspection by any authorized agent of the Wildlife Resources Commission during the time and at the place where the trial is being held.

(f) Applications for authorization of a field trial shall be submitted in writing to a Wildlife Enforcement Officer at least 30 days prior to the scheduled event.

(g) Pursuant to G.S. 113-291.1(d), hunters may train dogs using shotguns with shot of number 4 size or smaller during the closed season using domestically raised waterfowl and domestically raised game birds. Only nontoxic shot shall be used when training dogs using domestically raised waterfowl. All domestically raised waterfowl shall be individually tagged on one leg with a seamless band stamped with the number of the propagation license for the facility from which the domestically raised waterfowl originated. All other domestically raised game birds shall be individually tagged on one leg with a band indicating the propagation license number for the facility from which the birds originated.

History Note: Authority G.S. 113-134; 113-273; 113-276; 113-291.1; 113-291.5; 50 C.F.R. 21.13; Eff. February 1, 1976; Amended Eff. May 1, 2006; July 1, 1995; July 1, 1994; July 1, 1991; May 1, 1990.

15A NCAC 10B .0124 IMPORTATION OF ANIMAL PARTS

(a) No cervid carcass or carcass part from any state or province where Chronic Wasting Disease occurs as identified by the Chronic Wasting Disease Alliance on the Internet at <http://www.cwd-info.org/index.php/fuseaction/about.map> shall be imported, transported, or possessed in North Carolina except as provided herein:

- (1) meat that is cut and wrapped;
- (2) quarters or other portions of meat with no part of the spinal column or head attached;
- (3) meat that has been boned out;
- (4) caped hides;
- (5) cleaned skull plates;
- (6) antlers;
- (7) cleaned teeth;
- (8) finished taxidermy products.

(b) Pursuant to G.S. 113-291.2, any cervid carcass, carcass part, or container of processed and packaged cervid meat imported as in (a) above from a state or province where Chronic Wasting Disease is known to occur as identified by the Chronic Wasting Disease Alliance on the Internet at <http://www.cwd-info.org/index.php/fuseaction/about.map> shall be tagged identifying:

- (1) Hunter's name and address;
- (2) State or province of origin of any cervid carcass, carcass part, or container of processed and packaged cervid meat;
- (3) Date the cervid was killed and the hunter's hunting license number from the state or province of origin of any cervid carcass, carcass part, or container of processed and packaged cervid meat; and
- (4) Destination of the cervid carcass, carcass part or container of processed and packaged cervid meat within North Carolina.

History Note: Authority G.S. 113-291.2; Eff. May 1, 2006.

15A NCAC 10B .0202 BEAR

(a) Open Seasons for bear shall be from the:

- (1) Monday on or nearest October 15 to the Saturday before Thanksgiving and the third Monday after Thanksgiving to January 1 in and west of the boundary formed by I-77 from the Virginia State line to the intersection with I-40, continuing along I-40 west until the intersection of NC 18 and NC 18 to the South Carolina State line.
- (2) Second Monday in November to the following Saturday and the third Monday after Thanksgiving to the following Wednesday in all of Hertford County and Martin counties; and in the following parts of counties:
Halifax: that part east of US 301.
Northampton: that part east of US 301.
- (3) Second Monday in November to January 1 in all of Bladen, Carteret, Duplin, New Hanover, Onslow, Pender and Sampson counties; and in the following parts of counties:
Cumberland: that part south of NC 24 and east of the Cape Fear River.
- (4) First Monday in December to the third Saturday thereafter in Brunswick and Columbus counties.
- (5) Second Monday in November to the following Saturday and the third Monday after

Thanksgiving to the fifth Saturday after Thanksgiving in all of Beaufort, Craven, Dare, Hyde, Jones, Pamlico, Tyrrell, and Washington counties.

- (6) Saturday preceding the second Monday in November to the following Saturday and the third Monday after Thanksgiving to the fifth Saturday after Thanksgiving in Bertie, Camden, Chowan, Currituck, Gates and Pasquotank counties.

(b) No Open Season. There is no open season in any area not included in Paragraph (a) of this Rule or in those parts of counties included in the following posted bear sanctuaries:

- Avery, Burke and Caldwell counties--Daniel Boone bear sanctuary
- Beaufort, Bertie and Washington counties--Bachelor Bay bear sanctuary
- Beaufort and Pamlico counties--Gum Swamp bear sanctuary
- Bladen County--Suggs Mill Pond bear sanctuary
- Brunswick County--Green Swamp bear sanctuary
- Buncombe, Haywood, Henderson and Transylvania counties--Pisgah bear sanctuary
- Carteret, Craven and Jones counties--Croatan bear sanctuary
- Clay County--Fires Creek bear sanctuary
- Columbus County--Columbus County bear sanctuary
- Currituck County--North River bear sanctuary
- Dare County--Bombing Range bear sanctuary except by permit only
- Haywood County--Harmon Den bear sanctuary
- Haywood County--Sherwood bear sanctuary
- Hyde County--Gull Rock bear sanctuary
- Hyde County--Pungo River bear sanctuary
- Jackson County--Panthertown-Bonas Defeat bear sanctuary
- Macon County--Standing Indian bear sanctuary
- Macon County--Wayah bear sanctuary
- Madison County--Rich Mountain bear sanctuary
- McDowell and Yancey counties--Mt. Mitchell bear sanctuary except by permit only.
- Mitchell and Yancey counties--Flat Top bear sanctuary
- Wilkes County--Thurmond Chatham bear sanctuary

(c) Bag limits shall be:

- (1) daily, one;
- (2) possession, one;
- (3) season, one.

(d) Kill Reports. The carcass of each bear shall be tagged and the kill reported as provided by 15A NCAC 10B .0113.

History Note: Authority G.S. 113-134; 113-291.2; 113-291.7; 113-305;

Eff. February 1, 1976;
Amended Eff. July 1, 1998; September 1, 1995; July 1, 1995;
July 1, 1994; April 1, 1992;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. August 1, 2002;
Temporary Amendment Eff. September 1, 2003;
Temporary Amendment Expired Eff. December 27, 2003;
Amended Eff. May 1, 2006; June 1, 2005.

15A NCAC 10B .0203 DEER (WHITE-TAILED)

(a) Closed Season. All counties and parts of counties not listed under the open seasons in Paragraph (b) in this Rule shall be closed to deer hunting.

(b) Open Seasons (All Lawful Weapons)

(1) Deer With Visible Antlers. Deer with antlers or spikes protruding through the skin, as distinguished from knobs or buttons covered by skin or velvet, may be taken during the following seasons:

(A) Saturday on or nearest October 15 through January 1 in all of Beaufort, Bertie, Bladen, Brunswick, Camden, Carteret, Chowan, Columbus*, Craven, Currituck, Dare, Duplin, Edgecombe, Franklin, Gates, Greene, Halifax, Harnett, Hertford, Hoke, Hyde, Johnston, Jones, Lenoir, Martin, Nash, New Hanover, Northampton, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Pitt, Richmond**, Robeson, Sampson, Scotland**, Tyrrell, Vance, Wake, Warren, Washington, Wayne, and Wilson counties, and the following parts of counties:

Cumberland: All of the county except that part east of US 401, north of NC 24, and west of I-95;

Moore**: All of the county except that part north of NC 211 and west of US 1;

*Unlawful to hunt or kill deer in Lake Waccamaw or within 50 yards of its shoreline.

**Refer to 15A NCAC 10D .0103(f) for seasons on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

(B) Saturday before Thanksgiving through the fourth Saturday after Thanksgiving Day in all Alexander, Alleghany, Ashe, Catawba, Davie, Forsyth, Gaston, Iredell, Lincoln, Stokes, Surry, Watauga, Wilkes, and Yadkin counties.

(C) Monday of Thanksgiving week through the third Saturday after Thanksgiving Day in all of Avery,

Buncombe, Burke, Caldwell, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, Macon, Madison, McDowell, Mitchell, Polk, Swain, Transylvania, and Yancey counties.

(D) Two Saturdays before Thanksgiving through January 1 in all of Alamance, Anson, Cabarrus, Caswell, Chatham, Davidson, Durham, Granville, Guilford, Lee, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Stanly, and Union counties, and in the following parts of counties:

Cumberland: That part east of US 401, north of NC 24 and west of I-95; Moore: That part north of NC 211 and west of US 1;

(E) Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck County known as the Mackay Island National Wildlife Refuge;

(F) Monday of Thanksgiving week through the fifth Saturday after Thanksgiving Day in all of Cleveland and Rutherford counties, except for South Mountain Game Land.

(2) Deer of Either Sex. Except on Game Lands, deer of either sex may be taken during the open seasons and in the counties and portions of counties listed in this Subparagraph (Refer to 15A NCAC 10D .0103 for either sex seasons on Game Lands):

(A) The open either-sex deer hunting dates established by the U.S. Fish and Wildlife Service during the period from the Saturday on or nearest September 10 through January 1 in those parts of Camden, Gates and Pasquotank counties known as the Dismal Swamp National Wildlife Refuge, in those parts of Hyde, Tyrrell and Washington counties known as the Pocosin Lakes National Wildlife Refuge, in those parts of Anson and Richmond counties known as the Pee Dee National Wildlife Refuge, and in that part of Currituck

- County known as the Mackay Island National Wildlife Refuge.
- (B) The open either-sex deer hunting dates established by the appropriate military commands during the period from Saturday on or nearest October 15 through January 1 in that part of Brunswick County known as the Sunny Point Military Ocean Terminal, in that part of Craven County known and marked as Cherry Point Marine Base, in that part of Onslow County known and marked as the Camp Lejeune Marine Base, on Fort Bragg Military Reservation, and on Camp Mackall Military Reservation.
- (C) Youth either sex deer hunts. First Saturday in October for youth either sex deer hunting by permit only on a portion of Belews Creek Steam Station in Stokes County designated by agents of the Commission and the third Saturday in October for youth either-sex deer hunting by permit only on Mountain Island State Forest in Lincoln and Gaston counties; and the second Saturday in November for youth either-sex deer hunting by permit only on apportion of Warrior Creek located on W. Kerr Scott Reservoir, Wilkes County designated by agents of the Commission.
- (D) The last open day of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Buncombe, Haywood, Henderson, Madison and Transylvania counties and the following parts of counties:
 Avery: That part south of the Blue Ridge Parkway;
 Dare, except the Outer Banks north of Whalebone;
 Scotland: That part south of US 74; and
 Yancey: That part south of US 19 and US 19E.
- (E) The last six open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Burke, Caldwell, Catawba, Gaston, Lincoln, McDowell, Mitchell, Polk and Watauga and the following parts of counties:
 Avery: That part north of the Blue Ridge Parkway; and
 Yancey: That part north of US 19 and US 19E.
- (F) The first six open days and the last six open days of the Deer with Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Carteret, Cleveland, Hoke, Richmond, Robeson, Rutherford, counties and in the following parts of counties:
 Moore: All of the county except that part north of NC 211 and west of US 1; and
 Scotland: That part north of US 74.
- (G) All the open days of the Deer With Visible Antlers season described in Subparagraph (b)(1) of this Rule in all of Alamance, Alexander, Alleghany, Anson, Ashe, Beaufort, Bertie, Bladen, Brunswick, Cabarrus, Camden, Caswell, Chatham, Chowan, Columbus, Cumberland, Currituck, Craven, Davidson, Davie, Duplin, Durham, Edgecombe, Forsyth, Franklin, Gates, Granville, Greene, Guilford, Halifax, Harnett, Hertford, Hyde, Iredell, Johnston, Jones, Lee, Lenoir, Martin, Mecklenburg, Montgomery, Nash, New Hanover, Northampton, Onslow, Orange, Pamlico, Pasquotank, Pender, Perquimans, Person, Pitt, Randolph, Rockingham, Rowan, Sampson, Stanly, Stokes, Surry, Tyrrell, Union, Vance, Wake, Warren, Washington, Wilkes, Wayne, Wilson, and Yadkin counties, and in the following parts of counties:
 Buncombe: That part east of NC 191, south of the French Broad and Swannanoa Rivers, west of US 25, and north of NC 280;
 Dare: That part of the Outer Banks north of Whalebone;
 Henderson. That part east of NC 191 and north and west of NC 280;
 Moore: That part north of NC 211 and west of US 1; and
 Richmond: That part west of Little River.
- (c) Open Seasons (Bow and Arrow)
- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph and the bag limits set out in Paragraph (e) of this Rule, deer of either sex may be taken with bow and arrow during the following seasons:
- (A) Saturday on or nearest September 10 to the fourth Friday thereafter in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule,

except on Nicholson Creek, Rockfish Creek, and Sandhills Game Lands and the area known as the Outer Banks in Currituck County.

- (B) Saturday on or nearest September 10 to the second Friday before Thanksgiving in the counties and parts of counties having the open seasons for Deer with Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule except for that portion of Buffalo Cove Game Land in Wilkes County.
- (C) Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (C) of Subparagraph (b)(1) of this Rule and in Cleveland and Rutherford counties.
- (D) Saturday on or nearest September 10 to the third Friday before Thanksgiving in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

(2) Restrictions

- (A) Dogs may not be used for hunting deer during the bow and arrow season.
- (B) It is unlawful to carry any type of firearm while hunting with a bow during the bow and arrow deer hunting season.
- (C) Only bows and arrows of the types authorized in 15A NCAC 10B .0116 for taking deer may be used during the bow and arrow deer hunting season.

(d) Open Seasons (Muzzle-Loading Rifles and Shotguns)

- (1) Authorization. Subject to the restrictions set out in Subparagraph (2) of this Paragraph, deer may be taken only with muzzle-loading firearms (except that bow and arrow may be used on designated and posted game land Archery Zones) during the following seasons:

- (A) The Saturday on or nearest October 8 to the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (A) of Subparagraph (b)(1) of this Rule, except on Nicholson Creek, Rockfish Creek and Sandhills Game Lands and

the area known as the Outer Banks in Currituck County.

- (B) The second Saturday preceding Thanksgiving until the following Friday in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part (B) of Subparagraph (b)(1) of this Rule.
- (C) Monday on or nearest October 8 to the following Saturday in Cleveland and Rutherford counties and in the counties and parts of counties having the open seasons for Deer With Visible Antlers specified by Part C of Subparagraph (b)(1) of this Rule.
- (D) The third Saturday preceding Thanksgiving until the following Friday in the counties and parts of counties having the open season for Deer With Visible Antlers specified by Part (D) of Subparagraph (b)(1) of this Rule, and on Nicholson Creek, Rockfish Creek and Sandhills Game Lands.

(2) Restrictions

- (A) Deer of either sex may be taken during muzzle-loading firearms season in and east of the following counties: Polk, Rutherford, McDowell, Burke, Caldwell, Wilkes, and Ashe. Deer of either sex may be taken on the last day of muzzle-loading firearms season in all other counties.
- (B) Dogs shall not be used for hunting deer during the muzzle-loading firearms seasons.
- (C) Pistols shall not be carried while hunting deer during the muzzle-loading firearms seasons.

(e) In those counties or parts of counties listed in Part (b)(1)(A) of Subparagraph (b)(1) of this Rule and those counties or parts of counties listed in Part (b)(1)(D) of this Rule in which hunting deer with dogs is allowed, the daily bag limit shall be two and the possession limit six, two of which shall be antlerless. The season limit shall be six, two of which shall be antlerless. In all other counties or parts of counties, the daily bag limit shall be two and the possession limit six, four of which shall be antlerless. The season limit shall be six, four of which shall be antlerless. Antlerless deer include males with knobs or buttons covered by skin or velvet as distinguished from spikes protruding through the skin. The antlerless bag limits described above do not apply to antlerless deer harvested in areas covered in the Deer Management Assistance Program as described in G.S. 113-291.2(e). Individual daily antlerless bag limits on these areas shall be determined by the number of special tags, issued by the Division of Wildlife Management as authorized by the Executive Director, that shall be in the possession of the hunter. Season antlerless bag limits shall be set by the number

of tags available. All antlerless deer harvested on these areas, regardless of the date of harvest, shall be tagged with these special tags but the hunter does not have to validate the Big Game Harvest Report Card provided with the hunting license.

History Note: Authority G.S. 113-134; 113-270.3; 113-276.1; 113-291.1; 113-291.2;
Eff. February 1, 1976;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996, July 1, 1995; December 1, 1994; July 1, 1994; July 1, 1993;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2002; July 1, 2001;
Amended Eff. August 1, 2002 (Approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);
Amended Eff. May 1, 2006; June 1, 2005.

15A NCAC 10B .0302 OPEN SEASONS

(a) General. Subject to the restrictions set out in Paragraph (b) of this Rule, the following seasons for taking fur-bearing animals as defined in G.S. 113-129(7a), coyotes, and groundhogs shall apply as indicated, all dates being inclusive:

- (1) November 7 through February 12 in and west of Surry, Wilkes, Alexander, Catawba, Burke and Cleveland counties.
- (2) December 15 through February 28 in and east of Hertford, Bertie, Martin, Pitt, Greene, Lenoir, Duplin, Pender and New Hanover counties, except that in the marshes adjoining Currituck Sound in Currituck County the season is December 15-March 12 and nutria may not be shot at any time (day or night) during the open season for migratory waterfowl.
- (3) December 1 through February 20 in all other counties.
- (4) November 1 through March 31 statewide for beaver only.
- (5) Trapping coyotes is allowed during times and with methods described by local laws in counties where local laws have established fox trapping seasons even when those seasons fall outside the regular trapping seasons described above.
- (6) Nutria may be trapped at any time east of I-77.

(b) Restrictions

- (1) It is unlawful to trap or take otter on Roanoke Island north of US 64/264 in Dare County.
- (2) It is unlawful to set steel traps for muskrat or mink in and west of Surry, Wilkes, Alexander, Catawba, Burke and Cleveland counties except in or adjacent to the waters of lakes, streams or ponds.
- (3) It is unlawful to trap raccoon in Yadkin County and in and west of Surry, Wilkes, Alexander, Catawba, Lincoln and Gaston counties.

Note: See 15A NCAC 10D .0102(f) for other trapping restrictions on game lands.

History Note: Authority G.S. 113-134; 113-291.1; 113-291.2;
Eff. February 1, 1976;
Amended Eff. July 1, 1996; July 1, 1984; July 1, 1983; August 1, 1982; August 1, 1981;
Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. June 1, 2003;
Amended Eff. May 1, 2006; June 1, 2005; August 1, 2004.

15A NCAC 10C .0205 PUBLIC MOUNTAIN TROUT WATERS

(a) Designation of Public Mountain Trout Waters. The waters listed herein or in 15A NCAC 10D .0104 are designated as Public Mountain Trout Waters and further classified as Wild Trout Waters or Hatchery Supported Waters. For specific classifications, see Subparagraphs (1) through (6) of this Paragraph. These waters are posted and lists thereof are filed with the clerks of superior court of the counties in which they are located:

- (1) Hatchery Supported Trout Waters. The listed waters in the counties in Subparagraphs (a)(1)(A) through (Y) are classified as Hatchery Supported Public Mountain Trout Waters. Where specific watercourses or impoundments are listed, indentation indicates that the watercourse or impoundment listed is tributary to the next preceding watercourse or impoundment listed and not so indented. This classification applies to the entire watercourse or impoundment listed except as otherwise indicated in parentheses following the listing. Other clarifying information may also be included parenthetically. The tributaries of listed watercourses or impoundments are not included in the classification unless specifically set out therein. Otherwise, Wild Trout regulations apply to the tributaries.
 - (A) Alleghany County:
 - New River (not trout water)
 - Little River (Whitehead to McCann Dam)
 - Crab Creek
 - Brush Creek (except where posted against trespass)
 - Big Pine Creek
 - Laurel Branch
 - Big Glade Creek
 - Bledsoe Creek
 - Pine Swamp Creek
 - South Fork New River (not trout water)
 - Prather Creek
 - Cranberry Creek
 - Piney Fork
 - Meadow Fork

- Yadkin River (not trout water)
 Roaring River (not trout water)
 East Prong Roaring River (that portion on Stone Mountain State Park) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (B) Ashe County:
 New River (not trout waters)
 North Fork New River (Watauga Co. line to Sharp Dam)
 Helton Creek (Virginia State line to New River) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Big Horse Creek (Mud Creek at SR 1363 to confluence with North Fork New River)
 Buffalo Creek (headwaters to junction of NC 194-88 and SR 1131)
 Big Laurel Creek
 Three Top Creek (portion not on game lands)
 Hoskins Fork (Watauga County line to North Fork New River)
 South Fork New River (not trout waters)
 Cranberry Creek (Alleghany County line to South Fork New River)
 Nathans Creek
 Peak Creek (headwaters to Trout Lake, except Blue Ridge Parkway waters)
 Trout Lake [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Roan Creek
 Beaver Creek
 Pine Swamp Creek (all forks)
 Old Fields Creek
 Mill Creek (except where posted against trespass)
- (C) Avery County:
 Nolichucky River (not trout waters)
 North Toe River (headwaters to Mitchell County line, except where posted against trespass)
 Squirrel Creek
 Elk River (SR 1305 crossing immediately upstream of Big Falls to the Tennessee State line, including portions of tributaries on game lands)
 Catawba River (not trout water)
 Johns River (not trout water)
 Wilson Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Lost Cove Creek [not Hatchery Supported trout water, see Subparagraph (a)(4) of this Rule.]
 Buck Timber Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Cary Flat Branch [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Boyde Coffey Lake
 Archie Coffey Lake
 Linville River [Land Harbor line (below dam) to Blue Ridge Parkway boundary line, except where posted against trespass]
 Milltimber Creek
- (D) Buncombe County:
 French Broad River (not trout water)
 Ivy Creek (Ivy River) (Dillingham Creek to US 19-23 bridge)
 Dillingham Creek (Corner Rock Creek to Ivy Creek)
 Stony Creek
 Mineral Creek (including portions of tributaries on game lands)

- Corner Rock Creek (including tributaries, except Walker Branch)
- Reems Creek (Sugar Camp Fork to US 19-23 bridge, except where posted against trespass)
- Swannanoa River (SR 2702 bridge near Ridgecrest to Wood Avenue Bridge, intersection of NC 81W and US 74A in Asheville, except where posted against trespass)
- Bent Creek (headwaters to N.C. Arboretum boundary line, including portions of tributaries on game lands)
- Lake Powhatan
- Cane Creek (headwaters to SR 3138 bridge)
- (E) Burke County:
- Catawba River (Muddy Creek to the City of Morganton water intake dam) [Special Regulations apply. See Subparagraph (a)(7) of this Rule.]
- South Fork Catawba River (not trout water)
- Henry Fork (lower South Mountains State Park line downstream to SR 1919 at Ivy Creek)
- Jacob Fork (Shinny Creek to lower South Mountain State Park boundary) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- Johns River (not trout water)
- Parks Creek (portion not on game lands not trout water)
- Carroll Creek (game lands portion above SR 1405 including tributaries)
- Linville River (portion within Linville Gorge Wilderness Area, including tributaries, and portion below Lake James powerhouse from upstream
- bridge on SR 1223 to Muddy Creek)
- (F) Caldwell County:
- Catawba River (not trout water)
- Johns River (not trout water)
- Wilson Creek (Phillips Branch to Browns Mountain Beach dam, except where posted against trespass)
- Estes Mill Creek (not trout water)
- Thorps Creek (falls to NC 90 bridge)
- Mulberry Creek (portion not on game lands not trout water)
- Boone Fork [not Hatchery Supported trout water. See Subparagraph (a)(2) of this Rule.]
- Boone Fork Pond
- Yadkin River (not trout water)
- Buffalo Creek (mouth of Joes Creek to McCloud Branch)
- Joes Creek (first falls upstream of SR 1574 to confluence with Buffalo Creek)
- (G) Cherokee County:
- Hiwassee River (not trout water)
- Shuler Creek (headwaters to Tennessee line, except where posted against trespass including portions of tributaries on game lands)
- North Shoal Creek (Crane Creek) (headwaters to SR 1325, including portions of tributaries on game lands)
- Persimmon Creek
- Davis Creek (confluence of Bald and Dockery creeks to Hanging Dog Creek)
- Beaver Dam Creek (headwaters to SR 1326 bridge, including portions of tributaries on game lands)
- Valley River
- Hyatt Creek (including portions of tributaries on game lands)
- Webb Creek (including portions of tributaries on game lands)

- (H) Clay County:
- Junaluska Creek (Ashturn Creek to Valley River, including portions of tributaries on game lands)
 - Hiwassee River (not trout water)
 - Fires Creek (first bridge above the lower game land line on US Forest Service road 442 to SR 1300)
 - Tusquitee Creek (headwaters to lower SR 1300 bridge, including portions of Bluff Branch on game lands)
 - Big Tuni Creek (including portions of tributaries on game lands)
 - Chatuge Lake (not trout water)
 - Shooting Creek (SR 1349 bridge to US 64 bridge at SR 1338)
 - Hothouse Branch (including portions of tributaries on gamelands)
 - Vineyard Creek (including portions of tributaries on game lands)
- (I) Graham County:
- Little Tennessee River (not trout water)
 - Calderwood Reservoir (Cheoah Dam to Tennessee State line)
 - Cheoah River (not trout water)
 - Yellow Creek
 - Santeetlah Reservoir (not trout water)
 - West Buffalo Creek
 - Little Buffalo Creek
 - Santeetlah Creek (Johns Branch to mouth including portions of tributaries within this section located on game lands, excluding Johns Branch and Little Santeetlah Creek)
 - (Big) Snowbird Creek (old railroad junction to mouth, including portions of tributaries on game lands)
- (J) Haywood County:
- Pigeon River (Stamey Cove Branch to US 19-23 bridge)
 - Cold Springs Creek (including portions of tributaries on game lands)
 - Jonathans Creek - lower (SR 1394 bridge to Pigeon River)
 - Jonathans Creek - upper [SR 1302 bridge (west) to SR 1307 bridge]
 - Hemphill Creek
 - West Fork Pigeon River (triple arch bridge on highway NC 215 to Queens Creek, including portions of tributaries within this section located on game lands, except Middle Prong)
 - Richland Creek (Russ Avenue bridge to US 19A-23 bridge)
 - West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan) [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (K) Henderson County:
- (Rocky) Broad River (one-half mile north of Bat Cave to Rutherford County line)
 - Green River - upper (mouth of Rock Creek to mouth of Bobs Creek)
 - Green River - lower (Lake Summit Dam to I-26 bridge)
 - Camp Creek (SR 1919 to Polk County line)
- Mountain Creek (game lands boundary to SR 1138 bridge)
- Long Creek (portion not on game lands)
- Tulula Creek (headwaters to lower bridge on SR 1275)
- Franks Creek
- Cheoah Reservoir
- Fontana Reservoir (not trout water)
- Stecoah Creek
- Sawyer Creek
- Panther Creek (including portions of tributaries on game lands)

- (Big) Hungry River
 Little Hungry River
 French Broad River (not trout water)
 Cane Creek (SR 1551 bridge to US 25 bridge)
 Mud Creek (not trout water)
 Clear Creek (SR 1591 bridge at Jack Mountain Lane to SR 1572)
 Mills River (not trout water)
 North Fork Mills River (game lands portion below the Hendersonville watershed dam). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
- (L) Jackson County:
 Tuckasegee River (confluence with West Fork Tuckasegee River to SR 1534 bridge at Wilmot) [Delayed Harvest Regulations apply to that portion between NC 107 bridge at Love Field and the Dillsboro dam. See Subparagraph (a)(5) of this Rule.]
 Scott Creek (entire stream, except where posted against trespass)
 Dark Ridge Creek (Jones Creek to Scotts Creek)
 Buff Creek (uppermost crossing on SR 1457 to Scott Creek)
 Savannah Creek (Headwaters to Bradley's Packing House on NC 116)
 Greens Creek (Greens Creek Baptist Church on SR 1730 to Savannah Creek)
 Cullowhee Creek (Tilley Creek to Tuckasegee River)
 Bear Creek Lake
 Wolf Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Wolf Creek Lake
 Balsam Lake
 Tanasee Creek [not Hatchery Supported trout water, see Subparagraph (a)(2) of this Rule.]
 Tanasee Creek Lake
 West Fork Tuckasegee River (Shoal Creek to existing water level of Little Glenville Lake)
 Shoal Creek (Glenville Reservoir pipeline to mouth)
- (M) Macon County:
 Little Tennessee River (not trout water)
 Nantahala River (Nantahala Dam to Swain County line) [Delayed Harvest Regulations apply to the portion from Whiteoak Creek to the Nantahala Power and Light powerhouse discharge canal. See Subparagraph (a)(5) of this Rule.]
 Queens Creek Lake
 Burningtown Creek (including portions of tributaries on game lands)
 Cullasaja River Sequoyah Dam to US 64 bridge near junction of SR 1672, including portions of tributaries on game lands, excluding those portions of Buck Creek and Turtle Pond Creek on game lands. [Wild Trout Regulations apply. See Subparagraphs (a)(2) and (a)(6) of this Rule.]
 Ellijay Creek (except where posted against trespass, including portions of tributaries on game lands)
 Skitty Creek
 Cliffside Lake
 Cartoogechaye Creek (US 64 bridge to Little Tennessee River)
 Tessentee Creek (Nichols Branch to Little Tennessee River, except where posted against trespassing)
 Savannah River (not trout water)
 Big Creek (base of falls to Georgia State line, including portions of tributaries within this Section located on game lands)
- (N) Madison County:
 French Broad River (not trout water)
 Shut-In Creek (including portions of tributaries on game lands)
 Spring Creek (junction of NC 209 and NC 63 to lower US Forest Service boundary)

line, including portions of
tributaries on game lands)

Meadow Fork Creek

Roaring Fork

(including portions of
tributaries on game lands)

Little Creek

Max Patch Pond

Big Laurel Creek (Mars Hill
Watershed boundary to the
SR 1318 bridge, also known
as Big Laurel Road bridge,
downstream of Bearpen
Branch)

Big Laurel Creek (NC 208
bridge to US 25-70 bridge)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of this
Rule.]

Spillcorn Creek (entire
stream, excluding
tributaries)

Shelton Laurel Creek
(confluence of Big
Creek and Mill Creek to
NC 208 bridge at Belva)

Shelton Laurel Creek
(NC 208 bridge at Belva
to the confluence with
Big Laurel Creek)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of
this Rule.]

Mill Creek
(headwaters to confluence with Big
Creek)

Puncheon Fork
(Hampton Creek to Big
Laurel Creek)

Big Pine Creek (SR 1151
bridge to French Broad River)

Ivy Creek (not trout waters)

Little Ivy Creek (confluence
of Middle Fork and Paint
Fork at Beech Glen to
confluence with Ivy Creek at
Forks of Ivy)

(O) McDowell County:

Catawba River (Catawba Falls
Campground to Old Fort
Recreation Park)

Buck Creek (portion not on
game lands, not trout water)

Little Buck Creek
(game land portion including
portions of tributaries on
game
lands)

Curtis Creek game lands
portion downstream of US
Forest Service boundary at
Deep Branch. [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]

North Fork Catawba River
(headwaters to SR 1569
bridge)

Armstrong Creek (Cato
Holler line downstream to
upper Greenlee line)

Mill Creek (upper railroad
bridge to U.S. 70 Bridge,
except where posted against
trespass)

(P) Mitchell County:

Nolichucky River (not trout
water)

Big Rock Creek (headwaters
to NC 226 bridge at SR 1307
intersection)

Little Rock Creek
(Green Creek Bridge to
Big Rock Creek, except
where posted against
trespass)

Cane Creek (SR 1219 to NC
226 bridge)

Cane Creek (NC 226 bridge
to NC 80 bridge) [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]

Grassy Creek (East Fork
Grassy Creek to mouth)

East Fork Grassy Creek
North Toe River (Avery
County line to SR 1121
bridge)

(Q) Polk County:

Broad River (not trout water)

North Pacolet River (Pacolet
Falls to NC 108 bridge)

Fork Creek (Fork Creek
Church on SR 1100 to
North Pacolet River)

Big Fall Creek (portion
above and below water
supply reservoir)

Green River (Fishtop Falls
Access Area to mouth of
Brights Creek) [Delayed
Harvest Regulations apply to
the portion from Fishtop
Falls Access Area to Cove
Creek. See Subparagraph
(a)(5) of this Rule.]

- Little Cove Creek
(including portions of
tributaries on game lands)
Cove Creek (including
portions of tributaries on
game lands)
Camp Creek
[Henderson County line (top
of falls) to Green River]
- (R) Rutherford County:
(Rocky) Broad River (Henderson
County line to US 64/74 bridge,
except where posted against
trespass)
- (S) Stokes County:
Dan River (Virginia State line
downstream to a point 200 yards
below the end of SR 1421)
- (T) Surry County:
Yadkin River (not trout water)
Ararat River (SR 1727
bridge downstream to the
NC 103 bridge)
Stewarts Creek (not
trout water)
Pauls Creek
(Virginia State line
to 0.3 mile below
SR 1625 bridge -
lower Caudle
property line)
Fisher River
(Cooper Creek) (Virginia
State line to Interstate 77)
Little Fisher River
(Virginia State line to NC 89
bridge)
Mitchell River (0.6 mile
upstream of the end of SR
1333 to the SR 1330 bridge
below Kapps Mill Dam)
[Delayed Harvest
Regulations apply. See
Subparagraph (a)(5) of this
Rule.]
- (U) Swain County:
Little Tennessee River (not trout
water)
Calderwood Reservoir
(Cheoah Dam to Tennessee
State line)
Cheoah Reservoir
Fontana Reservoir (not trout
water)
Alarka Creek (game
lands boundary to
Fontana Reservoir)
Nantahala River (Macon
County line to existing
- Fontana Reservoir water
level)
Tuckasegee River (not trout
water)
Deep Creek (Great
Smoky Mountains
National Park boundary
line to Tuckasegee
River)
Connelly Creek
(including portions of
tributaries on game
lands)
- (V) Transylvania County:
French Broad River (junction of
west and north forks to US
276 bridge)
Davidson River (Avery
Creek to lower US Forest
Service boundary line)
East Fork French Broad
River (Gladly Fork to French
Broad River) [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]
Little River (confluence of
Lake Dense outflow to
Hooker Falls) [Delayed
Harvest Regulations apply.
See Subparagraph (a)(5) of
this Rule.]
Middle Fork French Broad
River
West Fork French Broad
River (SR 1312 and SR 1309
intersection to junction of
west and north forks,
including portions of
tributaries within this section
located on game lands)
- (W) Watauga County:
New River (not trout waters)
North Fork New River (from
confluence with Maine and
Mine branches to Ashe
County line)
Maine Branch (headwaters
to North Fork New River)
South New Fork River
(not trout water)
Meat Camp Creek
Norris Fork Creek
Howard Creek
(downstream from lower
falls)
Middle Fork New River
(Lake Chetola Dam to South
Fork New River)
Yadkin River (not trout water)

- Stony Fork (headwaters to Wilkes County line)
 Elk Creek (headwaters to gravel pit on SR 1508, except where posted against trespass)
 Watauga River (SR 1557 bridge to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crusis). [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Beech Creek
 Buckeye Creek Reservoir
 Coffee Lake
 Beaverdam Creek (confluence of Beaverdam Creek and Little Beaverdam Creek to an unnamed tributary adjacent to the intersection of SR 1201 and SR 1203)
 Laurel Creek
 Cove Creek (SR 1233 bridge at Zionville to SR 1233 bridge at Amantha)
 Dutch Creek (second bridge on SR 1134 to mouth)
- (X) Wilkes County:
 Yadkin River (not trout water)
 Roaring River (not trout water)
 East Prong Roaring River (Bullhead Creek to Brewer's Mill on SR 1943) [Delayed Harvest Regulations apply to portion on Stone Mountain State Park. See Subparagraph (a)(5) of this Rule.]
 Stone Mountain Creek [Delayed Harvest Regulations apply. See Subparagraph (a)(5) of this Rule.]
 Middle Prong Roaring River (headwaters to second bridge on SR 1736)
 Bell Branch Pond
 Boundary Line Pond
 West Prong Roaring River (not trout waters)
 Pike Creek
 Pike Creek Pond
- Cub Creek (0.5 miles upstream of SR 2460 bridge to SR 1001 bridge)
 Reddies River (not trout water)
 Middle Fork Reddies River (Clear Prong) (headwaters to bridge on SR 1580)
 South Fork Reddies River (headwaters to confluence with Middle Fork Reddies River)
 North Fork Reddies River (Vannoy Creek) (headwaters to Union School bridge on SR 1559)
 Darnell Creek (North Prong Reddies River) (downstream ford on SR 1569 to confluence with North Fork Reddies River)
- Lewis Fork Creek (not trout water)
 South Prong Lewis Fork (headwaters to Lewis Fork Baptist Church)
 Fall Creek (except portions posted against trespass)
- (Y) Yancey County:
 Nolichucky River (not trout water)
 Cane River [Bee Branch (SR 1110) to Bowlens Creek]
 Bald Mountain Creek (except portions posted against trespass)
 Indian Creek (not trout water)
 Price Creek (junction of SR 1120 and SR 1121 to Indian Creek)
 North Toe River (not trout water)
 South Toe River (Clear Creek to lower boundary line of Yancey County recreation park except where posted against trespass)
- (2) Wild Trout Waters. All waters designated as Public Mountain Trout Waters on the game lands listed in Subparagraph (b)(2) of 15A

NCAC 10D .0104, are classified as Wild Trout Waters unless specifically classified otherwise in Subparagraph (a)(1) of this Rule. The trout waters listed in this Subparagraph are also classified as Wild Trout Waters.

- (A) Alleghany County:
 Big Sandy Creek (portion on Stone Mountain State Park)
 Ramey Creek (entire stream)
 Stone Mountain Creek (that portion on Stone Mountain State Park)
- (B) Ashe County:
 Big Horse Creek (Virginia State Line to Mud Creek at SR 1363) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
 Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Land) [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (C) Avery County:
 Birchfield Creek (entire stream)
 Cow Camp Creek (entire stream)
 Cranberry Creek (headwaters to US 19E/NC 194 bridge)
 Elk River (portion on Lees-McRae College property, excluding the millpond) [Catch and Release/Artificial Flies Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
 Gragg Prong (entire stream)
 Horse Creek (entire stream)
 Jones Creek (entire stream)
 Kentucky Creek (entire stream)
 North Harper Creek (entire stream)
 Plumtree Creek (entire stream)
 Roaring Creek (entire stream)
 Rockhouse Creek (entire stream)
 South Harper Creek (entire stream)
 Webb Prong (entire stream)
 Wilson Creek [Catch and Release/Artificial Lures Only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (D) Buncombe County:
 Carter Creek (game land portion) [Catch and Release/Artificial Lures only Regulations apply. See Subparagraph (a)(3) of this Rule.]
- (E) Burke County:
 All waters located on South Mountain State Park, except the main stream of Jacob Fork

Between the mouth of Shinny Creek and the lower park boundary where Delayed Harvest Regulations apply, and Henry Fork and tributaries where Catch and Release/Artificial Lures Only Regulations apply. See Subparagraphs (a)(3) and (a)(5) of this Rule.

- (F) Caldwell County:
 Nettle Branch (game land portion)
 Buffalo Creek (Watauga County line to Long Ridge Branch including tributaries on game lands)
 Joes Creek (Watauga County line to first falls upstream of the end of SR 1574)
- (G) Cherokee County:
 Bald Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
 Dockery Creek (game land portions, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (H) Graham County:
 Little Buffalo Creek (entire stream)
 South Fork Squally Creek (entire stream)
 Squally Creek (entire stream)
- (I) Haywood County:
 Hurricane Creek (including portions of tributaries on game lands) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (J) Henderson County:
 Green River (I-26 bridge to Henderson/Polk County line)
- (K) Jackson County:
 Gage Creek (entire stream)
 North Fork Scott Creek (entire stream)
 Tanasee Creek (entire stream)
 Whitewater River (downstream from Silver Run Creek to South Carolina State line)
 Wolf Creek (entire stream, except Balsam Lake and Wolf Creek Lake)
- (L) Madison County:
 Big Creek (headwaters to the lower game land boundary, including tributaries) [Wild Trout/Natural Bait Waters Regulations apply. See Subparagraph (a)(6) of this Rule.]
- (M) Mitchell County:

- Green Creek (headwaters to Green Creek Bridge, except where posted against trespass)
- Little Rock Creek (headwaters to Green Creek Bridge, including all tributaries, except where posted against trespass)
- Wiles Creek (game land boundary to mouth)
- (N) Polk County
- Green River (Henderson County line to Fishtop Falls Access Area)
- Pulliam (Fulloms) Creek and tributaries (game lands portions)
- (O) Transylvania County:
All waters located on Gorges State Park
- Whitewater River (downstream from Silver Run Creek to South Carolina State line)
- (P) Watauga County:
Dutch Creek (headwaters to second bridge on SR 1134)
- Howards Creek (headwaters to lower falls)
- Watauga River (Avery County line to steel bridge at Riverside Farm Road)
- (Q) Wilkes County:
Big Sandy Creek (portion on Stone Mountain State Park)
- Garden Creek (portion on Stone Mountain State Park)
- Harris Creek and tributaries (portions on Stone Mountain State Park) [Catch and Release Artificial Lures Only Regulations apply. See Subparagraph (a)(4) of this Rule.]
- Widow Creek (portion on Stone Mountain State Park)
- (R) Yancey County:
Cattail Creek (Bridge at Mountain Farm Community Road (Pvt) to NC 197 bridge)
- Licksillet Creek (entire stream)
- Middle Creek (game land boundary to mouth)
- (3) Catch and Release/Artificial Lures Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Artificial Lures Only waters. Only artificial lures having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:
- (A) Ashe County:
- Big Horse Creek (Virginia State line to Mud Creek at SR 1363 excluding tributaries)
- Unnamed tributary of Three Top Creek (portion located on Three Top Mountain Game Lands)
- (B) Avery County:
Wilson Creek (game land portion)
- (C) Buncombe County:
Carter Creek (game land portion)
- (D) Burke County:
Henry Fork (portion on South Mountains State Park)
- (E) Jackson County:
Flat Creek
Tuckasegee River (upstream of Clarke property)
- (F) McDowell County:
Newberry Creek (game land portion)
- (G) Wilkes County:
Harris Creek (portion on Stone Mountain State Park)
- (H) Yancey County:
Lower Creek
Upper Creek
- (4) Catch and Release/Artificial Flies Only Trout Waters. Those portions of designated wild trout waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Catch and Release/Fly Fishing Only waters. Only artificial flies having one single hook may be used. No fish may be harvested or be in possession while fishing these streams:
- (A) Avery County:
Elk River (portion on Lees-McRae College property, excluding the millpond)
- Lost Cove Creek (game land portion, excluding Gragg Prong and Rockhouse Creek)
- (B) Transylvania County:
Davidson River (headwaters to Avery Creek, excluding Avery Creek, Looking Glass Creek and Grogan Creek)
- (C) Yancey County:
South Toe River (portion from the concrete bridge above Black Mountain Campgroup downstream to game land boundary, excluding Camp Creek and Big Lost Cove Creek)
- (5) Delayed Harvest Trout Waters. Those portions of designated Hatchery Supported Trout Waters as listed in this Subparagraph, excluding tributaries except as noted, are further classified as Delayed Harvest Waters. Between 1 October and one-half hour after

sunset on the Friday before the first Saturday of the following June, inclusive, it is unlawful to possess natural bait and only artificial lures with one single hook may be used. No fish may be harvested or be in possession while fishing these streams during this time. These waters are closed to fishing between one-half hour after sunset on the Friday before the first Saturday in June and 6:00 a.m. on the first Saturday in June. At 6:00 a.m. on the first Saturday in June these streams open for fishing under Hatchery Supported Waters rules:

- (A) Ashe County:
Trout Lake
Helton Creek (Virginia state line to New River)
- (B) Burke County:
Jacob Fork (Shinny Creek to lower South Mountains State Park boundary)
- (C) Haywood County:
West Fork Pigeon River (Queen Creek to the first game land boundary upstream of Lake Logan)
- (D) Henderson County:
North Fork Mills River (game land portion below the Hendersonville watershed dam)
- (E) Jackson County:
Tuckasegee River (NC 107 bridge at Love Field Downstream to the Dillsboro dam)
- (F) Macon County:
Nantahala River (Whiteoak Creek to the Nantahala hydropower discharge canal)
- (G) Madison County:
Big Laurel Creek (NC 208 bridge to the US 25-70 bridge)
Shelton Laurel Creek (NC 208 bridge at Belva to the confluence with Big Laurel Creek)
- (H) McDowell County:
Curtis Creek (game lands portion downstream of U.S. Forest Service boundary at Deep Branch)
- (I) Mitchell County:
Cane Creek (NC 226 bridge to NC 80 bridge)
- (J) Polk County:
Green River (Fishtop Falls Access Area to confluence with Cove Creek)
- (K) Surry County:
Mitchell River (0.6 mile upstream of the end of SR 1333 to the SR 1330 bridge below Kapps Mill Dam)
- (L) Transylvania County:
East Fork French Broad River (Glady Fork to French Broad River)

- (M) Watauga County:
Watauga River (SR 1557 bridge to NC 105 bridge and SR 1114 bridge to NC 194 bridge at Valle Crucis)
- (N) Wilkes County:
East Prong Roaring River (from Bullhead Creek downstream to the Stone Mountain State Park lower boundary)
Stone Mountain Creek (from falls at Allegheny County line to confluence with East Prong Roaring River and Bullhead Creek in Stone Mountain State Park)
- (6) Wild Trout/Natural Bait Waters. Those portions of designated Wild Trout Waters as listed in this Subparagraph, including tributaries except as noted, are further classified as Wild Trout/Natural Bait Waters. All artificial lures and natural baits, except live fish, are allowed provided they are fished using only one single hook. The creel limit, size limit, and open season are the same as other Wild Trout Waters [see 15A NCAC 10C .0305(a)].
 - (A) Cherokee County:
Bald Creek (game land portions)
Dockery Creek (game land portions)
Tellico River (Fain Ford to Tennessee state line excluding tributaries)
 - (B) Clay County:
Buck Creek (game land portion downstream of US 64 bridge)
 - (C) Graham County:
Deep Creek
Long Creek (game land portion)
 - (D) Haywood County:
Hurricane Creek (including portions of tributaries on game lands)
 - (E) Jackson County:
Chattooga River (SR 1100 bridge to South Carolina state line)
(lower) Fowler Creek (game land portion)
Scotsman Creek (game land portion)
 - (F) Macon County:
Chattooga River (SR 1100 bridge to South Carolina state line)
Jarrett Creek (game land portion)
Kimsey Creek
Overflow Creek (game land portion)
Park Creek
Tellico Creek (game land portion)
Turtle Pond Creek (game land portion)
 - (G) Madison County:

(H) Big Creek (headwaters to the lower game land boundary, including tributaries)
 Transylvania County:
 North Fork French Broad River (game land portions downstream of SR 1326)
 Thompson River (SR 1152 to South Carolina state line, except where posted against trespass, including portions of tributaries within this section located on game lands)

(7) Special Regulation Trout Waters. Those portions of Designated Public Mountain Trout Waters as listed in this Subparagraph, excluding tributaries as noted, are further classified as Special Regulation Trout Waters. Regulations specific to each water are defined below:

Burke County
 Catawba River (Muddy Creek to City of Morganton water intake dam).

Regulation: The daily creel limit is 7 trout and only one of which may be greater than 14 inches in length; no bait restrictions; no closed season.

(b) Fishing in Trout Waters

(1) Hatchery Supported Trout Waters. It is unlawful to take fish of any kind by any manner whatsoever from designated public mountain trout waters during the closed seasons for trout fishing. The seasons, size limits, creel limits and possession limits apply in all waters, whether designated or not, as public mountain trout waters. Except in power reservoirs and city water supply reservoirs so designated, it is unlawful to fish in designated public mountain trout waters with more than

one line. Night fishing is not allowed in most hatchery supported trout waters on game lands [see 15A NCAC 10D .0104(b)(1)].

(2) Wild Trout Waters. Except as otherwise provided in Subparagraphs (a)(3), (a)(4), and (a)(6) of this Rule, the following rules apply to fishing in wild trout waters.

(A) Open Season. There is a year round open season for the licensed taking of trout.

(B) Creel Limit. The daily creel limit is four trout.

(C) Size Limit. The minimum size limit is seven inches.

(D) Manner of Taking. Only artificial lures having only one single hook may be used. No person shall possess natural bait while fishing wild trout waters except those waters listed in 15A NCAC 10C .0205(a)(6).

(E) Night Fishing. Fishing on wild trout waters is not allowed between one-half hour after sunset and one-half hour before sunrise.

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995; July 1, 1994; July 1, 1993; October 1, 1992; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2001; Temporary Amendment Eff. July 1, 2002; Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003; Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003); Amended Eff. May 1, 2006; June 1, 2005.

15A NCAC 10C .0305 OPEN SEASONS: CREEL AND SIZE LIMITS

(a) Generally. Subject to the exceptions listed in Paragraph (b) of this Rule, the open seasons and creel and size limits are as indicated in the following table:

GAME FISHES	DAILY CREEL LIMITS	MINIMUM SIZE LIMITS	OPEN SEASON
Mountain Trout:			
Wild Trout Waters	4	7 in.	ALL YEAR (exc. (3))
Hatchery Supported Trout Waters and undesignated waters	7 (exc. (3))	None (exc. (3))	All year, except March 1 to 6:00 a.m. on first Saturday in April (exc. (3))
Muskellunge	2 (exc. (21))	30 in.	ALL YEAR
Pickereel: chain (Jack) and redfin	None	None	ALL YEAR

APPROVED RULES

Walleye	8 (exc. (9))	None (exc. (9))	ALL YEAR
Sauger	8	15 in.	ALL YEAR
Black Bass:			
Largemouth	5	14 in. (excs. (8&10))	ALL YEAR (exc. (17))
Smallmouth and Spotted	5	12 in. (excs. (8&10))	ALL YEAR
White Bass	25	None	ALL YEAR
Sea Trout (Spotted or Speckled)	10	12 in.	ALL YEAR
Flounder	8	14 in.	ALL YEAR
Red drum (channel bass, red fish, puppy drum)	1	18 in. (exc. (19))	ALL YEAR
Striped Bass and their hybrids (Morone Hybrids)	8 aggregate (excs. 1,2,5,6,11,&13)	16 in. (excs.1,2,5,6,11&13)	ALL YEAR (excs. 6,13&15)
Shad: (American and hickory)	10 aggregate	None	ALL YEAR (exc. (18))
Kokanee Salmon	7	None	ALL YEAR
Crappie and sunfish	None (excs. 4,12&16)	None (exc. (12))	ALL YEAR (exc. (4))
NONGAME FISHES	None (excs. (14&20))	None (exc. (20))	ALL YEAR (exc. (7))

(b) Exceptions

- (1) In the Dan River upstream from its confluence with Bannister River to the Brantly Steam Plant Dam and in John H. Kerr Reservoir the creel limit on striped bass and Morone hybrids is two in the aggregate and the minimum size limit is 26 inches from October 1 through May 31. From June 1 through September 30 the daily creel limit on striped bass and Morone hybrids is four in aggregate with no minimum size limit.
- (2) In the Cape Fear River upstream of Buckhorn Dam and the Deep and Haw rivers to the first impoundment and in Gaston, Roanoke Rapids and B. Everett Jordan reservoirs the creel limit on striped bass and Morone hybrids is four in the aggregate and the minimum size limit is 20 inches. In Lake Norman the creel limit on striped bass and Morone hybrids is four in aggregate with a minimum size limit is 16 inches from October 1 through May 31 and no minimum size limit from June 1 through September 30.
- (3) In designated public mountain trout waters the season for taking all species of fish is the same as the trout fishing season. There is no closed season on taking trout from Nantahala River and all tributaries (excluding impoundments) upstream from Nantahala Lake, Linville River within Linville Gorge Wilderness Area (including tributaries), Catawba River from Muddy Creek to the City of Morganton water intake dam, and the impounded waters of

- (4) power reservoirs and municipally-owned water supply reservoirs open to the public for fishing. In Lake Lure the daily creel limit for trout is five fish and minimum size limit for trout is 15 inches.
- (4) On Mattamuskeet Lake, special federal regulations apply.
- (5) In the inland fishing waters of Cape Fear, Neuse, Pee Dee, Pungo and Tar Pamlico rivers and their tributaries extending upstream to the first impoundment of the main course on the river or its tributaries, and Lake Mattamuskeet, the daily creel limit for striped bass and their hybrids is three fish in aggregate and the minimum length limit is 18 inches. In the Tar-Pamlico River and its tributaries upstream of the Grimesland bridge and in the Neuse River and its tributaries upstream of the NC 55 bridge in Lenoir County, no striped bass or striped bass hybrids between the lengths of 22 inches and 27 inches shall be retained during the period April 1 through May 31.
- (6) In the inland and joint fishing waters [as identified in 15A NCAC 10C .0107(1)(e)] of the Roanoke River Striped Bass Management Area, which includes the Roanoke, Cashie, Middle and Eastmost rivers and their tributaries, the open season for taking and possessing striped bass and their hybrids is March 1 through April 15 from the joint-coastal fishing waters boundary at Albemarle Sound upstream to the US 258 bridge and is March 15 through April 30 from the US 258

- bridge upstream to Roanoke Rapids Lake dam. During the open season the daily creel limit for striped bass and their hybrids is two fish in aggregate, the minimum size limit is 18 inches. No fish between 22 inches and 27 inches in length shall be retained in the daily creel limit. Only one fish larger than 27 inches may be retained in the daily creel limit.
- (7) See 15A NCAC 10C .0407 for open seasons for taking nongame fishes by special devices.
- (8) The maximum combined number of black bass of all species that may be retained per day is five fish, no more than two of which may be smaller than the applicable minimum size limit. The minimum size limit for all species of black bass is 14 inches, with no exception in Lake Luke Marion in Moore County, Reedy Creek Park lakes in Mecklenburg County, Lake Rim in Cumberland County, Randleman Reservoir in Randolph and Guilford counties, in the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina State line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery and Blewett Falls Lake. In and west of Madison, Buncombe, Henderson and Polk Counties and in designated public mountain trout waters the minimum size limit is 12 inches. In B. Everett Jordan Reservoir, in Falls of the Neuse Reservoir to Lake Michie Dam on the Flat River and to the mouth of Cub Creek on Eno River, in Lake Lure, and Buckhorn Reservoir in Wilson and Nash counties the minimum size limit for largemouth bass is 16 inches, with no exception. In Lake Lure the minimum size limit for smallmouth bass is 14 inches, with no exception. In Lake Phelps and Shearon Harris Reservoir no black bass between 16 and 20 inches shall be possessed.
- (9) A minimum size limit of 15 inches applies to walleye taken from Lake James and its tributaries, and the daily creel limit for walleye is four fish in Linville River upstream from the NC 126 bridge above Lake James.
- (10) The minimum size limit for all black bass, with no exception, is 18 inches in the following trophy bass lakes:
 (A) Cane Creek Lake in Union County;
 (B) Lake Thom-A-Lex in Davidson County.
- (11) In all impounded inland waters and their tributaries, except those waters described in Exceptions (1) and (4), the daily creel limit of striped bass and their hybrids may include not more than two fish of smaller size than the minimum size limit.
- (12) A daily creel limit of 20 fish and a minimum size limit of 10 inches apply to crappie in B. Everett Jordan Reservoir. A daily creel limit of 20 fish and a minimum size limit of eight inches apply to crappie in the following waters: the Yadkin-Pee Dee River from Idols Dam to the South Carolina State line including High Rock Lake, Tuckertown Lake, Badin Lake, Falls Lake, Lake Tillery, and Blewett Falls Lake, Lake Norman, Lake Hycy, Lake Ramseur, Cane Creek Lake, and the following waters and all their tributaries: Roanoke Sound, Croatan Sound, Currituck Sound, Albemarle Sound, Alligator River, Scuppernong River, Chowan River, Cashie River, Roanoke River downstream of U. S. 258 bridge, lake Mattamuskeet, Lake Phelps, Pungo Lake, Alligator Lake and New Lake. In and west of Madison, Buncombe and Rutherford counties, in Lake James, Lake Rhodhiss, Lake Hickory, and in Buckhorn Reservoir in Wilson and Nash counties a daily creel limit of 20 fish applies to crappie.
- (13) In designated inland fishing waters of Roanoke Sound, Croatan Sound, Albemarle Sound, Chowan River, Currituck Sound, Alligator River, Scuppernong River, and their tributaries (excluding the Roanoke River and Cashie River and their tributaries), striped bass fishing season, size limits and creel limits shall be the same as those established by duly adopted rules or proclamations of the Marine Fisheries Commission in adjacent joint or coastal fishing waters.
- (14) The daily creel limits for channel, white, and blue catfish in designated urban lakes are stated in 15A NCAC 10C .0401(e).
- (15) The Executive Director may, by proclamation, suspend or extend the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries. It is unlawful to violate the provisions of any proclamation issued under this authority.
- (16) In the entire Lumber River from the Camp MacKall bridge (SR 1225, at the point where Richmond, Moore, Scotland, and Hoke counties join) to the South Carolina state line and in all public fishing waters east of I-95, except Tar River Reservoir in Nash County, the daily creel limit for sunfish is 30 in aggregate, no more than 12 of which shall be redbreast sunfish.
- (17) In Sutton Lake, no largemouth bass shall be retained from December 1 through March 31.
- (18) The season for taking American and hickory shad with dip nets and bow nets is March 1 through April 30.

- (19) No red drum greater than 27 inches in length may be retained.
- (20) The daily possession limit for herring (alewife and blueback in aggregate) greater than six inches in length is specified in 15A NCAC 10C .0401(a) and in 15A NCAC 10C .0402(d).
- (21) On the French Broad River and its tributaries upstream of the US 64 bridge near Etowah, no muskellunge shall be retained.

History Note: Authority G.S. 113-134; 113-292; 113-304; 113-305;

Eff. February 1, 1976;

Temporary Amendment Eff. May 10, 1990, for a period of 180 days to expire on November 1, 1990;

Temporary Amendment Eff. May 22, 1990, for a period of 168 days to expire on November 1, 1990;

Temporary Amendment Eff. May 1, 1991, for a period of 180 days to expire on November 1, 1991;

Amended Eff. July 1, 1994; July 1, 1993; October 1, 1992;

Temporary Amendment Eff. December 1, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner;

Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; July 1, 1995;

Temporary Amendment Eff. November 1, 1998;

Amended Eff. April 1, 1999;

Temporary Amendment Eff. July 1, 1999;

Amended Eff. July 1, 2000;

Temporary Amendment Eff. July 1, 2001;

Temporary Amendment Eff. March 8, 2002 [This rule replaces the rule proposed for permanent amendment effective July 1, 2002 and approved by RRC in May 2001];

Amended Eff. August 1, 2002 (approved by RRC in April 2002);

Temporary Amendment Eff. June 1, 2003;

Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003);

Amended Eff. May 1, 2006; June 1, 2005.

15A NCAC 10C .0401 MANNER OF TAKING NONGAME FISHES: PURCHASE AND SALE

(a) Except as permitted by the rules in this Section, it shall be unlawful to take nongame fishes from the inland fishing waters of North Carolina in any manner other than with hook and line or grabbling. Nongame fishes may be taken by hook and line or grabbling at any time without restriction as to size limits or creel limits, with the following exceptions:

- (1) Blue crabs shall have a minimum carapace width of five inches (point to point):
- (2) No person shall take or possess herring (alewife and blueback) that are greater than six inches in length from the inland fishing waters of coastal rivers and their tributaries up to the first impoundment dam of the main course on the rivers. First impoundment dams are: Roanoke Rapids Dam on Roanoke River, Rocky Mount Mill Dam on Tar River, Milburnie Dam on Neuse River, Buckhorn Dam on Cape Fear River, Lake Waccamaw

Dam on Waccamaw River and Blewett Falls Dam on Pee-Dee River.

- (3) Grass carp shall not be taken or possessed on Lake James, Lookout Shoals Lake, Lake Norman, Mountain Island, Gaston and Roanoke Rapids reservoirs, except that two fish per day may be taken by bow and arrow.
- (4) No trotlines or set-hooks shall be used in the impounded waters located on the Sandhills Game Land or in designated public mountain trout waters.
- (5) In Lake Waccamaw, trotlines or set-hooks may be used only from October 1 through April 30.

(b) The season for taking nongame fishes by other hook and line methods in designated public mountain trout waters shall be the same as the trout fishing season.

(c) Nongame fishes, except alewife and blueback herring (greater than six inches in length) and bowfin, taken by hook and line, grabbling or by licensed special devices may be sold. Alewife and blueback herring less than 6 inches in length may be sold except in those waters specified in Paragraph (d) of Rule .0402 of this Section, where their possession is prohibited. Eels less than six inches in length may not be taken from inland waters for any purpose.

(d) Freshwater mussels, including the Asiatic clam (*Corbicula fluminea*), may only be taken from impounded waters, except mussels shall not be taken in Lake Waccamaw and in University Lake in Orange County. It shall be unlawful to possess more than 200 freshwater mussels.

(e) It shall be unlawful to use boats powered by gasoline engines on impoundments located on the Barnhill Public Fishing Area.

(f) In the posted waters listed below it shall be unlawful to take channel, white or blue catfish (forked tail catfish) by means other than hook and line; the daily creel limit for forked tail catfish is six fish in aggregate:

- Cedarrock Pond, Alamance County
- Lake Julian, Buncombe County
- Lake Tomahawk, Buncombe County
- Frank Liske Park Pond, Cabarrus County
- High Rock Pond, Caswell County
- Rabbit Shuffle Pond, Caswell County
- Lake Rim, Cumberland County
- Etheridge Pond on the Barnhill Public Fishing Area, Edgecombe County
- Indian Lake, Edgecombe County
- Newbold Pond on the Barnhill Public Fishing Area, Edgecombe County
- C.G. Hill Memorial Park Pond, Forsyth County
- Kernersville Lake, Forsyth County
- Winston Pond, Forsyth County
- Lake Devin, Granville County
- Bur-Mil Park Ponds, Guilford County
- Hagan-Stone Park Ponds, Guilford County
- Oka T. Hester Pond, Guilford County
- San-Lee Park Ponds, Lee County
- Kinston Neuseway Park Pond, Lenoir County
- Freedom Park Pond, Mecklenburg County
- Hornet's Nest Pond, Mecklenburg County

McAlpine Lake, Mecklenburg County
 Park Road Pond, Mecklenburg County
 Reedy Creek Park Ponds, Mecklenburg County
 Squirrel Park Pond, Mecklenburg County
 Lake Luke Marion, Moore County
 Anderson Community Park, Orange County
 Lake Michael, Orange County
 River Park North Pond, Pitt County
 Laughter Pond, Polk County
 Ellerbe Community Lake, Richmond County
 Hamlet City Lake, Richmond County
 Indian Camp Lake, Richmond County
 Hinson Lake, Richmond County
 Salisbury Community Lake, Rowan County
 Albemarle City Lake, Stanly County
 Big Elkin Creek, Surry County
 Apex Community Lake, Wake County
 Bass Lake, Wake County
 Bond Park Lake, Wake County
 Lake Crabtree, Wake County
 Shelley Lake, Wake County
 Simpkins Pond, Wake County
 Lake Toisnot, Wilson County
 Harris Lake County Park Ponds, Wake County

History Note: Authority G.S. 113-134; 113-272; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 1994; July 1, 1993; May 1, 1992; Temporary Amendment Eff. December 1, 1994; Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; Temporary Amendment Eff. July 1, 1999; Amended Eff. July 1, 2000; Temporary Amendment Eff. July 1, 2002; July 1, 2001; Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02); Temporary Amendment Eff. June 1, 2003; Amended Eff. May 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003); Amended Eff. May 1, 2006; June 1, 2005.

15A NCAC 10C .0402 TAKING NONGAME FISHES FOR BAIT

- (a) It is unlawful to take nongame fish for bait in the inland waters of North Carolina using equipment other than:
- (1) a net of dip net design not greater than six feet across;
 - (2) a seine of not greater than 12 feet in length (except in Lake Waccamaw where there is no length limitation) and with a bar mesh measure of not more than one-fourth inch;
 - (3) a cast net; or
 - (4) minnow traps not exceeding 12 inches in diameter and 24 inches in length, with funnel openings not exceeding one inch in diameter, and which are under the immediate control and attendance of the individual operating them.
- (b) It is unlawful to sell nongame fishes or aquatic animals taken under this Rule.
- (c) Game fishes and their young taken while netting for bait shall be immediately returned unharmed to the water.

(d) No person shall take or possess during one day more than 200 nongame fish in aggregate for bait, subject to the following restrictions:

- (1) No more than 50 eels, none of which may be less than six inches in length, from inland fishing waters; and
- (2) No herring (alewife and blueback) that are greater than six inches in length shall be taken or possessed from the inland fishing waters of coastal rivers and their tributaries up to the first impoundment dam of the main course on the river. First impoundment dams are Roanoke Rapids Dam on Roanoke River, Rocky Mount Mill Dam on Tar River, Milburnie Dam on Neuse River, Buckhorn Dam on Cape Fear River, Lake Waccamaw Dam on Waccamaw River and Blewett Falls Dam on Pee-Dee River.

(e) Any fishes taken for bait purposes are included within the daily possession limit for that species, if one is specified.

(f) It is unlawful to take nongame fish for bait or any other fish bait from designated public mountain trout waters and:

- (1) Chatham County
 Deep River
 Rocky River
 Bear Creek
- (2) Lee County
 Deep River
- (3) Moore County
 Deep River
- (4) Randolph County
 Deep River below the Coleridge Dam
 Fork Creek

(g) In the waters of the Little Tennessee River, the Catawba River upstream of Rhodhiss Dam, including all the tributaries and impoundments thereof, and on adjacent shorelines, docks, access ramps and bridge crossings, it is unlawful to transport, possess or release live alewife or live blueback herring.

History Note: Authority G.S. 113-134; 113-135; 113-135.1; 113-272; 113-272.3; 113-292; Eff. February 1, 1976; Amended Eff. July 1, 2000; July 1, 1998; July 1, 1993; July 1, 1992; May 1, 1992; July 1, 1989; Temporary Amendment Eff. July 1, 2001; Amended Eff. July 18, 2002; Temporary Amendment Eff. June 1, 2003; Amended Eff. June 1, 2004 (this amendment replaces the amendment approved by RRC on July 17, 2003); Amended Eff. May 1, 2006.

15A NCAC 10D .0102 GENERAL REGULATIONS REGARDING USE

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

- (1) Archery Zone. On portions of game lands posted as "Archery Zones" hunting is limited to bow and arrow hunting and falconry only. On these areas, deer of either sex may be taken on all open days of any applicable deer season.
- (2) Safety Zone. On portions of game lands posted as "Safety Zones" hunting is prohibited. No person shall hunt or discharge a firearm or bow and arrow within, into, or across a posted safety zone on any game land. Falconry is exempt from this provision.
- (3) Restricted Firearms Zone. On portions of game lands posted as "Restricted Firearms Zones" the use of centerfire rifles is prohibited.
- (4) Restricted Zone. Portions of game lands posted as "Restricted Zones" are closed to all use by the general public, and entry upon such an area for any purpose is prohibited without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission. Entry shall be authorized only when such entry will not compromise the primary purpose for establishing the Restricted Zone and the person or persons requesting entry can demonstrate a valid need or such person is a contractor or agent of the Commission conducting official business. "Valid need" includes issues of access to private property, scientific investigations, surveys, or other access to conduct activities in the public interest.
- (5) Establishment of Archery, Restricted Firearms, and Restricted Zones. The Commission shall conduct a public input meeting in the area where the game land is located before establishing any archery, restricted firearms or restricted zone. After the input meeting the public comments shall be presented to an official Commission meeting for final determination.

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

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a game land at any time except during the open hunting seasons or hunting days for game birds or game animals, other than fox, unless the device is cased or not immediately available for use, provided that such devices may be possessed and used by persons participating in field trials on field trial areas and on target shooting areas designated by the landowner, and possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle

ammunition may be carried as side arms on game lands at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons and by individuals training dogs during closed season without field trial authorization. This Rule shall not prevent possession or use of a bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell containing larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a game land, except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl or coyote hunting. Furthermore, only shotguns with any size shot may be possessed during the big game season for turkey. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting on any posted waterfowl impoundment on any game land, or while hunting waterfowl on Butner-Falls of Neuse Game Land or New Hope Game Land, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) Game Lands License: Hunting and Trapping

- (1) Requirement. Except as provided in Subparagraph (2) of this Paragraph, any person entering upon any game land for the purpose of hunting, trapping, or participating in dog training or field trial activities shall have in his possession a game lands license in addition to the appropriate hunting or trapping licenses.
- (2) Exceptions
 - (A) A person under 16 years of age may hunt on game lands on the license of his parent or legal guardian.
 - (B) The resident and nonresident sportsman's licenses include game lands use privileges.
 - (C) Judges and nonresidents participating in field trials under the circumstances set forth in Paragraph (e) of this Rule may do so without the game lands license.
 - (D) On the game lands described in Rule .0103(e)(2) of this Section the game lands license is required only for hunting doves; all other activities are subject to the control of the landowners.

(e) Field Trials and Training Dogs. A person serving as judge of a field trial which, pursuant to a written request from the sponsoring organization, has been officially authorized in writing and scheduled for occurrence on a game land by an authorized representative of the Wildlife Resources Commission, and any nonresident participating therein may do so without procuring a game lands license, provided such nonresident has in his possession a valid hunting license issued by the state of his residence. Any individual or organization sponsoring a field trial on the Sandhills Field Trial grounds or the Laurinburg Fox Trial facility shall file with the commission's agent an application to use the area and facility accompanied by the facility use fee computed at the rate of one hundred dollars (\$100.00) for each scheduled day of the trial. The total facility

use fee shall cover the period from 12:00 noon of the day preceding the first scheduled day of the trial to 10:00 a.m. of the day following the last scheduled day of the trial. The facility use fee shall be paid for all intermediate days on which for any reason trials are not run but the building or facilities are used or occupied. A fee of twenty-five dollars (\$25.00) per day shall be charged to sporting, educational, or scouting groups for scheduled events utilizing the club house only. No person or group of persons or any other entity shall enter or use in any manner any of the physical facilities located on the Laurinburg Fox Trial or the Sandhills Field Trial grounds without first having obtained specific written approval of such entry or use from an authorized agent of the Wildlife Resources Commission, and no such entry or use of any such facility shall exceed the scope of or continue beyond the specific approval so obtained. The Sandhills Field Trial facilities shall be used only for field trials scheduled with the approval of the Wildlife Resources Commission. No more than 16 days of field trials may be scheduled for occurrence on the Sandhills facilities during any calendar month, and no more than four days may be scheduled during any calendar week; provided, that a field trial requiring more than four days may be scheduled during one week upon reduction of the maximum number of days allowable during some other week so that the monthly maximum of 16 days is not exceeded. Before October 1 of each year, the North Carolina Field Trial Association or other organization desiring use of the Sandhills facilities between October 22 and November 18 and between December 3 and March 31 shall submit its proposed schedule of such use to the Wildlife Resources Commission for its consideration and approval. The use of the Sandhills Field Trial facilities at any time by individuals for training dogs is prohibited; elsewhere on the Sandhills Game Lands dogs may be trained only on Mondays, Wednesdays and Saturdays from October 1 through April 1. Dogs may not be trained or permitted to run unleashed from April 1 through August 15 on any game land located west of I-95, except when participating in field trials sanctioned by the Wildlife Resources Commission. Additionally, on game lands located west of I-95 where special hunts are scheduled for sportsmen participating in the Disabled Sportsman Program, dogs may not be trained or allowed to run unleashed during legal big game hunting hours on the dates of the special hunts.

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

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

- (1) on the field trial course of the Sandhills Game Land;
- (2) on the Harmon Den and Sherwood bear sanctuaries in Haywood County;

- (3) in posted "safety zones" located on any game land;
- (4) by the use of multiple sets (with anchors less than 15 feet apart) or bait on the National Forest Lands bounded by the Blue Ridge Parkway on the south, US 276 on the north and east, and NC 215 on the west;
- (5) on Cowan's Ford Waterfowl Refuge in Gaston, Lincoln and Mecklenburg Counties;
- (6) on the Hunting Creek Swamp Waterfowl Refuge;
- (7) on the John's River Waterfowl Refuge in Burke County;
- (8) on the Dupont State Forest Game Lands.

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

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

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

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

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

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

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

- (1) amputation of one or more limbs;
- (2) paralysis of one or more limbs;
- (3) dysfunction of one or more limbs rendering the person unable to perform the task of grasping and lifting with the hands and arms or unable to walk without mechanical assistance, other than a cane;
- (4) disease or injury or defect confining the person to a wheelchair, walker, or crutches; or

- (5) legal deafness, meaning the inability to hear or understand oral communications with or without assistance of amplification devices.

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

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

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

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

(o) Public nudity. Public nudity, including nude sunbathing, is prohibited on any Game Land, including land or water. For the purposes of this Section, "public nudity" means a person's intentional failure to cover with a fully opaque covering the

person's genitals, pubic area, anal area, or female breasts below a point from the top of the areola while in a public place.

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

(q) Shooting Ranges. On state-owned game lands, no person shall use designated shooting ranges for any purpose other than for firearm or bow and arrow marksmanship, development of shooting skills or for other safe uses of firearms and archery equipment. All other uses – including camping, building fires, operating concessions or other activities not directly involved with recreational or competitive shooting are expressly prohibited, except that activities which have been approved by the Commission and for which a permit has been issued may be conducted, provided that the permit authorizing such activity is available for inspection by wildlife enforcement officers at the time the activity is taking place. No person, when using any shooting range, shall deposit any debris or refuse on the grounds of the range. This includes any items used as targets, except that clay targets broken on the range, by the shooter, may be left on the grounds where they fall. No person shall shoot any items made of glass on the grounds of the range. No person may leave any vehicle or other obstruction in such a location or position that it will prevent, impede or inconvenience the use by other persons of any shooting range. No person shall leave parked any vehicle or other object at any place on the shooting range other than such a place or zone as is designated as an authorized parking zone and posted or marked as such. No person shall handle any firearms or bow and arrow on a shooting range in a careless or reckless manner. No person shall intentionally shoot into any target holder, post or other permanent fixture or structure while using a shooting range. No person shall shoot a firearm in a manner that would cause any rifled or smoothbore projectiles to travel off of the range, except that shotgun shot, size No. 4 or smaller may be allowed to travel from the range if it presents no risk of harm or injury to any person(s). Persons using a shooting range must obey posted range safety rules and those persons who violate range safety rules or create a public safety hazard must leave the shooting range if directed to by law enforcement officers or Commission employees. No person shall handle any firearms on a shooting range while under the influence of an impairing substance. The consumption of alcohol or alcoholic beverages on a shooting range is prohibited. Shooting ranges are open from sunrise to sunset on Monday through Saturday. Firearms are to be unloaded and cased when being transported to the shooting range while on Game Lands. No person, when using any shooting range, shall do any act which is prohibited or neglect to do any act which is required by signs or markings placed on such area under authority of this Regulation for the purpose of regulating the use of the area.

History Note: Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; Eff. February 1, 1976; Amended Eff. July 1, 1993; April 1, 1992; Temporary Amendment Eff. October 11, 1993; Amended Eff. July 1, 1998; July 1, 1996; July 1, 1995; July 1, 1994;

Temporary Amendment Eff. July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. August 31, 2001;
Amended Eff. August 1, 2002;
Amended Eff. June 1, 2004; (this amendment replaces the
amendment approved by RRC on July 17, 2003);
Amended Eff. May 1, 2006; November 1, 2005.

15A NCAC 10D .0103 HUNTING ON GAME LANDS

(a) **Safety Requirements.** No person while hunting on any designated game land shall be under the influence of alcohol or any narcotic drug, or fail to comply with special restrictions enacted by the National Park Service regarding the use of the Blue Ridge Parkway where it adjoins game lands listed in this Rule.

(b) **Traffic Requirements.** No person shall park a vehicle on game lands in such a manner as to block traffic, gates or otherwise prevent vehicles from using any roadway.

(c) **Tree Stands.** It is unlawful to erect or to occupy, for the purpose of hunting, any tree stand or platform attached by nails, screws, bolts or wire to a tree on any game land designated herein. This prohibition shall not apply to lag-screw steps or portable stands that are removed after use with no metal left remaining in or attached to the tree.

(d) **Time and Manner of Taking.** Except where closed to hunting or limited to specific dates by this Chapter, hunting on game lands is permitted during the open season for the game or furbearing species being hunted. On managed waterfowl impoundments, hunters shall not enter the posted impoundment areas earlier than 4:00 a.m. on the permitted hunting dates, and hunting is prohibited after 1:00 p.m. on such hunting dates; decoys shall not be set out prior to 4:00 a.m. and must be removed by 3:00 p.m. each day. No person shall operate any vessel or vehicle powered by an internal combustion engine on a managed waterfowl impoundment. No person shall attempt to obscure the sex or age of any bird or animal taken by severing the head or any other part thereof, or possess any bird or animal which has been so mutilated. No person shall place, or cause to be placed on any game land, salt, grain, fruit, or other foods without prior written authorization of the commission or its agent. A decision to grant or deny authorization shall be made based on the best management practices for the wildlife species in question. No person shall take or attempt to take any game birds or game animals attracted to such foods. No live wild animals or wild birds shall be removed from any game land.

(e) **Definitions:**

- (1) For purposes of this Section "Eastern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(A); "Central" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(D); "Northwestern" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(B); "Western" season refers to seasons set for those counties or parts of counties listed in 15A NCAC 10B .0203(b)(1)(C).

- (2) For purposes of this Section, "Dove Only Area" refers to a Game Land on which doves may be taken and dove hunting is limited to Mondays, Wednesdays, Saturdays and to Thanksgiving, Christmas and New Year's Days within the federally-announced season.
- (3) For purposes of this Section, "Three Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons and hunting is limited to Mondays, Wednesdays, Saturdays and Thanksgiving, Christmas and New Year's Days. These "open days" also apply to either-sex hunting seasons listed under each game land. Raccoon and opossum hunting may continue until 7:00 a.m. on Tuesdays, until 7:00 a.m. on Thursdays, and until midnight on Saturdays.
- (4) For purposes of this Section, "Six Days per Week Area" refers to a Game Land on which any game may be taken during the open seasons, except that:
 - (A) Bears shall not be taken on lands designated and posted as bear sanctuaries;
 - (B) Wild boar shall not be taken with the use of dogs on such bear sanctuaries, and wild boar may be hunted only during the bow and arrow seasons, the muzzle-loading deer season and the regular gun season on deer on bear sanctuaries;
 - (C) On game lands open to deer hunting located in or west of the counties of Rockingham, Guilford, Randolph, Montgomery and Anson, the following rules apply to the use of dogs during the regular season for hunting deer with guns:
 - (i) Except for the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, game birds may be hunted with dogs.
 - (ii) In the counties of Cherokee, Clay, Graham, Jackson, Macon, Madison, Polk, and Swain, small game in season may be hunted with dogs on all game lands except on bear sanctuaries.
 - (iii) Additionally, raccoon and opossum may be hunted when in season on Uwharrie Game Lands;
 - (D) On bear sanctuaries in and west of Madison, Buncombe, Henderson and Polk counties dogs shall not be trained or allowed to run unleashed between March 1 and the Monday on or nearest October 15.

(f) The listed seasons and restrictions apply in the following game lands:

- (1) Alcoa Game Land in Davidson, Davie, Montgomery, Rowan and Stanly counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season in that portion in Montgomery county and deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season in those portions in Davie, Davidson, Rowan and Stanly counties.
- (2) Alligator River Game Land in Tyrrell County
 - (A) Six Day per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (3) Angola Bay Game Land in Duplin and Pender counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (4) Bachelor Bay Game Land in Bertie and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (5) Bertie County Game Land in Bertie County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (6) Bladen Lakes State Forest Game Land in Bladen County
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Saturday preceding Eastern bow season with bow and arrow and the Friday preceding the Eastern muzzle-loading season with any legal weapon (with weapons exceptions described in this Paragraph) by participants in the Disabled Sportsman Program.
 - (C) Handguns shall not be carried and, except for muzzle-loaders, rifles

larger than .22 caliber rimfire shall not be used or possessed.

- (D) On the Singletary Lake Tract deer and bear may be taken only by still hunting.
- (E) Wild turkey hunting on the Singletary Lake Tract is by permit only.
- (F) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (7) Broad River Game Land in Cleveland County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer with Visible Antlers Season.
 - (C) Use of centerfire rifles is prohibited.
- (8) Brunswick County Game Land in Brunswick County: Permit Only Area
- (9) Buckhorn Game Land in Orange County: Permit Only Area, except during the bow and arrow season for deer, during which the area shall be open as a three-day-per-week area.
- (10) Buckridge Game Land in Tyrrell County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days of the second week of the December Bear Season.
- (11) Buffalo Cove Game Land in Caldwell and Wilkes Counties
 - (A) Six Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving. Deer may be taken with bow and arrow on open days beginning the Monday on or nearest September 10 to the fourth Saturday thereafter, and Monday on or nearest October 15 to the Saturday before Thanksgiving and during the deer with visible antlers season. Deer may be taken with muzzle-loading firearms on open days beginning the Monday on or nearest October 8 through the following Saturday, and during the Deer With Visible Antlers season.
 - (C) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is

- prohibited from September 1 through May 15. This Rule includes all equine species.
- (12) Bullard and Branch Hunting Preserve Game Lands in Robeson County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (13) Butner - Falls of Neuse Game Land in Durham, Granville and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons. Waterfowl shall not be taken after 1:00 p.m. On the posted waterfowl impoundments a special permit is required for all waterfowl hunting after November 1.
- (D) Horseback riding, including all equine species, is prohibited.
- (E) Target shooting is prohibited
- (F) Wild turkey hunting is by permit only, except on those areas posted as an archery zone.
- (G) The use of dogs for hunting deer is prohibited on that portion west of NC 50 and south of Falls Lake.
- (14) Cape Fear Game Land in Pender County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Turkey Hunting is by permit only on that portion known as the Roan Island Tract.
- (15) Carteret County Game Land in Carteret County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (16) Caswell Game Land in Caswell County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Thursday and Friday preceding the Central muzzle-loading season by participants in the Disabled Sportsman Program.
- (C) Horseback riding is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons. Horseback riding is allowed only on roads opened to vehicular traffic. Participants must obtain a game lands license prior to engaging in such activity.
- (D) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
- (E) The area encompassed by the following roads is closed to all quail and woodcock hunting and all bird dog training: From Yanceyville south on NC 62 to the intersection of SR 1746, west on SR1746 to the intersection of SR 1156, south on SR 1156 to the intersection of SR 1783, east on SR 1783 to the intersection of NC 62, north on NC62 to the intersection of SR 1736, east on SR 1736 to the intersection of SR 1730, east on SR 1730 to NC 86, north on NC 86 to NC 62.
- (17) Caswell Farm Game Land in Lenoir County
- (A) Dove-Only Area
- (B) Dove hunting is by permit only from opening day through either the first Saturday or Labor Day which ever comes last of the first segment of dove season.
- (18) Catawba Game Land in Catawba County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Deer may be taken with bow and arrow only from the tract known as Molly's Backbone.
- (19) Chatham Game Land in Chatham County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Wild turkey hunting is by permit only.
- (D) Horseback riding, including all equine species, is allowed only during June, July, and August and on Sundays during the remainder of the year except during open turkey and deer seasons.
- (20) Cherokee Game Land in Ashe County
- (A) Six Days per Week Area

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- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (21) Chowan Game Land in Chowan County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the days of the applicable Deer With Visible Antlers Season.
- (22) Chowan Swamp Game Land in Gates County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (23) Cold Mountain Game Land in Haywood County
 - (A) Six Days per Week Area
 - (B) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (24) Columbus County Game Land in Columbus County.
 - (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (25) Croatan Game Land in Carteret, Craven and Jones counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons;
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (26) Currituck Banks Game Land in Currituck County
 - (A) Six Days per Week Area
 - (B) Permanent waterfowl blinds in Currituck Sound on these game lands shall be hunted by permit only after November 1.
 - (C) Licensed hunting guides may accompany the permitted individual or party provided the guides do not possess or use a firearm.
 - (D) The boundary of the Game Land shall extend 5 yards from the edge of the marsh or shoreline.
- (E) Dogs shall be allowed only for waterfowl hunting by permitted waterfowl hunters on the day of their hunt.
- (F) No screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
- (G) Deer of either sex may be taken all the days of the applicable deer with visible antlers season.
- (27) Dare Game Land in Dare County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last day of the Deer With Visible Antlers Season.
 - (C) No hunting on posted parts of bombing range.
 - (D) The use and training of dogs is prohibited from March 1 through June 30.
- (28) Dupont State Forest Game Lands in Henderson and Transylvania counties
 - (A) Hunting is by Permit only.
 - (B) The training and use of dogs for hunting except during scheduled small game permit hunts for squirrel, grouse, rabbit, or quail is prohibited.
 - (C) Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (29) Elk Knob Game Land in Ashe and Watauga counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (30) Goose Creek Game Land in Beaufort and Pamlico counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons; and
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
 - (D) After November 1, on the Pamlico Point, Campbell Creek, Hunting

- Creek and Spring Creek impoundments, a special permit is required for hunting on opening and closing days of the applicable waterfowl seasons, Saturdays of the applicable waterfowl seasons, and on Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days.
- (E) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (31) Green River Game Land in Henderson, and Polk counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through-August 31 and all horseback riding is prohibited from September 1 through May 15. This rule includes all equine species.
- (32) Green Swamp Game Land in Brunswick County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (33) Gull Rock Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl on posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons; and
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl season.
- (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (E) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season on the Long Shoal River Tract of Gull Rock Game Land.
- (34) Harris Game Land in Chatham, Harnett and Wake counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Waterfowl shall be taken only on Tuesdays, Fridays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
- (D) The use or construction of permanent hunting blinds shall be prohibited.
- (E) Wild turkey hunting is by permit only.
- (35) Holly Shelter Game Land in Pender County
- (A) Three Days per Week Area.
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Deer of either sex may also be taken the Friday preceding the Eastern muzzle-loading season with any legal weapon and the Saturday preceding Eastern bow season with bow and arrow by participants in the Disabled Sportsman Program.
- (C) Waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons regardless of the day of the week on which they occur, provided however, that waterfowl in posted waterfowl impoundments shall be taken only on the following days:
- (i) the opening and closing days of the applicable waterfowl seasons;
- (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
- (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
- (D) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (36) Hyco Game land in Person County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.

- (37) J. Morgan Futch Game Land in Tyrrell County, Permit Only Area.
- (38) Jordan Game Land in Chatham, Durham, Orange and Wake counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl may be taken only on Mondays, Wednesdays, Saturdays; on Thanksgiving, Christmas and New Year's Days; and on the opening and closing days of the applicable waterfowl seasons.
 - (D) Horseback riding, including all equine species, is prohibited except on those areas posted as American Tobacco Trail and other areas specifically posted for equestrian use. Unless otherwise posted, horseback riding is permitted on posted portions of the American Tobacco Trail anytime the trail is open for use. On all other trails posted for equestrian use, horseback riding is allowed only during June, July and August, and on Sundays the remainder of the year except during open turkey and deer seasons.
 - (E) Target shooting is prohibited.
 - (F) Wild turkey hunting is by permit only, except on those areas posted as an Archery Zone.
- (39) Kerr Scott Game Land in Wilkes County
 - (A) Six Days per Week Area
 - (B) Use of centerfire rifles shall be prohibited.
 - (C) Use of muzzleloaders, shotguns, or rifles for hunting deer during the applicable Deer With Visible Antlers Season shall be prohibited.
 - (D) Tree stands shall not be left overnight and no screws, nails, or other objects penetrating the bark shall be used to attach a tree stand or blind to a tree.
 - (E) Deer of either sex may be taken on all open days of the applicable deer with visible antlers season.
- (40) Lantern Acres Game Land in Tyrrell and Washington counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Wild turkey hunting is by permit only.
- (41) Lee Game Land in Lee County
 - (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (42) Light Ground Pocosin Game Land in Pamlico County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer with Visible Antlers Season.
- (43) Linwood Game Land in Davidson County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken on all of the open days of the applicable Deer With Visible Antlers Season.
- (44) Mayo Game Land in Person County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
 - (C) Waterfowl shall be taken only on Tuesdays, Thursdays and Saturdays; Christmas and New Year's Days, and on the opening and closing days of the applicable waterfowl seasons.
 - (D) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
- (45) Mitchell River Game Land in Surry County
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last six days of the applicable Deer with Visible Antlers Season.
 - (C) Horseback riding, including all equine species, is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15.
- (46) Nantahala Game Land in Cherokee, Clay, Graham, Jackson, Macon, Swain and Transylvania counties
 - (A) Six Days per Week Area
 - (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season in that portion located in Transylvania County.
 - (C) Raccoon and opossum shall be hunted only from sunset Friday until sunrise on Saturday and from sunset until 12:00 midnight on Saturday on Fires Creek Bear Sanctuary in Clay County and in that part of Cherokee County north of US 64 and NC 294, east of Persimmon Creek and Hiwassee Lake, south of Hiwassee Lake and west of Nottely River; in

- the same part of Cherokee County dog training is prohibited from March 1 to the Monday on or nearest October 15.
- (47) Needmore Game Land in Macon and Swain counties.
- (A) Six Days per Week Area
- (B) Horseback riding shall be prohibited except on designated trails May 16 through August 31 and all horseback riding shall be prohibited from September 1 through May 15. This Rule includes all equine species.
- (48) Neuse River Game Land in Craven County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (49) New Lake Game Land in Hyde and Tyrrell counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (50) Nicholson Creek Game Land in Hoke County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the third Friday before Thanksgiving.
- (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the third Saturday before Thanksgiving through the following Wednesday.
- (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
- (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (F) The use of dogs for hunting deer is prohibited.
- (G) Wild turkey hunting is by permit only.
- (51) North River Game Land in Currituck, Camden and Pasquotank counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (D) Wild turkey hunting is by permit only on that portion in Camden County.
- (52) Northwest River Marsh Game Land in Currituck County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (C) The boundary of the Game Land shall extend five yards from the edge of the marsh or shoreline.
- (53) Pee Dee River Game Land in Anson, Montgomery, Richmond and Stanly counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Use of centerfire rifles prohibited in that portion in Anson and Richmond counties North of US-74.
- (54) Perkins Game Land in Davie County
- (A) Three Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
- (55) Pisgah Game Land in Avery, Buncombe, Burke, Caldwell, Haywood, Henderson, Madison, McDowell, Mitchell, Transylvania, Watauga and Yancey counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season except on that portion in Avery County south of the Blue Ridge Parkway, Yancey County, and that portion in Haywood County encompassed by US 276 on the north, US 74 on the west, and the Blue Ridge Parkway on the south and east.
- (C) Harmon Den and Sherwood Bear Sanctuaries in Haywood County are closed to hunting raccoon, opossum and wildcat. Training raccoon and opossum dogs is prohibited from March 1 to the Monday on or nearest October 15 in that part of Madison County north of the French Broad River, south of US 25-70 and west of SR 1319.
- (56) Pungo River Game Land in Hyde County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (57) Rhodes Pond Game Land in Cumberland County
- (A) Hunting is by permit only.
- (B) Swimming is prohibited on the area.
- (58) Roanoke River Wetlands in Bertie, Halifax and Martin counties

- (A) Hunting is by Permit only.
 - (B) Vehicles are prohibited on roads or trails except those operated on official Commission business or by permit holders.
 - (C) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (59) Roanoke Sound Marshes Game Land in Dare County-Hunting is by permit only.
- (60) Robeson Game Land in Robeson County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (61) Rockfish Creek Game Land in Hoke County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken with bow and arrow on open hunting days from the Saturday on or nearest September 10 to the third Friday before Thanksgiving.
 - (C) Deer of either sex may be taken with muzzle-loading firearms on open hunting days beginning the third Saturday before Thanksgiving through the following Wednesday.
 - (D) The Deer With Visible Antlers season consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving.
 - (E) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season.
 - (F) The use of dogs for hunting deer is prohibited.
 - (G) Wild turkey hunting is by permit only.
- (62) Sampson Game Land in Sampson County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (63) Sandhills Game Land in Hoke, Moore, Richmond and Scotland counties
- (A) Three Days per Week Area
 - (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the second Saturday before Thanksgiving through the third Saturday after Thanksgiving except on the field trial grounds where the gun season is open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving. Deer may be taken with bow and arrow on all open hunting days during the bow and arrow season, as well as during the regular gun season. Deer may be taken with muzzle-loading firearms on open days beginning the third Saturday before Thanksgiving through the following Wednesday, and during the Deer With Visible Antlers season.
- (C) Gun either-sex deer hunting is by permit only. For participants in the Disabled Sportsman Program, either-sex deer hunting with any legal weapon is permitted on all areas the Thursday and Friday prior to the muzzle-loading season described in the preceding paragraph. Except for the deer, opossum, rabbit, raccoon and squirrel seasons specifically indicated for the field trial grounds in this Rule and Disabled Sportsman Program hunts, the field trial grounds are closed to all hunting during the period October 22 to March 31.
- (D) In addition to the regular hunting days, waterfowl may be taken on the opening and closing days of the applicable waterfowl seasons
- (E) Wild turkey hunting is by permit only.
- (F) Dove hunting on the field trial grounds will be prohibited from the second Sunday in September through the remainder of the hunting season.
- (G) Opossum, raccoon and squirrel (fox and gray) hunting on the field trial grounds will be allowed on open days from the second Monday before Thanksgiving through the Saturday following Thanksgiving and rabbit season on the field trial grounds will be from the Saturday preceding Thanksgiving through the Saturday following Thanksgiving.
- (H) The following areas are closed to all quail and woodcock hunting and dog training on birds: In Richmond County: that part east of US 1; In Scotland County: that part east of east of SR 1001 and west of US 15/501.
- (I) Horseback riding on field trial grounds from October 22 through March 31 shall be prohibited except by participants in authorized field trials.
- (64) Scuppernon Game Land in Tyrrell and Washington counties
- (A) Six Days per Week Area

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- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
- (65) Shocco Creek Game Land in Franklin and Warren counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding, including all equine species, is prohibited.
- (66) South Mountains Game Land in Burke, Cleveland, McDowell and Rutherford counties
- (A) Six Days per Week Area
- (B) The Deer With Visible Antlers season for deer consists of the open hunting days from the Monday before Thanksgiving through the third Saturday after Thanksgiving.
- (C) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (D) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (E) That part of South Mountains Game Land in Cleveland, McDowell, and Rutherford counties is closed to all grouse, quail and woodcock hunting and all bird dog training.
- (67) Stones Creek Game Land in Onslow County
- (A) Six-Day per Week Area.
- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season
- (C) Swimming in all lakes is prohibited.
- (68) Suggs Mill Pond Game Land in Bladen County;
- (A) Hunting is by Permit only.
- (B) Camping is restricted to Sep. 1-Feb 28 and April 7- May 14 in areas both designated and posted as camping areas.
- (69) Sutton Lake Game Land in New Hanover County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (70) Tar River Game Land in Edgecombe County - - hunting is by permit only.
- (71) Three Top Mountain Game Land in Ashe County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last six open days of the applicable Deer With Visible Antlers Season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (72) Thurmond Chatham Game Land in Wilkes County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last six open days of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take either-sex deer with bow and arrow on the Saturday prior to Northwestern bow and arrow season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species. Participants must obtain a game lands license prior to horseback riding on this area.
- (D) Bearded or beardless turkeys may be taken from the Monday on or nearest to January 15 through the following Saturday by permit only.
- (73) Toxaway Game Land in Transylvania County
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the last open day of the applicable Deer With Visible Antlers Season. Participants of the Disabled Sportsman Program may also take deer of either sex with any legal weapon on the Saturday prior to the first segment of the Western bow and arrow season.
- (C) Horseback riding is prohibited except on designated trails May 16 through August 31 and all horseback riding is prohibited from September 1 through May 15. This Rule includes all equine species.
- (74) Uwharrie Game Land in Davidson, Montgomery and Randolph counties
- (A) Six Days per Week Area
- (B) Deer of either sex may be taken the first six open days and the last open six days of the applicable Deer With Visible Antlers Season.
- (75) Vance Game Land in Vance County
- (A) Six Days per Week Area

- (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) The use of dogs, centerfire rifles and handguns for hunting deer is prohibited on the Nutbush Peninsula tract.
- (76) Van Swamp Game Land in Beaufort and Washington counties
- (A) Six Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Bear may only be taken the first three hunting days during the November Bear Season and the first three hunting days during the second week of the December Bear Season.
- (77) White Oak River Game Land in Onslow County
- (A) Three Days per Week Area
 - (B) Deer of either sex may be taken all the open days of the applicable Deer With Visible Antlers Season.
 - (C) Except as provided in Part (D) of this Subparagraph, waterfowl in posted waterfowl impoundments shall be taken only on the following days:
 - (i) the opening and closing days of the applicable waterfowl seasons; and
 - (ii) Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days; and
 - (iii) Tuesdays and Saturdays of the applicable waterfowl seasons.
 - (D) After October 1, a special permit is required for hunting on opening and closing days of the applicable waterfowl seasons, Saturdays of the applicable waterfowl seasons, and on Thanksgiving, Christmas, New Year's and Martin Luther King, Jr. Days.

Dare County-Dare Game Lands (Those parts of bombing range posted against hunting)
 Dare County--Roanoke Sound Marshes Game Lands
 Davie-Hunting Creek Swamp Waterfowl Refuge
 Gaston, Lincoln and Mecklenburg counties-Cowan's Ford Waterfowl Refuge
 Henderson and Transylvania counties--Dupont State Forest Game Lands

History Note: Authority G.S. 113-134; 113-264; 113-291.2; 113-291.5; 113-305;
Eff. February 1, 1976;
Temporary Amendment Eff. October 3, 1991;
Amended Eff. July 1, 1998; July 1, 1997; July 1, 1996; September 1, 1995; July 1, 1995; September 1, 1994; July 1, 1994;
Temporary Amendment Eff. October 1, 1999; July 1, 1999;
Amended Eff. July 1, 2000;
Temporary Amendment Eff. July 1, 2001;
Temporary Amendment Eff. July 1, 2002;
Amended Eff. August 1, 2002 (approved by RRC on 06/21/01 and 04/18/02);
Temporary Amendment Eff. June 1, 2003;
Amended Eff. June 1, 2004 (this replaces the amendment approved by RRC on July 17, 2003);
Amended Eff. May 1, 2006; February 1, 2006, June 1, 2005; October 1, 2004.

15A NCAC 10F .0355 PERQUIMANS COUNTY

- (a) Regulated Areas. This Rule applies to the following waters:
- (1) Perquimans River:
 - (A) The canals of Holiday Island;
 - (B) The area within 50 yards of the Hertford City Boat Ramp; and
 - (C) The area within 75 yards of the Perquimans River Bridge on U.S. 17 Business also known as the Hertford S-Shaped Bridge.
 - (2) Yeopim River:
 - (A) The area within 75 yards of the Albemarle Plantation Marina Piers;
 - (B) The area of Beaver Cove as delineated by appropriate markers;
 - (C) The canal entrance between Navaho Trail and Cherokee Trail;
 - (D) The canal entrance between Cherokee Trail and Ashe Street;
 - (E) The boat ramp at Ashe and Pine Street;
 - (F) The canal entrance between Pine Street and Linden Street;
 - (G) The canal entrance and boat ramp between Willow Street and Evergreen Drive;
 - (H) The canal entrance between Sago Street and Alder Street; and
 - (I) The swimming area at the Snug Harbor Park and Beach.
 - (3) Yeopim Creek

(g) On permitted type hunts deer of either sex may be taken on the hunt dates indicated on the permit. Completed applications must be received by the Commission not later than the first day of September next preceding the dates of hunt. Permits shall be issued by random computer selection, shall be mailed to the permittees prior to the hunt, and shall be nontransferable. A hunter making a kill must validate the kill and report the kill to a wildlife cooperater agent or by phone.

(h) The following game lands and refuges shall be closed to all hunting except to those individuals who have obtained a valid and current permit from the Wildlife Resources Commission:
 Bertie, Halifax and Martin counties-Roanoke River Wetlands
 Bertie County-Roanoke River National Wildlife Refuge
 Bladen County—Suggs Mill Pond Game Lands
 Burke County—John's River Waterfowl Refuge

- (A) The canal entrance between Mohave Trail and Iowa Trail; and
- (B) The canal entrance between Iowa Trail and Shawnee Trail.
- (4) Little River: The entrance to the cove known as "Muddy Gut Canal," which extends from the waters known as "Deep Creek."

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within the regulated area described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The Board of Commissioners of Perquimans County is designated a suitable agency for placement and maintenance of markers implementing this Rule.

History Note: Authority G.S. 75A-3; 75A-15; Eff. November 1, 1988; Amended Eff. October 1, 1992; Temporary Amendment Eff. October 1, 1997; Amended Eff. July 1, 1998; Temporary Amendment Eff. February 4, 2000; Amended Eff. May 1, 2006; June 1, 2005; July 1, 2000.

15A NCAC 10F .0372 HERTFORD COUNTY

(a) Regulated Areas. This Rule applies to the Chowan River within the territorial jurisdiction of Hertford County, in the area along the southern shoreline of the Chowan River, extending up to 600 feet in an easterly direction, and up to 1000 feet in a westerly direction, from the shore line terminus of State Road 1401 (Tuscarora Beach Road) at the site of the property commonly known as Tuscarora Beach, extending 200 feet toward the center of the Chowan River, as indicated by buoys.

(b) Speed Limit. No person shall operate any motorboat or vessel at greater than no-wake speed within any of the regulated areas described in Paragraph (a) of this Rule.

(c) Placement and Maintenance of Markers. The County of Hertford is designated a suitable agency for placement and maintenance of the markers implementing this Rule.

History Note: Authority G.S. 75A-3; 75A-15; Eff. May 1, 2006.

15A NCAC 10J .0102 GENERAL REGULATIONS REGARDING USE OF CONSERVATION AREAS

(a) Trespass. Entry on areas posted as Wildlife Conservation Areas for purposes other than wildlife observation, hunting, trapping or fishing shall be as authorized by the landowner and there shall be no removal of any plants or parts thereof, or live or dead nongame wildlife species or parts thereof, or other materials, without the written authorization of the landowner: Restrictions. On those areas designated and posted as Colonial Waterbird Nesting Areas, entry is prohibited during the period of April 1 through August 31 of each year, except by written permission of the landowner. Entry into Colonial Waterbird Nesting Areas during the period of September 1 through March 31 will be as authorized by the landowner.

(b) Littering. No person shall deposit any litter, trash, garbage, or other refuse at any place on any wildlife conservation area except in receptacles provided for disposal of such refuse. No garbage dumps or sanitary landfills shall be established on any

wildlife conservation area by any person, firm, corporation, county or municipality, except as permitted by the landowner.

(c) Possession of Hunting Devices. It is unlawful to possess a firearm or bow and arrow on a designated wildlife conservation area at any time except during the open hunting seasons or hunting days for game birds or game animals thereon unless such device is cased or not immediately available for use, provided that such devices may be possessed in designated camping areas for defense of persons and property; and provided further that .22 caliber pistols with barrels not greater than seven and one-half inches in length and shooting only short, long, or long rifle ammunition may be carried as side arms on designated wildlife conservation areas at any time other than by hunters during the special bow and arrow and muzzle-loading firearms deer hunting seasons. This Rule shall not prevent possession or use of bow and arrow as a licensed special fishing device in those waters where such use is authorized. During the closed firearms seasons on big game (deer, bear, boar, wild turkey), no person shall possess a shotgun shell larger than No. 4 shot or any rifle or pistol larger than a .22 caliber rimfire while on a designated wildlife conservation area except that shotgun shells containing any size steel or non-toxic shot may be used while waterfowl hunting. No person shall hunt with or have in possession any shotgun shell containing lead or toxic shot while hunting waterfowl on any area designated as a wildlife conservation area, except shotgun shells containing lead buckshot may be used while deer hunting.

(d) License Requirements:

- (1) Hunting and Trapping:
 - (A) Requirement. Except as provided in Paragraph (d)(1)(B) of this Rule, any person entering upon any designated wildlife conservation area for the purpose of hunting or trapping shall have in his possession a game lands use license in addition to the appropriate hunting or trapping licenses.
 - (B) Exception. A person under 16 years of age may hunt on designated wildlife conservation areas on the license of his parent or legal guardian.

(2) Trout Fishing. Any person 16 years of age or over, including an individual fishing with natural bait in the county of his residence, entering a designated wildlife conservation area for the purpose of fishing in designated public mountain trout waters located thereon must have in his possession a regular fishing license and special trout license. The resident and nonresident sportsman's licenses and short-term comprehensive fishing licenses include trout fishing privileges on designated wildlife conservation areas.

(e) Training Dogs. Dogs shall not be trained on designated wildlife conservation areas except during open hunting seasons for game animals or game birds thereon. Dogs may not be allowed to enter any wildlife conservation area designated and posted as a colonial waterbird nesting area during the period of April 1 through August 31.

(f) Trapping. Subject to the restrictions contained in 15A NCAC 10B .0110, .0302, and .0303, trapping of fur-bearing animals is permitted on any area designated and posted as a wildlife conservation area during the applicable open seasons, except that trapping is prohibited:

- (1) on the Nona Pitt Hinson Cohen Wildlife Conservation Area in Richmond County;
- (2) in posted "safety zones" located on any Wildlife Conservation Area.

(g) Use of Weapons. No person shall hunt or discharge a firearm or bow and arrow from a vehicle, or within 200 yards of any building or designated camping areas, or within, into, or across a posted "safety zone" on any designated wildlife conservation area. No person shall hunt with or discharge a firearm within, into, or across a posted "restricted zone" on any designated wildlife conservation area.

(h) Vehicular Traffic. No person shall drive a motorized vehicle on a road, trail or area posted against vehicular traffic or other than on roads maintained for vehicular use on any designated wildlife conservation area.

(i) Camping. No person shall camp on any designated wildlife conservation area except on an area designated by the landowner

for camping. On the coastal islands designated wildlife conservation areas, camping shall be allowed except on those areas designated and posted as Colonial Waterbird Nesting Areas.

(j) Swimming. No person shall swim in the waters located on designated wildlife conservation areas, except that a person may swim in waters adjacent to coastal island wildlife conservation areas.

(k) Motorboats. No person shall operate any vessel powered by an internal combustion engine on the waters located on designated wildlife conservation areas.

(l) Non-Highway Licensed Vehicles. It is unlawful to operate motorized land vehicles not licensed for highway use on Wildlife Conservation Areas. Persons who have obtained a permit issued pursuant to G.S. 113-297 are exempt from this Rule but shall comply with permit conditions.

History Note: Authority G.S. 113-134; 113-264; 113-270.3; 113-291.2; 113-291.5; 113-305; 113-306; 113-296; 113-297; Eff. February 1, 1990; Amended Eff. May 1, 2006; June 1, 2005.

15A NCAC 11 .0353 FINANCIAL ASSURANCE AND RECORD-KEEPING FOR DECOMMISSIONING

(a) For the purposes of this Rule, R is defined as the sum of the ratios of the quantity of each isotope with half-life greater than 120 days to the applicable value in the table in Appendix C to 10 CFR §§ 20.1001 – 20.2401, as shown in the following formula:

$$R = \sum_1^n \left(\frac{\text{Possession limit of Isotope 1}}{\text{Appendix C value for Isotope 1}} + \frac{\text{Possession limit of Isotope 2}}{\text{Appendix C value for Isotope 2}} \dots + \frac{\text{Possession limit of Isotope } n}{\text{Appendix C value for Isotope } n} \right)$$

(b) For unsealed radioactive materials, other than source material, the quantities requiring financial assurance and the financial assurance amounts are as follows:

- (1) If R divided by 10^5 is greater than one, then the minimum financial assurance amount is one million one hundred twenty-five thousand dollars (\$1,125,000) and shall be as stated in a decommissioning funding plan as described in Paragraph (i) of this Rule;
- (2) If R divided by 10^4 is greater than one, but R divided by 10^5 is less than or equal to one, then the financial assurance amount is one million one hundred twenty-five thousand dollars (\$1,125,000); or
- (3) If R divided by 10^3 is greater than one, but R divided by 10^4 is less than or equal to one, then the financial assurance amount is two hundred twenty-five thousand dollars (\$225,000).

(c) For sealed radioactive materials, the quantities requiring financial assurance and the financial assurance amounts are as follows:

- (1) If R divided by 10^{12} is greater than one, the licensee shall submit a decommissioning funding plan in accordance with Paragraph (i) of this Rule; or
- (2) If R divided by 10^{10} is greater than one, but R divided by 10^{12} is less than or equal to one,

then the financial assurance amount is one hundred thirteen thousand dollars (\$113,000).

(d) For source material in a readily dispersible form, the quantities requiring financial assurance and the financial assurance amounts are as follows:

- (1) If a specific license authorizes possession and use of more than 100 millicuries, then the minimum financial assurance amount is one million one hundred twenty-five thousand dollars (\$1,125,000) and shall be as stated in a decommissioning funding plan as described in Paragraph (i) of this Rule; or
- (2) If a specific license authorizes possession and use of more than 10 millicuries, but less than or equal to 100 millicuries, then the licensee shall either:
 - (a) submit a decommissioning funding plan in accordance with Paragraph (i) of this Rule; or
 - (b) submit certification of financial assurance in the amount of two hundred twenty-five thousand dollars (\$225,000).

(e) Each applicant for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in Paragraphs (b) or (c) or source material in quantities specified in Paragraph (d) of this Rule shall either:

- (1) submit a decommissioning funding plan as described in Paragraph (i) of this Rule; or
- (2) submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by Paragraphs (b) through (d) of this Rule using one of the methods described in Rule .0354 of this Section. For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material. As part of the certification, the applicant shall submit to this agency, a copy of the financial instrument obtained to satisfy the requirements of Paragraph (i) of this Rule.

(f) Each holder of a specific license issued before the effective date of this Rule, and of a type described in Paragraphs (b)(1), (b)(2), (c)(1), or (d)(1) of this Rule shall submit, no later than May 1, 2007, a certification of financial assurance for decommissioning or a decommissioning funding plan in accordance with the criteria set forth in this Rule.

(g) Each holder of a specific license issued before the effective date of this Rule, and of a type described in Paragraphs (b)(3), (c)(2) or (d)(2) of this Rule shall submit, no later than November 1, 2007, a certification of financial assurance in accordance with the criteria set forth in this Rule.

(h) Each holder of a specific license issued on or after the effective date of this Rule, which is of a type described in Paragraphs (b) through (d) of this Rule, shall provide financial assurance for decommissioning in accordance with the criteria set forth in this Rule.

(i) Each decommissioning funding plan shall contain a cost estimate for decommissioning and documentation of an approved method assuring funds for decommissioning as referenced in Rule .0354 of this Section, including means of adjusting cost estimates and associated funding levels at intervals not to exceed three years.

(j) Each person licensed under this Section of this Chapter shall keep records of information important to the safe and effective decommissioning of the facility in an identified location until the license is terminated by the agency. If records of relevant information are kept for other purposes, reference to these records and their locations may be used. Information the agency considers important to decommissioning includes:

- (1) Records of spills or other occurrences involving the spread of contamination in and around the facility, equipment, or site.
 - (A) These records may be limited to instances when contamination remains after any cleanup procedures or when there is reasonable likelihood that contaminants may have spread to inaccessible areas as in the case of possible seepage into porous materials such as concrete.
 - (B) These records shall include any known information on identification of involved nuclides, quantities, forms, and concentrations.

- (2) As-built drawings and modifications of structures and equipment in restricted areas where radioactive materials are being used or stored, and of locations of possible inaccessible contamination such as buried pipes which may be subject to contamination.

- (A) If required drawings are referenced, each relevant document need not be indexed individually.
- (B) If drawings are not available, the licensee shall substitute records of available information concerning these areas and locations.

- (3) Records of the cost estimate performed for the decommissioning funding plan or of the amount certified for decommissioning, and records of the funding method used for assuring funds if either a funding plan or certification is used.

- (4) Except for areas containing only sealed sources (provided the sealed sources have not leaked or no contamination remains after cleanup of any leak) or radioactive materials having only half-lives of less than 65 days, or depleted uranium used only for shielding, licensees shall be required to establish and maintain a list, contained in a single document. The list shall be updated every two years, and include the following information:

- (A) All areas designated and formerly designated as restricted areas as defined in Rule .0104 of this Chapter;
- (B) All areas outside of restricted areas that require documentation under Paragraph (j) of this Rule;
- (C) All areas outside of restricted areas where current and previous wastes have been buried as documented in Rule .1642 of this Chapter; and
- (D) All areas outside of restricted areas which contain material that, if the license expired, the licensee would be required to decontaminate either the area to unrestricted release levels or to apply to the agency for approval for disposal as required in Rule .1629 of this Chapter.

(k) Prior to license termination, each licensee authorized to possess radioactive material in an unsealed form, shall forward to the agency the records required in Paragraph (j) of this Rule.

(l) Before licensed activities are transferred, licensees shall transfer all records required in Paragraph (j) of this Rule. In this case, the new licensee shall maintain the records until the license is terminated.

History Note: Authority G.S. 104E-7; 104E-18; Eff. May 1, 1992; Amended Eff. May 1, 2006; April 1, 1999; August 1, 1998; January 1, 1994.

15A NCAC 18D .0105 DEFINITIONS

The following definitions shall apply throughout this Subchapter:

(1) "Acceptable Experience"

(a) For surface grades means at least 50 percent of the duties shall consist of active on-site performance of operational duties, including on-site water facility laboratory duties, at a surface water treatment facility. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, cross-connection-control and other skills necessary for maintaining and operating a surface water treatment facility. The remaining duties shall be in related fields such as wastewater facility operation, water/wastewater laboratory, water pumping stations, water system design and engineering, wells, distribution systems, or cross-connection-control. The experience of Division of Environmental Health, Public Water Supply Section personnel shall be acceptable if at least 50 percent of their job duties include inspection or on-site technical assistance of public water systems.

(b) For well grades means at least 50 percent of the duties shall consist of active on-site performance of operational duties for public water systems with chemical treatment having one or more wells. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, cross-connection-control and other skills necessary for maintaining and operating a treated well water system. The remaining duties shall be in related fields such as wastewater facility operation, water/wastewater laboratory, water pumping stations, water system design and engineering, surface facilities, distribution systems, or cross-connection-control. The experience of Division of Environmental Health, Public Water Supply Section personnel shall be acceptable if at least 50 percent of their job duties include inspection or on-site technical assistance of public water systems.

(c) For distribution grades means at least 50 percent of the duties shall consist of active on-site performance of operational duties for distribution systems within public water systems. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, cross-connection-control and other skills necessary for maintaining and operating a water distribution system. The remaining duties shall be in related fields such as wastewater facility operation, water/wastewater laboratory, water pumping stations, water system design and engineering, surface facilities, wells, or cross-connection-control. The experience of Division of Environmental Health, Public Water Supply Section personnel shall be acceptable if at least 50 percent of their job duties include inspection or on-site technical assistance of public water systems.

(d) For cross-connection-control grade means the duties shall consist of on-site performance of cross-connection-control duties for a public water system. This experience shall be based on the use of mathematics, equipment, materials, maintenance, installation and repair techniques, back flow prevention and other skills necessary for maintaining and operating a cross-connection-control program for a public water system. The remaining duties shall be in related fields such as wastewater facility operation, water/wastewater laboratory, water pumping stations, water system design and engineering, surface facilities, or wells. The experience of Division of Environmental Health, Public Water Supply Section personnel shall be acceptable if at least 50 percent of their job duties include inspection or on-site technical assistance of public water systems.

(2) "Certified Operator" means any holder of a certificate issued by the Board in accordance with the provisions of G.S. 90A-20 to -29.

(3) "College Graduate" means a graduate of a regionally accredited four-year institution awarding degrees on the bachelor level.

(4) "Licensee" means any person who holds a current certificate issued by the Water Treatment Facility Operators Board of Certification.

- (5) "Owner" shall mean the person, political subdivision, firm, corporation, association, partnership or non-profit corporation formed to operate a public water supply facility.
- (6) "Political Subdivision" means any city, town, county, sanitary district, or other governmental agency or privately owned public water supply operating a water treatment facility.
- (7) "Secretary" shall mean the Secretary of the Department of Environment and Natural Resources.
- (8) "Service Connection" means a water tap made to provide a water connection to the water distribution system.
- (9) "Fire Protection System" means dry or wet sprinkler systems or fire hydrant connection to the water distribution system.

History Note: Authority G.S. 90A-21(c); Eff. February 1, 1976; Readopted Eff. March 1, 1979; Amended Eff. May 1, 2006; August 1, 2002; August 1, 1998; August 3, 1992; January 1, 1992; September 1, 1990; June 1, 1988.

15A NCAC 18D .0201 GRADES OF CERTIFICATION

(a) Applicants for the various grades of certification shall be at least 18 years old and meet the following educational and experience requirements:

- (1) GRADE A-SURFACE shall have one year acceptable experience at a surface water facility while holding a Grade B-Surface certificate and have satisfactorily completed an A-Surface school conducted by the Board.
- (2) GRADE B-SURFACE shall:
 - (A) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, have six months of acceptable experience at a surface water facility, and have satisfactorily completed an B-Surface school conducted by the Board, or
 - (B) Have one year of acceptable experience at a surface water facility while holding a Grade C-Surface certificate and have satisfactorily completed a B-Surface school conducted by the Board.
- (3) GRADE C-SURFACE shall:
 - (A) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, have six months of acceptable experience at a surface water facility, and have satisfactorily

- completed an C-Surface school conducted by the Board, or
- (B) Be a high school graduate or equivalent, have six months acceptable experience at a surface water facility and have satisfactorily completed a C-Surface school conducted by the Board.
- (4) GRADE A-WELL shall have one year of acceptable experience at a well water facility while holding a Grade B-Well certificate and have satisfactorily completed an A-Well school conducted by the Board.
- (5) GRADE B-WELL shall:
 - (A) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, have six months of acceptable experience at a well water facility, and have satisfactorily completed an B-Well school conducted by the Board, or
 - (B) Have one year of acceptable experience at a well water facility while holding a Grade C-Well certificate and have satisfactorily completed a B-Well school conducted by the Board.
- (6) GRADE C-WELL shall:
 - (A) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, have three months of acceptable experience at a well water facility, and have satisfactorily completed an C-Well school conducted by the Board, or
 - (B) Be a high school graduate or equivalent, have six months of acceptable experience at a well water facility, and have satisfactorily completed a C-Well school conducted by the Board, or
 - (C) Hold a Grade A-Surface certification and have satisfactorily completed a C-Well school conducted by the Board.
- (7) GRADE D-WELL shall be a high school graduate or equivalent, have three months of acceptable experience at a well water facility, and have satisfactorily completed a C-Well or D-Well school conducted by the Board.
- (8) GRADE A-DISTRIBUTION shall have one year of acceptable experience at Class B or higher distribution system while holding a Grade B-Distribution certificate and have

- satisfactorily completed an A-Distribution school conducted by the Board.
- (9) **GRADE B-DISTRIBUTION** shall:
- (A) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two year technical program with a diploma in water and wastewater technology, have six months of acceptable experience at a Class B or higher distribution system, have satisfactorily completed an B-Distribution school conducted by the Board, and shall hold a certificate of completion of trench shoring training conducted by the Board; or
- (B) Have one year of acceptable experience at a Class C or higher distribution system while holding a Grade C-Distribution certificate and have satisfactorily completed a B-Distribution school conducted by the Board.
- (10) **GRADE C-DISTRIBUTION** shall hold a certificate of completion of trench shoring training conducted by the Board and shall:
- (A) Be a college graduate with a bachelor's degree in the physical or natural sciences, or be a graduate of a two year technical program with a diploma in water and wastewater technology, have three months of acceptable experience at a Class C or higher distribution system, and have satisfactorily completed an C-Distribution school conducted by the Board, or
- (B) Be a high school graduate or equivalent, have six months of acceptable experience at a Class D or higher distribution system and have satisfactorily completed a C-Distribution school conducted by the Board.
- (11) **GRADE D-DISTRIBUTION** shall be a high school graduate or equivalent, have three months of acceptable experience at a distribution system, and have satisfactorily completed a D-Distribution school conducted by the Board.
- (12) **GRADE CROSS-CONNECTION-CONTROL** shall:
- (A) Be a college graduate with a bachelor's degree in the physical or natural sciences or be a graduate of a two-year technical program with a degree in water and wastewater or civil engineering technology, and have satisfactorily completed a cross

connection control school conducted by the Board, or

- (B) Be a high school graduate or equivalent, have six months of acceptable experience at Class D - Distribution or higher system or have one year experience in the operations of cross connection control devices, and have satisfactorily completed a cross connection control school conducted by the Board, or
- (C) Be a plumbing contractor licensed by the State of North Carolina and have satisfactorily completed a cross connection control school conducted by the Board.

(b) Applications for certification of an operator certified in a state other than North Carolina shall be submitted on the Board's form. The application shall supply information to assist the Board in determining whether or not the requirements under which the out-of-state certification was obtained are equal to those required by the rules of the Water Treatment Facility Operators Board of Certification

History Note: Authority G.S. 90A-21(c); 90A-22; 90A-23; 90A-24; Eff. February 1, 1976; Amended Eff. September 1, 1977; Readopted Eff. March 1, 1979; Amended Eff. May 1, 2006; September 1, 2004; August 1, 2000; August 1, 1998; May 3, 1993; August 3, 1992; July 1, 1991; December 31, 1980.

15A NCAC 18D .0301 APPLICATION FOR EXAM

- (a) All applicants for exams shall file an application on a form available from: Chairman, North Carolina Water Treatment Facility Operators Certification Board, 1635 Mail Service Center, Raleigh, North Carolina 27699-1635.
- (b) Applications for certification must be submitted to the Board at least 30 days prior to the date of the examination.
- (c) The applicant shall certify that the information given is correct to the best of his/her knowledge. In addition, the applicant's supervisor shall certify that he/she has reviewed the application and recommends that the applicant be considered for certification by the Board.
- (d) Applicants shall take the examination at the place and date specified by the Board.

History Note: Authority G.S. 90A-21(c); 90A-24; Eff. February 1, 1976; Amended Eff. September 1, 1977; Readopted Eff. March 1, 1979; Amended Eff. May 1, 2006; August 1, 2004; February 1, 2002; August 3, 1992; September 1, 1990.

15A NCAC 18D .0701 OPERATOR IN RESPONSIBLE CHARGE

- (a) An operator in responsible charge must possess a valid certificate issued by the Board equivalent to or exceeding the classification of the facility for which he or she is designated.

(b) The operator in responsible charge is actually in charge of the daily operation and maintenance of the facility and shall not reside more than 50 miles from the facility without written permission from the Board. The operator in responsible charge shall be readily available for consultation on the premises of the facility in case of an emergency, malfunction or breakdown of equipment or other needs. No person shall be in responsible charge of more than any one of the following without written permission from the Board:

- (1) One surface water treatment facility;
- (2) Five community public water systems with well water facilities;
- (3) 10 non-community public water systems with well water facilities;
- (4) One distribution system serving over 3,300 service connections;
- (5) Five distribution systems serving over 500 service connections and less than 3,300 service connections;
- (6) 10 total distribution systems; or
- (7) 10 total cross-connection control systems.

No person shall be in responsible charge of any combination of a surface water treatment facility, a community public water system with well water facilities, a non-community public water system with well water facilities, a distribution system, and a cross-connection control facility without written permission from the Board.

(c) When permission from the Board is required, the request shall include sufficient documentation to satisfy the Board that the facilities in question can be managed in compliance with the requirements of 15A NCAC 18C.

(d) The operator in responsible charge shall report with annual certification renewal the name(s) and public water system identification number(s) for all systems for which the operator is the operator in responsible charge.

(e) If an operator in responsible charge takes responsibility for an additional system or relinquishes responsibility for any system, the operator shall notify the Board in writing within 30 days of this change.

(f) The operator in responsible charge shall establish standard operating procedures for each facility for which he/she is responsible. These procedures shall provide sufficient instruction to ensure that his/her decisions about water quality or quantity that affect public health are carried out properly. The procedures shall instruct persons lacking proper certification to refer all such decisions affecting public health to the certified operator on duty or to the operator in responsible charge.

History Note: Authority G.S. 90A-21(c); 90A-31; Eff. August 1, 1998; Amended Eff. May 1, 2006; August 1, 2002; August 1, 2000.

TITLE 17 – DEPARTMENT OF REVENUE

17 NCAC 03C .0108 EXTENSIONS

(a) Application. -- If the Gift Tax Return, Form G-600, cannot be filed by the due date of April 15, a donor may apply for an automatic six-month extension of time to file the return. To receive the extension, a donor must file Form D-410G,

Application for Extension for Filing Gift Tax Return, by the original due date of the return.

(b) Late Payment Penalty. -- An extension does not extend the time for payment of the tax due. Tax not paid by the original due date of the return is subject to the 10 percent penalty for failure to pay a tax when due. The Department does not assess this penalty if the donor paid at least 90 percent of the amount of tax due by the original due date of the return. Interest applies to all amounts not paid by the original due date of the return.

(c) Donors Outside U.S. - Donors, including military personnel, living outside the United States and Puerto Rico are granted an automatic extension of four months for filing a North Carolina gift tax return. No application is required to receive this extension.

(d) Return. -- A return may be filed at any time within the extension period. A return that is filed after the end of the extension period is subject to the penalty for failure to file a return.

History Note: Authority G.S. 105-197; 105-236; 105-262; 105-263; Eff. June 1, 1993; Amended Eff. May 1, 2006; August 1, 2002; July 1, 2000; August 1, 1998.

17 NCAC 06B .0107 EXTENSIONS

(a) Application. -- If an income tax return cannot be filed by the due date, a taxpayer may apply for an automatic six-month extension of time to file the return. To receive the extension, an individual must file Form D-410, Application for Extension for Filing Individual Income Tax Return, by the original due date of the return, and a partnership, estate, or trust must file Form D-410P, Application for Extension for Filing Partnership, Estate, or Trust Tax Return.

(b) Late Payment Penalty. -- A 10 percent late payment penalty applies to the remaining balance due if the tax paid by the due date of the return is less than 90 percent of the total amount of tax due. If the 90 percent rule is met, any remaining balance due, including interest, must be paid with the income tax return before the expiration of the extension period to avoid the late payment penalty. If a taxpayer does not file the application for extension by the original due date of the return, the taxpayer is subject to both the five percent per month late filing penalty (five dollars (\$5.00) minimum; 25 percent maximum) and the 10 percent late payment penalty (five dollars (\$5.00) minimum) on the remaining balance due.

(c) Individuals Outside U.S. -- Individuals living outside the United States and Puerto Rico (including military personnel) are granted an automatic extension of four months for filing a North Carolina income tax return if they attach a statement to the return showing that they were living outside the United States and Puerto Rico on the date the return was due. The time for payment of the tax is also extended; however, interest is due on any unpaid tax from the original due date of the return until the tax is paid. If an individual is unable to file the return within the automatic four-month extension period, an additional two-month extension may be obtained by following the provisions in Paragraph (a) of this Rule; however, Form D-410 must be filed by the automatic four-month extended date of August 15.

(d) Return. -- A return may be filed at any time within the extension period but it must be filed before the end of the extension period to avoid the late filing penalty.

History Note: Authority G.S. 105-155; 105-157; 105-160.6; 105-160.7; 105-236(3); 105-236(4); 105-262; 105-263; Eff. February 1, 1976; Amended Eff. May 1, 2006; August 1, 2002; August 1, 1998; November 1, 1994; May 1, 1994; June 1, 1993; October 1, 1992.

17 NCAC 06B .3206 FRAUD PENALTY

When an audit is based upon a federal audit report and the fraud penalty has been assessed for federal purposes, the 50 percent fraud penalty shall be assessed for State purposes. When the fraud penalty is assessed, no penalty for negligence shall be assessed with respect to the same deficiency; however, the penalty for failure to file and interest on the underpayment of estimated income tax shall be assessed if applicable with respect to the same deficiency.

History Note: Authority G.S. 105-159; 105-163.15; 105-236; 105-262; Eff. April 1, 1978; Amended Eff. May 1, 2006; July 1, 1999; June 1, 1993.

17 NCAC 06B .3902 NONRESIDENTS

- (a) The term "nonresident" includes an individual:
 - (1) Who resides in North Carolina for a temporary or transitory purpose and is, in fact, a domiciliary resident of another state or country; or
 - (2) Who does not reside in North Carolina but has income from sources within North Carolina and is, in fact, a domiciliary resident of another state or country.

(b) Under the Servicemembers Civil Relief Act, a member of the Armed Services who is a legal resident of another state stationed in North Carolina by virtue of military orders, is not subject to North Carolina income tax on his service pay but other income from employment, a business, or tangible property in North Carolina is subject to North Carolina income tax.

(c) There is no presumption as to the residence of a spouse of a member of the armed forces because of marriage. Legal residence shall be determined based on the facts in each case.

History Note: Authority G.S. 105-134.5; 105-262; Eff. June 1, 1990; Amended Eff. May 1, 2006; June 1, 1993.

17 NCAC 06D .0102 REQUIREMENTS FOR FILING

(a) Married individuals may make joint payments of estimated income tax even if they are not living together; however, they may not make joint estimated tax payments if they are separated under a decree of divorce or of separate maintenance. Also, they may not make joint estimated tax payments if either of them is a nonresident alien or if either of them have different tax years. Whether a man and wife make joint estimated tax payments or

separate payments shall not affect their choice of filing a joint income tax return or separate return. If they make joint payments and then file separate returns, they may divide the estimated tax payments between them.

(b) A taxpayer filing a short period return because of changing his income year shall make estimated income tax payments on the installment dates which fall within the short period and 15 days after the close of the short period which would have been due had he not changed his income year. Interest on an underpayment of estimated income tax for a short period shall be computed for the period of underpayment based on the tax shown due on the short period return and computed in the same manner as it would have been computed had the taxpayer not changed his income year.

(c) An individual may elect to have his or her income tax refund applied only to estimated income tax for the following year. A return reflecting an election to apply a refund to estimated tax for the following year must be filed by the last allowable date for making estimated tax payments for that year for the election to be valid.

(d) If an individual makes a valid election, that individual may not revoke the election after the return has been filed in order to have the amount refunded or applied in any other manner, such as an offset against any subsequently determined tax liability.

History Note: Authority G.S. 105-163.15; 105-262; Eff. February 1, 1976; Amended Eff. May 1, 2006; June 1, 1993; October 1, 1991; June 1, 1990; February 1, 1988.

17 NCAC 06D .0201 GENERAL

Interest may be due for underpayment of estimated income tax. The interest is computed separately for each payment period, therefore an individual may owe interest for an early period even if that individual later paid enough to make up the underpayment. If an individual did not pay enough tax by the due date of each of the payment periods, the individual may owe interest even if the individual is due a refund when the return is filed.

History Note: Authority G.S. 105-163.15; 105-236(9); 105-241.1(i); 105-262; Eff. February 1, 1976; Amended Eff. May 1, 2006; June 1, 1990; August 1, 1986; February 21, 1979.

17 NCAC 06D .0210 PERIOD OF UNDERPAYMENT

(a) If a payment of estimated tax is applied to an underpayment for an earlier period, but the payment is less than the underpayment, there shall be more than one period of underpayment for the earlier period.

(b) The first period of underpayment for any payment period shall be from the day after the due date for the payment period to the date of the first applied payment. Later periods of underpayment for that payment period shall be from the day after the due date for the payment period to the date of the next applied payment or April 15 of the following year, whichever is earlier.

(c) To determine the interest for a payment period with more than one period of underpayment, interest shall be computed

separately for each of the periods of underpayment using the number of days in each period of underpayment, the correct underpayment balance, and the appropriate interest rates.

History Note: Authority G.S. 105-163.15; 105-163.18; 105-262; Eff. June 1, 1990; Amended Eff. May 1, 2006; June 1, 1993.

- (4) consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (5) a copy of the applicant's high school diploma or proof of equivalency;
- (6) the proper fees, as required by 21 NCAC 04B .0202;
- (6) documentation of required auctioneer schooling or auctioneer experience, as follows:

TITLE 21 – OCCUPATIONAL LICENSING BOARDS

CHAPTER 4 - COMMISSION FOR AUCTIONEERS

21 NCAC 04B .0103 DEFINITIONS

Whenever used in this Chapter:

- (1) "Auctioneers Law" or "licensing law" shall refer to G.S. 85B;
- (2) "Buyer's Premium" shall mean any additional charge owed by a buyer to the auctioneer, auction firm, or directly to the seller above and beyond the highest accepted bid amount;
- (3) "Board" shall mean the North Carolina Auctioneers Commission;
- (4) "Minimum Bid" as used in auctions shall mean minimum opening bids;
- (5) "Principal(s)" as it pertains to auction firms shall mean director(s), officer(s) and partner(s);
- (6) "Non-Auction Firm Business" shall mean a sole licensed auctioneer whose business is not defined as an "Auction Firm" as set forth in G.S. 85B-1(6);
- (7) "Auction house," "auction barn," or "auction gallery" shall mean an auction business that conducts auctions at a single location and where consignments are brought to the location by either the auctioneer/auction firm or the public to be sold at auction.

History Note: Authority G.S. 85B-1; 85B-3.1; 85B-4; Eff. November 1, 1984; Amended Eff. May 1, 2006; April 1, 2001; April 1, 1996; January 1, 1995.

21 NCAC 04B .0201 APPLICATION FORMS

(a) Auctioneer. Each applicant for an auctioneer license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) one passport-type photograph for identification;
- (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official in other states) in each county where the applicant has resided and maintained a business within the immediate preceding 60 months (five years);
- (3) the completed fingerprint cards provided by the Board and the form signed by the applicant

(A) Applicants who base their application upon their successful completion of an approved school of auctioneering shall submit a photostatic copy of their diploma or certificate of successful completion. An applicant shall have successfully completed this school within the five years preceding the date of application or if the applicant has successfully completed this school more than the five years preceding the date of his or her application, shall submit documentation verifying the applicant's active lawful participation in auctions within the two years preceding the date of application. The above referenced participation in auctions is defined as "Auctioneering" as set forth in G.S. 85B-1(8).

(B) Applicants who base their application upon their successful completion of an apprenticeship shall submit a log which was maintained and completed during the apprenticeship period which details the exact hours and dates on which they obtained apprenticeship experience, with each entry being verified and signed by their supervising auctioneer. A minimum of 100 hours of experience during the apprenticeship two-year period shall be obtained. Not less than 25 of the total hours accumulated must be attributable to bid calling and not less than 50 hours shall be attributable to working as a ring person, drafting and negotiating contracts, appraising merchandise, advertising, clerking and cashiering, with not less than five hours of accumulated experience documented for each category. An apprentice who applies for an auctioneer license under this Part shall submit his application and supporting documentation and obtain a passing score on the auctioneer exam prior to the expiration of his apprentice auctioneer license; and

- (7) Non-resident applicants shall also submit a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.

(b) Non-Resident Reciprocal Auctioneer. Each non-resident applicant for auctioneer license, who applies for a North Carolina license pursuant to G.S. 85B-5 shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) one passport-type photograph for identification;
- (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county where the applicant has resided and maintained a business within the immediate preceding 60 months (five years);
- (3) the completed fingerprint cards provided by the Board and the form signed by the applicant consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (4) a copy of the applicant's high school diploma or proof of equivalency;
- (5) the proper fees, as required by 21 NCAC 04B .0202;
- (6) a statement of good standing from the licensing board or Commission of each jurisdiction where the applicant holds an auctioneer, apprentice auctioneer or auction firm license; and
- (7) a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.

(c) Apprentice Auctioneer. Each applicant for an apprentice auctioneer license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) one passport-type photograph for identification;
- (2) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county where the applicant has resided and maintained a business within the immediate preceding 60 months (five years);
- (3) the completed fingerprint cards provided by the Board and the form signed by the applicant consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (4) a copy of the applicant's high school diploma or proof of equivalency;
- (5) the proper fees, as required by 21 NCAC 04B .0202;
- (6) the signature, as designated on the applicant form, of the licensed auctioneer who will be supervising the apprentice auctioneer;

- (7) a written statement of the proposed supervisor's background and experience in the auction profession to include the number and types of auctions conducted or participated in annually; and

- (8) if applicant is a non-resident, a properly completed "Designation of Agent for Service of Process Form" with notarized signature and notarial seal affixed.

(d) Auction Firms. An applicant for an auction firm shall be a principal within the firm. Each applicant for an auction firm license shall complete an application form provided by the Board. This form shall be submitted to the Executive Director and shall be accompanied by:

- (1) statements of the results of a local criminal history records search by the clerk of superior court (or equivalent official) in each county where any principal and designated person of the auction firm has resided and maintained a business within the immediate preceding 60 months (five years);
- (2) each of the principal's and designated person's of the auction firm completed fingerprint cards provided by the Board and the form signed by each consenting to the check of the criminal history and to the use of fingerprints and other identifying information;
- (3) a copy of each principal's and designated person's high school diploma or proof of equivalency;
- (4) the proper fees, as required by 21 NCAC 04B .0202;
- (5) a certified copy of any applicable Articles of Incorporation or Partnership Agreement;
- (6) a statement of good standing from the licensing board or Commission of each jurisdiction where the applicant firm and any principal and designated person of such firm holds an auctioneer license of any type; and
- (7) if applicant firm is a non-resident, a properly completed "Designation of Agent for Service of Process Form" (one each for the auction firm and for each principal and designated person of the firm) with notarized signature and notarial seal affixed and, if a corporation, the corporate seal and corporate secretary's signature affixed.

History Note: Authority G.S. 85B-1; 85B-3.1; 85B-4(d); 85B-5; 85B-3.2; Eff. November 1, 1984; Amended Eff. April 1, 1996; January 1, 1995; June 1, 1991; Temporary Amendment Eff. January 1, 2000; Amended Eff. May 1, 2006; April 1, 2001.

21 NCAC 04B .0401 LICENSE NUMBER: DISPLAY OF LICENSE AND POCKET CARD

(a) When being licensed each individual or firm shall be issued a license number which remains solely his. Should that number be retired for any reason (such as death, failure to continue in the

auction business, failure to renew his license, or any other reason) that number shall not be reissued back to the individual or the firm or to any other individual or firm.

(b) A pocket card shall be issued by the Executive Director giving the auctioneer, apprentice auctioneer or auction firm's name, license number and date of expiration. The pocket card must be carried by the licensee, and in the case of auction firms each of the designated person(s), at all times when auctioneering activities are being conducted and shall be available for inspection by the Executive Director or designated agent of the

Board. An auction firm shall display its license in a prominent place upon its premises, so as to be visible for inspection by patrons of the firm.

History Note: Authority G.S. 85B-3.1; 85B-4; Eff. November 1, 1984; Amended Eff. May 1, 2006; April 1, 2001; January 1, 1995; April 1, 1989.

21 NCAC 04B .0502 REQUIREMENTS FOR APPROVAL/MINIMUM STANDARDS

(a) In order to be accepted as an approved school, and in order to remain approved, the course curriculum must contain classroom instruction in the following subjects for the minimum number of hours shown:

- (1) Essential Core Curriculum (minimum 50 hours);
 - 16 Hours - Bid Calling, Voice Control, Proper Breathing Techniques, and Use and Sequence of Numbers;
 - 4 Hours - Advertising;
 - 8 Hours - Auctioneers Law and Rules and Regulations;
 - 2 Hours - Uniform Commercial Code and Bulk Transfers;
 - 2 Hours - Drafting and Negotiating Contracts;
 - 2 Hours - Closing Statements and Settlements;
 - 8 Hours - Accounting and Mathematics;
 - 1 Hour - Auctioneering Ethics;
 - 2 Hours - Handling Sale Proceeds and Escrow Accounts;
 - 2 Hours - Auction Preparation and Setup;
 - 3 Hours - Review and Testing (End of Course).

- (2) Supplemental Instruction Areas (minimum 30 hours):

Antiques	Heavy Equipment
Real Estate	Automobiles
Technology	Cattle and Livestock
Environmental Issues	Public Speaking
Computers	Estate Sales
Firearms	Appraising
Foreclosure and Bankruptcy Sales	Sales Tax Requirements
Art, Rugs, Jewelry	Hygiene and Personal Appearance
Body Language	Ring Work
Farm Machinery	Consignment Auctions

Minimum hours are not required in individual supplemental subjects, however, all topics must be addressed in the school.

- (3) Courses that include students that will become North Carolina applicants must provide a minimum of 2 hours of instruction on the North Carolina Auctioneers Law and Rules, G.S. 85B and 21 NCAC 04B. This instruction shall be included within the minimum required 8 hours instruction of Auctioneers Law and Rules and Regulations.

(b) Students attending an approved course must attend and successfully complete a minimum of 80 hours of classroom instruction according to the list of subjects and minimum hours of instruction in each subject specified in Paragraph (a) of this Rule. An hour of creditable instruction is defined as 50 minutes of classroom instruction or practical exercise accompanied by a 10 minute break.

(c) Each course offered must include instruction by a minimum of five different instructors, at least two of whom must be professional auctioneers. Regardless of the total number of hours taught by any given instructor, no more than 20 hours of an individual's instruction may be counted to satisfy the requirements of Paragraph (a) of this Rule.

(d) The school shall establish standards for all persons who instruct in an approved school with minimum training or experience, or a combination thereof, in the particular field in which they are instructing.

(e) The school shall provide or make available suitable facilities, equipment, materials and supplies necessary for the course, specifically including:

- (1) a comfortable, well-lighted and ventilated classroom with a seating capacity sufficient to accommodate all students; and
- (2) audio-visual equipment and other instructional devices and aids necessary and beneficial to the delivery of effective training.

History Note: Authority G.S. 85B-3.1; 85B-4(d); Eff. November 1, 1984;

Amended Eff. May 1, 2006; April 1, 2001; March 1, 1995.

21 NCAC 04B .0602 ADVERTISING

(a) In all advertisements relating to an auction, the auctioneer's, apprentice auctioneer's or auction firm's name and license number shall be conspicuously given. If an auctioneer is working for or in conjunction with an auction firm, such relationships shall be disclosed and both license numbers shall be conspicuously given. A general advertisement which does not concern a specific sale(s) and which does not list sale dates, times or locations, generally referred to as trolling or holding advertisements, shall not be subject to any identification requirement. A licensee may advertise under a name, assumed name, trade name, or combination of names, only if written notice has been previously filed with the Board.

(b) Any licensee who advertises an "Estate Sale" shall specifically disclose, in all advertisement materials, whether it is the estate of a living or deceased person. Before conducting an auction as an "estate sale," the majority of items in the sale shall come from the estate of the living or deceased person(s). Other items not related to or in an estate may be sold with an estate if specifically disclosed at or before the time of the auction.

(c) It shall be a violation of these Rules to advertise a "Bankruptcy Sale" unless the item(s) offered for sale, whether real or personal, are from an active bankruptcy action. Before conducting an auction as a "bankruptcy sale," the majority of the items in the sale shall come from the bankruptcy of one or more parties. Other items not related to or from a bankruptcy action may be sold with items from a bankruptcy action if specifically disclosed at or before the time of the auction.

(d) It shall be a violation of these Rules to advertise an item, either real or personal, as "Absolute" or "Without Reserve" if the item is subject to confirmation, minimum bid, or any other condition of sale. Before advertising an auction as absolute or without reserve, the majority of items in the sale shall be offered for sale absolute or without reserve. Items that are not absolute may be included in the auction provided they are specifically designated as such in all announcements or advertisements.

(e) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Urgent," "Emergency," "Distress" or any other word which connotes liquidation of assets or that the buyers will, for some extraordinary reason, be in a position to reap some unusual bargain without specifically disclosing, in the written advertisement in a print size equal to the descriptive word, the reason that the sale is "urgent," the nature of the "emergency" or the cause of the "distress," etc.

(f) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Seized," "Confiscated," "Forfeited" or any other word which connotes a governmental action whereby items are seized or taken by a government department, agency or commission and released or sold or that the buyers will, for some governmental reason, be in a position to reap some unusual bargain without specifically disclosing, in the written advertisement in a print size equal to the descriptive word, the exact nature of the government action.

(g) It shall be a violation of these Rules to advertise any items as being from an "estate" or a "bankruptcy," or from an "urgent," "emergency," "distress," "seized," "confiscated," "forfeited" or similar sale, unless the consignor of the item(s) to be sold is the original owner of the item(s), the designated representative of

the owner, or a federal, state or local department, agency or commission charged with disposing of the item(s), and consigned the item(s) directly to the advertised sale.

(h) It shall be a violation of these Rules to:

- (1) Reference the U.C.C. or any other uniform act or federal or state law in any advertisement unless such act or law is required, by law, to be referenced;
- (2) Reference or mention any federal, state or local department, agency or commission in any advertisement unless specifically required by law to do so or unless prior written approval is received from such department, agency or commission; or
- (3) Otherwise connote in any advertisement that the auction is under the auspices of, at the direction of or required by federal or state law or act or a federal, state or local agency or commission and that the buyers will, for some legal or governmental reason, be in a position to reap some unusual bargain.

(i) It shall be a violation of these Rules to advertise for sale items which the auctioneer/firm does not intend to offer for sale at the advertised auction.

(j) It shall be a violation of these Rules for an auctioneer or auction firm to permit its name or license number to appear on any advertisement for an auction without reviewing the contents of the advertisement prior to its publication to ascertain its compliance with applicable law and Rules.

(k) It shall be a violation of these Rules to advertise any auction using such descriptive words as "Contents," "Stock," "Inventory," "Liquidation" or any other word which connotes that the items to be auctioned are present on the premises of a residence, business, building or establishment unless the items were physically present continuously for 30 days prior to the signing of the contract or written agreement. Before conducting an auction using any of the descriptive words, the majority of the items in the sale shall be from the premises. Other items not related to or from the contents of the residence or business may be included in the auction provided they are specifically designated as such in all advertisements previous to the sale. The 30 day requirement shall not apply to items used in direct conjunction with the residence or business and brought to the site solely for the purpose of sale at auction.

(l) At all auctions that include a buyer's premium, the amount of the buyer's premium shall be announced at the beginning of the auction and a written notice of this information shall be conspicuously displayed or distributed to the public at the auction site.

History Note: Authority G.S. 85B-1; 85B-3.1; 85B-8(a)(4); Eff. November 1, 1984; Amended Eff. May 1, 2006; April 1, 2001; April 1, 1996; January 1, 1995; June 1, 1991.

21 NCAC 04B .0604 CONTRACTS, CONSIGNMENT RECORDS, SALES RECORDS, AND BIDDER REGISTRATION RECORDS

- (a) All written agreements for auctions and registration, sales and accounting records shall be maintained at the site during the conduct of the auction and, upon request, shall be made available to the Commission or its designated agent.
- (b) An auction house, auction barn, or auction gallery business may enter into a written agreement with regular dealers or sellers for an extended period of time, not to exceed one year.
- (c) The consignment records shall be kept by the licensee for a period of two years from the date of the auction.
- (d) At an auction house, auction barn, or auction gallery, when consignments are brought to the location by the public during that specific auction sale, the sales records and the consignment records may be the same.
- (e) The sales records shall be kept by the licensee for a period of two years from the date of the auction.
- (f) The bidder registration records shall contain the bidders' names, addresses, telephone numbers, and when possible e-mail addresses. The bidder registration records shall be kept by the licensee for a period of two years from the date of the auction.
- (g) All required records shall be open for inspection by the Commission or its designated agent at reasonable times, or copies of the same shall be provided to the Commission or its designated agent upon written request.

History Note: Authority G.S. 85B-1; 85B-7; Eff. January 1, 1995; Amended Eff. May 1, 2006.

21 NCAC 04B .0605 BIDDING

- (a) No auctioneer/auction firm shall bid on items in a sale he is conducting or procure such a bid without the intent to purchase the item. However, in a sale with reserve, the auctioneer/auction firm may bid on the reserve item up to, and including, the amount of the reserve price without the intent to purchase the item. In any auction where the auctioneer/auction firm bids or such auctioneer/auction firm procures such a bid, the auctioneer shall announce such bidding in advance of the auction.
- (b) A minimum opening bid shall not be required in an absolute auction. Following an opening bid, the auctioneer may set reasonable minimum bid increments. Such a policy shall be stated and, if possible, posted or included in the auctioneer's/auction firm's written terms and conditions of the sale. In this Paragraph "reasonable minimum bid increments" are determined by the type and value of the property being offered at an auction.

History Note: Authority G.S. 25-2-328(4); 85B-1; 85B-3.1; Eff. January 1, 1995; Amended Eff. May 1, 2006; April 1, 2001.

21 NCAC 04B .0607 NON-AUCTION FIRM BUSINESSES

- (a) A licensed auctioneer who owns and operates a non-auction firm business has the sole responsibility for arranging, managing, soliciting, and contracting auctions; the supervision of the auction staff; the supervision of the acceptance of consignments of items for sale at auction; the supervision of the advertising of an auction; and the supervision of the acceptance of payment and disbursement of monies for items sold at auction.

- (b) A licensed auctioneer or an apprentice auctioneer who is employed or contracted by another licensed auctioneer who owns and operates a non-auction firm business shall only be responsible for calling bids and performing duties that a non-auctioneer is allowed to perform.
- (c) A licensed auctioneer who owns and operates a non-auction firm business shall be on the premises of his businesses' auction sale location while the auction sale is conducted.

History Note: Authority G.S. 85B-1; 85B-3.1; Eff. May 1, 2006.

21 NCAC 04B .0806 COURSE COMPLETION REPORTING

- (a) Course sponsors must prepare and submit to the Board reports verifying completion of each continuing education course conducted. Sponsors must submit these reports to the Board in a manner that will assure receipt by the Board within thirty calendar days following the course, but in no case later than May 15 for courses conducted prior to that date. Reports shall include the following:

- (1) Official course name;
- (2) Sponsor or coordinator name, mailing address, and telephone number;
- (3) Coordinator signature certifying that the information is correct;
- (4) Name, address, and North Carolina license number of each licensee who satisfactorily completes the course and who desires continuing education credit for the course;
- (5) Physical location where course was conducted;
- (6) Date(s), starting and ending times of course; and
- (7) Number of credit hours.

- (b) At the request of the Board, course sponsors must provide licensees enrolled in each continuing education course an opportunity to complete an evaluation of the course upon completion of the course.

- (c) Course sponsors shall provide each licensee who satisfactorily completes an approved continuing education course a course completion certificate. Sponsors must provide the certificates to licensees within thirty calendar days following the course, but in no case later than May 15 for any course completed prior to that date. The certificate shall be retained by the licensee as secondary proof of having completed the course. Course completion certificates shall include the following:

- (1) Official course name;
- (2) Name of licensee who satisfactorily completes the course;
- (3) Date(s) of attendance;
- (4) Number of credit hours; and
- (5) Coordinator signature certifying that the information is correct.

- (d) When a licensee in attendance at a continuing education course does not comply with the student participation standards, the course sponsor shall advise the Board of this matter in writing at the time reports verifying completion of continuing education for the course are submitted. A sponsor who determines that a licensee failed to comply with either the Board's attendance or student participation standards shall not

provide the licensee with a course completion certificate nor shall the sponsor include the licensee's name on the reports verifying completion of continuing education.

History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Amended Eff. May 1, 2006.

21 NCAC 04B .0819 ALTERNATIVE COMPLIANCE

- (a) An auctioneer, apprentice auctioneer, or designated person of an auction firm who is unable to attend a Board-approved course and obtain the requisite hours of instruction established by the Board may apply to the Board for alternative compliance.
- (b) A written request for alternative compliance shall be received by the Board by May 15 of the year in which the requisite hours of instruction are to be completed.
- (c) If approved, the course of instruction shall be completed prior to license renewal and shall be exempt from the late fee.
- (d) Alternative compliance shall include:
 - (1) Academic courses at a community college, junior college, or college or university located in this State and accredited by the Southern Association of Colleges and Schools in any of the following topics:
 - (A) Accounting;
 - (B) Finance;
 - (C) Business Management;
 - (D) Business Law;
 - (E) Economics;
 - (F) Marketing;
 - (G) Computer Science;
 - (H) Sales; or
 - (I) Enhancing Personal or Professional Skills.
 - (2) Completion of any non-real estate appraisal course with evidence of successful completion; and
 - (3) Publication of an article in professional journal of general circulation among the membership of the profession.

History Note: Authority G.S. 85B-4(e1);
Temporary Adoption Eff. January 1, 2000;
Eff. April 1, 2001;
Amended Eff. May 1, 2006.

CHAPTER 12 - LICENSING BOARD FOR GENERAL CONTRACTORS

21 NCAC 12 .0302 REQUEST

- (a) A request for the required application form may be made at the address in Rule .0101 of this Chapter.
- (b) The Board shall charge a fee to cover the cost of publishing and mailing the application package.

History Note: Authority G.S. 87-1; 87-10; 150B-19(5);
Eff. February 1, 1976;

Amended Eff. June 23, 1977;
Readopted Eff. September 26, 1977;
Amended Eff. May 1, 2006; December 1, 1995; June 1, 1992.

21 NCAC 12 .0506 CHARGE FOR STATUS OF LICENSURE

The Board shall charge persons requesting a verified copy of all or part of its roster of licensed contractors a fee to cover the cost of copying and mailing. The Board shall furnish copies free of charge to governmental entities.

History Note: Authority G.S. 87-8; 87-13; 150B-19(5);
Eff. June 1, 1992;
Amended Eff. May 1, 2006; May 1, 1995.

CHAPTER 32 – BOARD OF MEDICAL EXAMINERS

21 NCAC 32S .0101 DEFINITIONS

The following definitions apply to this Subchapter:

- (1) "Board" means the North Carolina Medical Board.
- (2) "Physician Assistant" means a person licensed by and registered with the Board to perform medical acts, tasks, or functions under the supervision of a physician licensed by the Board, who performs tasks traditionally performed by the physician, and who has graduated from a physician assistant or surgeon assistant program accredited by the Commission on Accreditation of Allied Health Education Programs, or its predecessor or successor agencies.
- (3) "Physician Assistant License" means the document issued by the Board showing approval for the physician assistant to perform medical acts, tasks, or functions under North Carolina law.
- (4) "Registering" means paying the annual fee and providing the information requested by the Board as outlined in Rule .0105 of this Section.
- (5) "Supervising Physician" means a physician who is licensed by the Board and who is not prohibited by the Board from supervising physician assistants. The physician may serve as a primary supervising physician or as a back-up supervising physician.
 - (a) The "Primary Supervising Physician" is the physician who accepts full responsibility for the physician assistant's medical activities and professional conduct at all times, whether the physician personally is providing supervision or the supervision is being provided by a Back-up Supervising Physician. The Primary Supervising Physician shall assume responsibility for assuring the

Board that the physician assistant is qualified by education and training to perform all medical acts required of the physician assistant and shall assume responsibility for the physician assistant's performance in the particular field or fields in which the physician assistant is expected to perform medical acts.

(b) The "Back-up Supervising Physician" means the physician who accepts the responsibility for supervision of the physician assistant's activities in the absence of the Primary Supervising Physician. The Back-up Supervising Physician is responsible for the activities of the physician assistant only when providing supervision.

(6) "Supervising" means overseeing the activities of, and accepting the responsibility for, the medical services rendered by a physician assistant.

(7) "Supervisory Arrangement" is the written statement that describes the medical acts, tasks and functions delegated to the physician assistant by the primary supervisory physician appropriate to the physician assistant's qualification, training, skill and competence.

(8) "Volunteer practice" means performance of medical acts, tasks, or functions without expectation of any form of payment or compensation.

(9) "Examination" means the Physician Assistant National Certifying Examination.

History Note: Authority G.S. 90-18(c)(13); 90-18.1; Eff. May 1, 1999; Amended Eff. June 1, 2006.

21 NCAC 32S .0102 QUALIFICATIONS FOR LICENSE

(a) Except as otherwise provided in this Subchapter, an individual shall obtain a license from the Board before the individual may practice as a physician assistant. The Board may grant a license as a physician assistant to an applicant who has met all the following criteria:

- (1) submits a completed application on forms provided by the Board;
- (2) pays the fee established by Rule .0121(1) in this Section;
- (3) has successfully completed an educational program for physician assistants or surgeon assistants accredited by the Commission on Accreditation of Allied Health Education Programs or its predecessor or successor agencies and; if licensed in North Carolina after June 1, 1994, has successfully completed the Physician Assistant National Certifying Examination;

(4) certifies that he or she is mentally and physically able to engage safely in practice as a physician assistant;

(5) has no license, certificate, or registration as a physician assistant currently under discipline, revocation, suspension or probation for cause resulting from the applicant's practice as a physician assistant;

(6) has good moral character;

(7) submits to the Board any other information the Board deems necessary to evaluate the applicant's qualifications; and

(8) if two years or more have passed since graduation from an approved program, as described in Subparagraph (3), the applicant must affirm that he/she has successfully completed at least 100 hours of continuing medication education (CME) during the preceding two years. The Board may, require submission of documentation of CME as part of application process.

(b) An applicant may be required to appear, in person, for an interview with the Executive Director, a Board member, an agent of the Board, or the full Board upon completion of all credentials.

History Note: Authority G.S. 90-11; 90-18(c)(13); 90-18.1; Eff. May 1, 1999; Amended Eff. June 1, 2006.

21 NCAC 32S .0104 INACTIVE LICENSE STATUS

(a) By notifying the Board in writing any physician assistant may elect to place his or her license on an inactive status. A physician assistant with an inactive license shall not practice as a physician assistant. Any physician assistant who engages in practice while his or her license is on inactive status shall be considered to be practicing without a license, which shall be grounds for discipline under G.S. 90-14(a)(7). A physician assistant requesting reactivation from inactive status shall pay the current renewal fee, to provide documentation to the Board verifying completion of continuing medical education during the preceding two years as required in Rule .0106 of this Section, and shall meet the criteria for renewal as specified in 21 NCAC 32S .0105.

(b) A physician assistant requesting reactivation from inactive status that is more than year after the date the license became inactive shall pay the current renewal fee, provide documentation to the Board verifying completion of continuing medical education during the preceding two years as required in Rule .0106 of this Section, complete forms provided by the Board, provide proof that he/she has successfully completed the Physician Assistant National Certifying Examination, and shall meet the criteria for renewal as specified in 21 NCAC 32S .0105.

History Note: Authority G.S. 90-13(c)(13); 90-18.1; Eff. May 1, 1999; Amended Eff. June 1, 2006.

CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0120 DEFINITIONS

The following definitions shall apply throughout this chapter unless the context indicates otherwise:

- (1) "Academic term" means one semester of a school year.
- (2) "Accountability/Responsibility" means being answerable for action or inaction of self, and of others in the context of delegation or assignment.
- (3) "Accredited institution" means an institution accredited by a United States Department of Education approved institutional accrediting body.
- (4) "Active Practice" means activities that are performed, either for compensation or without compensation, consistent with the scope of practice for each level of licensee as defined in G.S. 90-171.20(4), (7) and (8).
- (5) "Advanced Practice Registered Nurse (APRN)" means for the purposes of Board qualification a nurse who meets the criteria specified in G.S. 90-171.21(d)(4).
- (6) "Assigning" means designating responsibility for implementation of a specific activity or set of activities to a person licensed and competent to perform such activities.
- (7) "Clinical experience" means application of nursing knowledge in demonstrating clinical judgment.
- (8) "Clinical judgment" means the application of the nursing student's knowledge, skills, abilities and experience in making decisions about client care.
- (9) "Competent" means having the knowledge, skills and ability to safely perform an activity or role.
- (10) "Continuing Competence" means the on-going acquisition and application of knowledge and the decision-making, psychomotor, and interpersonal skills expected of the licensed nurse resulting in nursing care that contributes to the health and welfare of clients served.
- (11) "Contact Hours" means 50 minutes of an organized learning experience.
- (12) "Continuing Education Activity" means a planned, organized learning experience that is related to the practice of nursing or contributes to the competency of the nurse as defined in 21 NCAC 36 .0223 Subparagraph (a)(2).
- (13) "Controlling institution" means the degree-granting organization or hospital under which the nursing education program is operating.
- (14) "Curriculum" means an organized system of teaching and learning activities directed toward the achievement of specified learning objectives/outcomes.
- (15) "Delegation" means transferring to a competent individual the authority to perform a selected nursing activity in a selected situation. The nurse retains accountability for the delegation.
- (16) "Dimensions of Practice" means those aspects of nursing practice that include professional responsibility, knowledge-based practice, legal/ethical practice and collaborating with others, consistent with G.S. 90-171.20(4), (7) and (8).
- (17) "Distance education" means the teaching/learning strategies used to meet the learning needs of students, when the students and faculty are separate from each other.
- (18) "Faculty directed clinical practice" means the responsibility of nursing program faculty in overseeing student clinical learning including the utilization of preceptors.
- (19) "Focused client care experience" means a clinical experience that simulates an entry-level work experience. The intent is to assist the student to transition to an entry-level practice. There is no specific setting requirement. Supervision may be by faculty/preceptor dyad or direct faculty supervision.
- (20) "Interdisciplinary faculty" means faculty from professions other than nursing.
- (21) "Interdisciplinary team" means all individuals involved in providing a client's care, who cooperate, collaborate, communicate and integrate care to ensure that care is continuous and reliable.
- (22) "Level of Licensure" means practice of nursing by either a Licensed Practice Nurse or a Registered Nurse as defined in G.S. 90-171.20(7) and (8).
- (23) "Level of student" means the point in the program to which the student has progressed.
- (24) "Maximum enrollment" means the total number of pre-licensure students that can be enrolled in the nursing program at any one time. The number reflects the capacity of the nursing program based on demonstrated resources sufficient to implement the curriculum.
- (25) "Methods of Instruction" means the planned process through which teacher and student interact with selected environment and content so that the response of the student gives evidence that learning has taken place. It is based upon stated course objectives/outcomes for learning experiences in classroom, laboratory and clinical settings.
- (26) "National Credentialing Body" means a credentialing body that offers certification or re-certification in the licensed nurse's or Advanced Practice Registered Nurse's specialty area of practice.

- (27) "NCLEX-PN™" means the National Council Licensure Examinations for Practical Nurses.
- (28) "NCLEX-RN™" means the National Council Licensure Examinations for Registered Nurses.
- (29) "Nursing Accreditation body" means a national nursing accrediting body, recognized by the United States Department of Education.
- (30) "Nursing program faculty" means individuals employed full or part time by academic institution responsible for developing, implementing, evaluation and updating nursing curricula.
- (31) "Nursing project" means a project or research study of a topic related to nursing practice that includes a problem statement, objectives, methodology and summary of findings.
- (32) "Participating in" means to have a part in or contribute to the elements of the nursing process.
- (33) "Pattern of noncompliance" means episodes of recurring non-compliance with one or more Rules in Section .0300.
- (34) "Preceptor" means a registered nurse at or above the level of licensure that an assigned student is seeking, who may serve as a teacher, mentor, role model and supervisor for a faculty directed clinical experience.
- (35) "Prescribing Authority" means the legal permission granted by the Board of Nursing and Medical Board for the nurse practitioner and nurse midwife to procure and prescribe legend and controlled pharmacological agents and devices to a client in compliance with Board of Nursing rules and other applicable federal and state law and regulations.
- (36) "Program Closure" means to cease operation of a nursing program.
- (37) "Program Type" means a course of study that prepares an individual to function as an entry-level practitioner of nursing. The three program types are:
- (a) BSN - Curriculum components for Bachelor of Science in Nursing provides for the attainment of knowledge and skill sets in the current practice in nursing, nursing theory, nursing research, community and public health, health care policy, health care delivery and finance, communications, therapeutic interventions and current trends in health care. For this program type, the client is the individual, family, group, and community.
- (b) Associate Degree in Nursing (ADN)/Diploma in Registered Nursing - Curriculum components for the ADN/Diploma in Registered Nursing provides for the attainment of knowledge and skill sets in the current practice in nursing, community concepts, health care delivery, communications, therapeutic interventions and current trends in health care. For this program type, client is the individual, group of individuals, and family.
- (c) Practical Nurse Diploma - Curriculum prepares for functioning in a dependent role in providing direct nursing care under the direction of a registered nurse or other health care provider as defined by the Nursing Practice Act. Curriculum components provide for the attainment of knowledge and skill sets in the current practice of practical nursing, communications, therapeutic interventions, including pharmacology, growth and development and current trends in health care. For this program type client is the individual, or group of individuals.
- (38) "Review" means collecting and analyzing information to assess compliance with Section .0300 of this Chapter. Information may be collected by multiple methods including review of written reports and materials, on-site observations and review of documents or in person or telephone interview(s) and conference(s)
- (39) "Rescind Approval" means a Board action that removes the approval status previously granted.
- (40) "Self Assessment" means the process whereby the individual reviews her/his own nursing practice and identifies the knowledge and skills possessed, as well as those skills to be strengthened.
- (41) "Specialty" means a broad, population-based focus of study encompassing the common health-related problems of that group of patients and the likely co-morbidities, interventions and responses to those problems.
- (42) "Supervision" means the provision of guidance or direction, evaluation and follow-up by the licensed nurse for accomplishment of an assigned or delegated nursing activity or set of activities.
- (43) "Survey" means an on-site visit for the purpose of gathering data in relation to reviewing nursing programs compliance with Section .0300 of this Chapter.

History Note: Authority G.S. 90-171.23; 90-171.38; Eff. April 1, 2003; Amended Eff. May 1, 2006; December 1, 2005; August 1, 2005.

21 NCAC 36 .0232 CONTINUING COMPETENCE

(a) Effective July 1, 2006, upon application for license renewal or reinstatement, each licensee shall:

- (1) Complete a self-assessment of practice including the dimensions of: professional responsibility, knowledge based practice, legal/ethical practice and collaborating with others;
- (2) Develop a plan for continued learning; and
- (3) Select and implement a learning activity option from those outlined in Paragraph (b) of this Rule.

(b) Effective July 1, 2008, upon application for license renewal or reinstatement, each licensee shall attest to having completed one of the following learning activity options during the preceding renewal cycle and be prepared to submit evidence of completion if requested by the Board:

- (1) National Certification or re-certification related to the nurse's practice role by a national credentialing body recognized by the Board, consistent with 21 NCAC 36 .0120 and 21 NCAC 36 .0801;
- (2) Thirty contact hours of continuing education activities related to the nurse's practice;
- (3) Completion of a Board approved refresher course, consistent with 21 NCAC 36 .0220 and 21 NCAC 36 .0808(d);
- (4) Completion of a minimum of two semester hours of post-licensure academic education related to nursing practice;
- (5) Fifteen contact hours of a continuing education activity related to the nurse's practice and completion of a nursing project as principal or co-principal investigator to include a statement of the problem, project objectives, methods and summary of findings;
- (6) Fifteen contact hours of a continuing education activity related to the nurse's practice and authoring or co-authoring a published nursing-related article, paper, book or book chapter;
- (7) Fifteen contact hours of a continuing education activity related to the nurse's practice and designing, developing, and conducting an educational presentation or presentations totaling a minimum of five contact hours for nurses or other health professionals; or
- (8) Fifteen contact hours of a continuing education activity related to the nurse's practice and 640 hours of active practice within the previous two years.

(c) The following documentation shall be accepted as evidence of completion of learning activity options outlined in Paragraph (b) of this Rule:

- (1) Evidence of national certification shall include a copy of a certificate which includes name of licensee, name of certifying body, date of certification, date of certification expiration. Certification shall be initially attained during the licensure period, or have been in effect

during the entire licensure period, or have been re-certified during the licensure period.

- (2) Evidence of contact hours of continuing education shall include the name of the licensee; title of educational activity, name of the provider, number of contact hours and date of activity.
- (3) Evidence of completion of a Board approved refresher course shall include written correspondence from the provider with the name of the licensee, name of the provider, and verification of successful completion of the course.
- (4) Evidence of post-licensure academic education shall include a copy of transcript with the name of the licensee, name of educational institution, date of attendance, name of course with grade and number of credit hours received.
- (5) Evidence of completion of a nursing project shall include an abstract or summary of the project, the name of the licensee, role of the licensee as principal or co-principal investigator, date of project completion, statement of the problem, project objectives, methods used and summary of findings.
- (6) Evidence of authoring or co-authoring a published nursing-related article, paper, book or book chapter which shall include a copy of the publication to include the name of the licensee and publication date.
- (7) Evidence of developing and conducting an educational presentation or presentations totaling at least five contact hours for nurses or other health professionals shall include a copy of program brochure or course syllabi, objectives, content and teaching methods, and date and location of presentation.
- (8) Evidence of 640 hours of active practice in nursing shall include documentation of the name of the licensee, number of hours worked in calendar or fiscal year, name and address of employer and signature of supervisor. If self-employed, hours worked may be validated through other methods such as tax records or other business records. If active practice is of a volunteer or gratuitous nature, hours worked may be validated by the recipient agency.

(d) A licensee shall retain supporting documentation to provide proof of completion of the option chosen in Paragraph (b) of this Rule throughout the renewal cycle.

(e) Effective July 1, 2008, at the time of license renewal or reinstatement, licensees shall be subject to random audit for proof of compliance with the Board's requirements for continuing competence.

(f) The Board shall inform licensees of their selection for audit upon notice of license renewal or request for reinstatement. Documentation of acceptable evidence shall be consistent with Paragraph (c) of this Rule and shall be submitted to the Board no later than the last day of the renewal month.

(g) Failure of a licensee to meet the requirements of this Rule shall result in disciplinary action pursuant to G.S. 90-171.37 and 21 NCAC 36 .0217.

History Note: Authority G.S. 90-171.23(b); 90-171.37(1) and (8); Eff. May 1, 2006.

CHAPTER 50 - BOARD OF EXAMINERS OF PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS

21 NCAC 50 .0301 QUALIFICATIONS DETERMINED BY EXAMINATION

(a) In order to determine the qualifications of an applicant, the Board shall provide an examination in writing or by computer in the following categories:

- Plumbing Contracting, Class I
- Plumbing Contracting, Class II
- Heating, Group No. 1 - Contracting, Class I
- Heating, Group No. 1 - Contracting, Class II
- Heating, Group No. 2 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class I
- Heating, Group No. 3 - Contracting, Class II
- Fuel Piping
- Fire Sprinkler Inspection Technician

(b) Each person being examined by the Board for a contractor license shall be required to read, interpret and provide answers to both the business and law part and the technical part of the examination required by G.S. 87-21(b).

(c) Applicants for licensure as a fire sprinkler contractor, unlimited classification, must submit evidence of current certification by the National Institute for Certification and Engineering Technology (NICET) for Fire Protection Engineering Technician, Level III, subfield of Automatic Sprinkler System Layout as the prerequisite for licensure. Current certification by NICET is in lieu of separate technical examination conducted by the Board. Applicants for licensure as a fire sprinkler contractor, unlimited classification, must take and pass the business and law part of the exam administered by the Board.

(d) Applicants for licensure in the Limited Fire Sprinkler Inspection Technician classification must either pass the technical examination offered by the Board or submit evidence of Level II Certification in "Inspection and Testing of Water-based Protection Systems" by NICET in lieu of examination. License without examination shall be issued beginning July 1, 2003, and ending July 1, 2004, to applicants who meet the experience requirement in Rule .0306. Technicians who obtained license without examination must either pass the technical examination offered by the Board or submit evidence of Level II Certification in "Inspection and Testing of Water-based Protection Systems" by NICET in lieu of examination no later than July 1, 2006 or Technician license shall lapse.

(e) Applicants for the Limited Fire Sprinkler Inspection Contractor classification must submit evidence of Level III certification in "Inspection and Testing of Water-based Fire Protection Systems" by NICET in lieu of examination.

Contractors who obtain license by NICET certification must maintain such certification thereafter as a condition of license renewal.

(f) Applicants for license in the Limited Fire Sprinkler Maintenance classification obtain license based on maintenance experience, education and job classification set forth in Rule. 0306.

History Note: Authority G.S. 87-18; 87-21(a); 87-21(b); Eff. February 1, 1976; Readopted Eff. September 29, 1977; Amended Eff. July 1, 1991; May 1, 1989; August 1, 1982; Temporary Amendment Eff. September 15, 1997; Amended Eff. March 1, 2005; January 1, 2004; July 1, 2003; August 1, 2002; July 1, 1998; Emergency Amendment Eff. December 5, 2005; Emergency Amendment Expired February 13, 2006; Amended Eff. May 1, 2006.

21 NCAC 50 .0512 EMPLOYEES EXEMPTED FROM LICENSURE

(a) An unlicensed person who is directly and regularly employed in the ordinary course of business by a contractor licensed pursuant to G.S. 87, Article 2 is not required to have a license and shall not be subject to an action for injunctive relief brought by the Board. Factors establishing whether the individual is directly and regularly employed in the ordinary course of business of such contractor include, the following:

- (1) whether the individual is on the licensed contractor's payroll;
- (2) whether taxes are withheld from the payment to the individual and the contractor performs such other acts as are lawfully required of an employer;
- (3) whether the licensed contractor exercises control and supervision over the method, manner and details of the individual's work; and
- (4) whether the licensed contractor, and not the unlicensed person, is and remains obligated to the property owner or general contractor for the work.

(b) Persons acting as independent contractors, consultants or subcontractors, or paid as such, are not bona fide employees; provided that licensed contractors may utilize employees shared with a labor supplier under a written contract which may allocate payroll or tax withholding obligations to the labor supplier while reserving control, supervision and obligation to the owner or general contractor to the licensee of the Board, and provided the licensee upon whose qualifications the license of the employing contractor is based remains a person meeting all four of the indicia of employment set out in Paragraph (a) of this Rule and is not contracted by or acting as a labor supplier.

History Note: Authority G.S. 87-18; 87-25; Eff. August 1, 2000; Amended Eff. May 1, 2006.

21 NCAC 50 .0515 LIMITED FIRE SPRINKLER MAINTENANCE TECHNICIAN LICENSE

(a) License in the Limited Fire Sprinkler Maintenance classification is required of the technician who carries out periodic maintenance observation or testing of water-based fire protection systems. Licenses shall be issued based on experience and training, as described in Rules .0301 and .0306 of this Chapter and expire annually. This license is limited to work on the systems at the locations of the employer of the licensee for which experience was demonstrated. Upon termination of employment at the location for which certified, the Limited Fire Sprinkler Maintenance license shall lapse, and a new license shall be obtained for the systems at the new place of employment by compliance with the requirements of Rule .0306 of this Chapter. Insurers who carry out inspections for the limited purpose of underwriting or rating for insurance purposes, in situations where the physical tasks are carried out by the on-site Maintenance licensee of the insured, are not required to be licensed pursuant to this Rule.

(b) Persons holding Limited Fire Sprinkler Maintenance license may only:

- (1) Operate and lubricate hydrants and control valves;
- (2) Adjust valve and pump packing glands;
- (3) Bleed moisture and condensation from air compressors, air lines and dry pipe system auxiliary drains;
- (4) Clean strainers;
- (5) Check for painted, damaged or corroded sprinklers, corroded or leaking piping and verify control valves are open;
- (6) Replace painted, corroded or damaged sprinkler head, using identical serial numbers;
- (7) Replace missing or loose hangers;
- (8) Replace gauges;
- (9) Clean water motor gong;
- (10) Perform air compressor maintenance;
- (11) Reset dry pipe valves;
- (12) Exercise fire pumps, not including conduct of a flow measurement test;
- (13) Perform periodic maintenance observation or testing, not including the annual NFPA-25 inspections; or
- (14) Perform repairs other than the foregoing on an emergency basis where necessary to restore a system to operation, provided the holder of the Limited Fire Sprinkler Maintenance license documents his efforts and inability to obtain the services of the holder of a license as an unlimited Fire Sprinkler Contractor prior to performing the repairs, but obtains such services within 72 hours thereafter.

*History Note: Authority G.S. 87-21;
Eff. January 1, 2004;
Amended Eff. May 1, 2006; March 1, 2005.*

21 NCAC 50 .1401 CONTINUING EDUCATION REQUIREMENTS

(a) Beginning with renewals of license for years beginning on or after January 1, 2003, each holder of a Plumbing, Heating or Fuel Piping license, must have completed six hours of approved

continuing education for each calendar year as a condition of license renewal. Prior to renewal of license for the year beginning January 1, 2008, and for renewals thereafter, each holder of a Fire Sprinkler Contractors license must have completed six hours of approved classroom continuing education for each calendar year.

(b) As part of and not in addition to the requirements set out in Paragraph (a) of this Rule, at least once every three calendar years, each applicant for license renewal, other than fire sprinkler licensees, must complete:

- (1) four hours instruction devoted entirely to N.C. building codes including recent changes or amendments to those codes;
- (2) a minimum of two hours instruction in system design;
- (3) a minimum of two hours instruction in system installation; and
- (4) two hours instruction in business courses such as business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects.

(c) Courses must be in areas related to plumbing, heating and air conditioning contracting such as the technical and practical aspects of the analysis of plans and specifications, estimating costs, fundamentals of installation and design, equipment, duct and pipe sizing, code requirements, fire hazards and other subjects as those may relate to engaging in business as a plumbing, heating or fuel piping contractor or to plumbing or heating systems. No more than two hours annually may be dedicated to business ethics, taxation, payroll, cash management, bid and contract preparation, customer relations or similar subjects.

(d) Persons holding multiple qualifications from the Board must complete at least six hours annually, but are not required to take hours each year in each qualification. Licensees with multiple qualifications shall take instruction so as to remain current in all areas of contracting work in which actively engaged.

(e) Licenses may not be renewed without documentation of course attendance, course name, course number, content and teacher. Falsification or misstatement of continuing education information shall be grounds for failure to renew licenses and disciplinary action, including revocation or suspension of licenses.

(f) Holders of Fire Sprinkler Contractor's licenses, licensed pursuant to the minimum requirements of certification for NICET Level III, subfield of Automatic Sprinkler System Layout, and persons holding NICET certification in Inspection and Testing of water-based Fire Protection Systems shall obtain continuing education in the process of maintaining current NICET certification. Such persons shall submit evidence of continued NICET certification to the Board. At least six hours of the continuing education shall be classroom education carried out by personal attendance at courses approved pursuant to this Section.

(g) Beginning with renewals of license on or after January 1, 2003, each holder of a Fire Sprinkler Contractors or Fire Sprinkler Inspection Contractor or Technician license not required to be current on the continuing education requirements of NICET must complete six hours of approved continuing education in areas related to fire sprinkler contracting during the

preceding calendar year as a condition of license renewal. Licensees in the Limited Fire Sprinkler maintenance classification shall obtain six hours of approved classroom continuing education annually relevant to the systems they maintain.

History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. May 1, 2006; January 1, 2004; April 1, 2003.

21 NCAC 50 .1402 EXEMPTIONS AND CREDITS

- (a) Licensees may not carry over hours from one calendar year to the next.
- (b) Newly licensed individuals shall have no continuing education requirements for the calendar year in which they first become licensed.
- (c) Licensees who are unable to fulfill the required number of hours as the result of illness as certified by an attending physician and who will not be engaged in bidding, supervising or other activities for which license is required may petition the Board in writing for an exemption or request approval of an individualized plan tailored to their physical limitations. Such requests shall be approved within 90 days consistent with the requirements applicable to all licensees.
- (d) Licensees who are over the age of 65, and who shall not be engaged in bidding, supervising or other activities for which license is required during the coming year, except as an employee of another licensee, may apply to the Board and obtain an exemption. If exemption is granted and the licensee thereafter wishes to engage in activity requiring license, the continuing education must be completed and satisfactory proof provided to the Board before any activity requiring license is undertaken.
- (e) Instructors in Board-approved courses shall receive continuing education credit for lecture hours in approved courses.
- (f) Members of the Board shall receive continuing education credit for hours spent in hearings or in monitoring continuing education courses. Licensees sitting on the Resolution Review Committee or attending formal hearings other than as a Respondent shall receive credit for such hours, but are not relieved of the necessity to obtain the code hours required by 21 NCAC 50 .1401(b)(1).

History Note: Authority G.S. 87-21(b)(3); 87-22; Eff. April 1, 2001; Amended Eff. May 1, 2006; April 1, 2003.

CHAPTER 66 - VETERINARY MEDICAL BOARD

21 NCAC 66 .0301 APPLICATION AND EXAMINATION

- (a) All applicants for a license to practice veterinary medicine shall complete, sign and return the application form for veterinary license available from the Board.
- (b) All applicants for license by examination shall successfully pass the licensure examinations. The Board shall review and evaluate the validity and accuracy of information contained in an

application for licensure. If the prerequisites of G.S. 90-187 and G.S. 90-187.1 are met, the Board shall admit the applicant to the examinations.

- (c) The nature of the examinations is to determine the applicant's minimum competency to practice veterinary medicine within the state of North Carolina. The Board shall administer, in conformity with the testing service criteria, the North American Veterinary Licensing Examination (NAVLE) as prepared by the Board or a licensure examination service contracted with by the Board.
- (d) The Board shall also administer a special North Carolina Examination to evaluate the applicant's knowledge of Article 11 of Chapter 90 and 21 NCAC 66 of the North Carolina Administrative Code.
- (e) Pursuant to G.S. 90-187.1, the Board shall establish the passing score for the current NAVLE and the North Carolina Examination, which shall include examination on the statutes and administrative rules governing the practice of veterinary medicine in the State.
- (f) The Executive Director shall notify all applicants of the score received on the examinations. Thereafter, if all information has been verified as correct and truthful, and if the requirements of G.S. 90-187 and G.S. 90-187.1 have been met, he shall issue a license to those successfully passing the examinations.
- (g) This Section does not apply to the licensure, relicensure or reinstatement of a veterinarian whose license has been suspended or revoked by the Board or who presently has a complaint or other matter pending in this or another state or jurisdiction that has or may result in discipline against the applicant's license to practice veterinary medicine in that State.
- (h) In determining whether to issue a license to practice veterinary medicine, the Board may consider all information obtained as a result of the application, including but not limited to all testing information, including examination scores of the examinations identified herein; and information obtained pursuant to the requirements of Rule .0310 of this Section or information obtained about the applicant which the applicant was required to have furnished.

History Note: Authority G.S. 90-185(1); 90-185(6); 90-187; 90-187.1; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. May 1, 2006; May 1, 1996; May 1, 1989.

TITLE 23 – COMMUNITY COLLEGES

23 NCAC 02C .0503 DONATED OR LOANED PROPERTY

- (a) A board of trustees may accept property donated to the college for any lawful educational purpose that is consistent with the mission and purpose of the community college system.
- (b) Prior to a board of trustees accepting any property that restricts the use of funds derived from the sale or lease of the property, the college shall submit to the Department a copy of the document transferring the property for review.

(c) Any funds derived from the sale or lease of property donated to a college for a specific educational purpose shall be used to accomplish that purpose.

(d) A board of trustees may permit a private business enterprise that loans or donates instructional equipment to the college to use the college's facilities to demonstrate the donated or loaned equipment to customers or potential customers of the private business enterprise provided that:

- (1) The board of trustees develop procedures to regulate the use of its facilities for this purpose;
- (2) The procedures must comply with G.S. 115D-15;
- (3) The college provides an annual report to the State Board regarding the use of its facilities for these purposes; and,
- (4) The lender's or donor's use of the college facilities shall not interfere with the education of students.

History Note: Authority G.S. 115D-5; 115D-15; 115D-20; Temporary Adoption Eff. October 21, 1998; Temporary Adoption Expired August 13, 1999; Eff. August 1, 2000; Amended Eff. May 1, 2006.

23 NCAC 02D .0605 OPEN-END DESIGN AGREEMENTS

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

- (1) The open-end design agreement must be publicly announced in a manner reasonably expected to inform interested designers of the college's need for an open-end agreement for designer services.
- (2) Designers or consultants for open-end design agreements shall be selected in accordance with the college's designer selection procedures for minor projects.
- (3) The total estimated cost of each small project shall not exceed the maximum expenditure established by G.S. 143-64.34(c) for each small project that can be designed using the services of a designer secured through an open-end design agreement.

(4) The initial term of the open-end design agreement shall be the same as the initial term established for fixed term contracts in 01 NCAC 30D .0302(f).

(5) Design fees for any single project designed under an open-end design agreement shall not exceed the single project monetary limit established for a fixed term contract by 01 NCAC 30D .0302(f).

(6) Regardless of the number of projects during the initial term of an open-end design agreement, the total amount of fees paid under an open-end design agreement during its initial term shall not exceed the maximum fees payable under a fixed term contract during the fixed term contract's initial year as established by 01 NCAC 30D .0302(f).

(7) A board of trustees of a community college may extend the initial term of the original open-end design agreement for a maximum of one additional year.

(8) The maximum amount payable under an open-end design agreement during any additional term after the initial term shall not exceed the maximum amount payable under a fixed term contract during any additional term after the initial term as established by 01 NCAC 30D .0302(f).

(9) If the term of an open-end design agreement is extended for one additional year and regardless of the number of projects, the sum of the fees paid for the initial term of the agreement and for the year long extension shall not exceed the limitation established by the State Building Commission for the maximum amount payable under fixed term contracts in 01 NCAC 30D .0302(f).

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

History Note: Authority G.S. 115D-5; 143-64-34; Eff. May 1, 2006.

RULES REVIEW COMMISSION

This Section contains information for the meetings of the Rules Review Commission on Thursday May 18 and Thursday June 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

June 15, 2006 July 20, 2006
August 17, 2006 September 21, 2006

**RULES REVIEW COMMISSION
MAY 18, 2006
MINUTES**

The Rules Review Commission met on Thursday, May 18, 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; Lee Settle, Dana Simpson; John Tart and David Twiddy.

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

The following people attended:

Cathe Goode	NC Dental Board
Becky Garrett	NC Board of Recreational Therapy
Pamela Wilson	NC Board of Recreational Therapy
Dana Barksdale	Department of Justice/DHHS
Jeremy Heuts	Department of Justice
Bayard Alcorn	DENR/Park and Recreation Authority
Mike McCulley	DENR/Parks and Recreation Authority
Anna Mitchell	Department of Revenue/Sales Tax
Ed Strickland	Department of Revenue/Sales Tax
Barrett Kays	CSSC
Martin Haley	
Jim McSwain	Gold Coast Pool
Mike Lopazanski	DCM
Dana Sholes	OAH
Felicia Williams	OAH
Lauren Curtis	OAH
Julie Edwards	OAH
Molly Masich	OAH
Julian Mann	OAH
Cory Menees	DHHS/Public Health
Connie Pixley	DENR
David Stanley	Brunswick County Health Department
Steven Berkowitz	DENR

Arnette Cowan	DHHS/DPH
Iain Stauffer	Department of Justice
John Barkley	Department of Justice/DENR
Bob Nebler	DENR
Nancy Pate	DENR
Carson Carmichael	Board of Pharmacy
Nick Fountain	Young, Moore & Henderson

APPROVAL OF MINUTES

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

Chairman Hayman announced the sad news of Commissioner Saunder's mother passing away as well as the Rules Review Commission secretary, Barbara Townsend's, mother-in-law.

Chairman Hayman asked for any discussion, comments, or corrections concerning the minutes of the April 20, 2006 meeting. The minutes were approved as written.

FOLLOW-UP MATTERS

21 NCAC 14P .0105: Cosmetic Art Examiners – The Commission did not receive any response from the agency therefore no action was taken.

21 NCAC 50 .0306; .1404: Plumbing, Heating and Fire Sprinkler Contractors Board – The Commission approved the rewritten rules submitted by the agency.

LOG OF FILINGS

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

21 NCAC 02 .0208: Board of Architecture – The Commission objected to the rule due to ambiguity. In (b), line 7, it is unclear what constitutes "reasonable entertainment and hospitality" especially in the context that only gifts of "nominal" value are allowed. It is unclear to this observer whether, e.g., an evening at Ruth's Chris Steak House would be considered "reasonable entertainment and hospitality" and at the same time a gift of only "nominal value." It is also not clear whether a gift of more than "nominal value" would be acceptable if it was made without the "intent of influencing the judgment of an existing or prospective client."

21 NCAC 02 .0209: Board of Architecture - The Commission objected to the rule due to ambiguity. In (9), page 2 lines 31 – 34, it is not clear whether an offer, payment or gift to a government official would be acceptable if it was made without the "intent of influencing the judgment of an existing or prospective client."

21 NCAC 02 .0302: Board of Architecture – The Commission objected to the rule due to lack of statutory authority and ambiguity. It is unclear what constitutes "natural endowments for the practice of architecture" and "fitness for the practice of architecture" in (d). To the extent that either of those requirements are outside the qualifications that the Board may specify, as set out in G.S. 83A-7, there is no authority cited to add them as qualifications. It is also unclear what standards the Board will use in determining whether to require a candidate's appearance or how they are to be judged or graded when they do appear.

21 NCAC 14J .0502: Cosmetic Art Examiners – The Commission objected to the rule due to lack of statutory authority, ambiguity and necessity. It is unclear what is meant by "meeting all the North Carolina requirements" in the first sentence. If this means meeting the qualification requirements found in G.S. 88B-7, then it is unlikely that the applicant's training has been in a foreign country. If the training is in a cosmetic art school in a foreign country that does not have N.C. Board approval, then they do not meet this North Carolina requirement. It is unclear what is meant by the requirement to "demonstrate satisfactory proof of proficiency in ... cosmetology skills ..." or how to meet it. Presumably it is something more than passing the state Board examination, since this is a specified requirement in the second sentence of this rule. To the extent that this rule might require additional testing, examination, or any other sort of proof of fitness other than passing the State Board examination, there is no authority to set such a requirement. There is no specific statutory provision addressing licensure of foreign applicants. Presumably these are applicants who do not meet the qualifications found in G.S. 88B-7. There is a provision, G.S. 88B-13, that addresses the N.C. licensure of applicants licensed in another state. But this does not refer to licensing applicants who are trained and licensed in a foreign jurisdiction. If these applicants meet the requirements of either G.S. 88B-7 or 88B-13, then this provision is unnecessary. If they do not meet those requirements then it appears to be outside the Board's authority to make up the qualifications and licensure requirements for this particular type of applicant.

COMMISSION PROCEDURES AND OTHER BUSINESS

Judge Mann provided the commission with a book that has recently been published entitled "rule making in north carolina" and was written by professor Richard B. Whisnant of UNC school of government. He stated that he hoped this book would give those who read it a better understanding of rulemaking in North Carolina.

The meeting adjourned at 10:59 a.m.

The next scheduled meeting of the Commission is Thursday, June 15, 2006 at 10:00 a.m.

Respectfully submitted,
Lisa Johnson

**LIST OF APPROVED PERMANENT RULES
May 18, 2006 Meeting**

COASTAL RESOURCES COMMISSION

<u>Authority</u>	15A NCAC 07I .0101
<u>Future Funding</u>	15A NCAC 07I .0206
<u>Grant Administration</u>	15A NCAC 07I .0305
<u>Definitions</u>	15A NCAC 07I .0502
<u>Allocation of Authority</u>	15A NCAC 07I .0506
<u>Notice of Civil Action</u>	15A NCAC 07I .0509
<u>General Definitions</u>	15A NCAC 07J .0102

PARKS AND RECREATION AUTHORITY

<u>Evaluation of Applications</u>	15A NCAC 12K .0105
<u>Grant Agreement</u>	15A NCAC 12K .0106
<u>Eligible Projects and Costs</u>	15A NCAC 12K .0108

HEALTH SERVICES, COMMISSION FOR

<u>Definitions</u>	15A NCAC 18A .1935
<u>Criteria for Design of Alternative Sewage</u>	15A NCAC 18A .1957
<u>Approval and Permitting of on-Sitewastewater Systems</u>	15A NCAC 18A .1969
<u>Advanced Wastewater Pretreatment System</u>	15A NCAC 18A .1970

REVENUE, DEPARTMENT OF

<u>Farm Machines Machinery Tobacco Items</u>	17 NCAC 07B .1101
<u>Trackers Backhoes Draglines</u>	17 NCAC 07B .1103
<u>Irrigation Equipment</u>	17 NCAC 07B .1104
<u>Egg Cleaning Detergent</u>	17 NCAC 07B .1107
<u>Ventilators</u>	17 NCAC 07B .1111
<u>Snapbean Graders</u>	17 NCAC 07B .1115
<u>Liquid Fertilizer Applicators</u>	17 NCAC 07B .1116
<u>Mechanical Post Hole Diggers</u>	17 NCAC 07B .1117
<u>Sickle Grinders</u>	17 NCAC 07B .1118
<u>Tobacco Tying Machines</u>	17 NCAC 07B .1119
<u>Cotton Bags and Sheets</u>	17 NCAC 07B .1120
<u>Right-of-way Equipment</u>	17 NCAC 07B .1122
<u>Certain Sales to Commercial Animal Farmers</u>	17 NCAC 07B .1123
<u>Florists Nurserymen Greenhouse Operators and Farmers</u>	17 NCAC 07B .2801

RULES REVIEW COMMISSION

<u>Florists" Delivery Associations</u>	17	NCAC	07B	.2802
<u>Fertilizer and Seeds</u>	17	NCAC	07B	.4002
<u>Household Insecticides, Etc.</u>	17	NCAC	07B	.4006
<u>Chicks Eggs Exemption</u>	17	NCAC	07B	.5201
<u>Chicks Eggs Taxable</u>	17	NCAC	07B	.5202

ARCHITECTURE, BOARD OF

<u>Name of Firm</u>	21	NCAC	02	.0205
<u>Requirement for and Use of Professional Seal</u>	21	NCAC	02	.0206
<u>Incompetence</u>	21	NCAC	02	.0210
<u>Individual Licenses</u>	21	NCAC	02	.0213
<u>Architect Emeritus</u>	21	NCAC	02	.0217
<u>Registration by Reciprocity Without Written Examination</u>	21	NCAC	02	.0303
<u>Scope</u>	21	NCAC	02	.0901
<u>Determination of Credit</u>	21	NCAC	02	.0904
<u>Exceptions</u>	21	NCAC	02	.0906
<u>Non-Compliance</u>	21	NCAC	02	.0910

DENTAL EXAMINERS, BOARD OF

<u>Licensure</u>	21	NCAC	16C	.0101
<u>Student May Apply</u>	21	NCAC	16C	.0202
<u>Transcripts Required</u>	21	NCAC	16C	.0203
<u>Application for Licensure</u>	21	NCAC	16C	.0301
<u>Board Approved Examinations</u>	21	NCAC	16C	.0303
<u>Other Requirements</u>	21	NCAC	16C	.0304
<u>Time for Filing</u>	21	NCAC	16C	.0305
<u>Examinations</u>	21	NCAC	16C	.0306
<u>Clinical Examination</u>	21	NCAC	16C	.0307
<u>Supplies</u>	21	NCAC	16C	.0308
<u>Patient</u>	21	NCAC	16C	.0309
<u>Reexamination</u>	21	NCAC	16C	.0310
<u>Application for Examination Conducted by the Board</u>	21	NCAC	16C	.0401
<u>Time for Filing</u>	21	NCAC	16C	.0402
<u>Examination Conducted by the Board</u>	21	NCAC	16C	.0403
<u>Patients and Supplies for Board Conducted Clinical Examin...</u>	21	NCAC	16C	.0404
<u>Board Conducted Reexamination</u>	21	NCAC	16C	.0405
<u>Dental Hygienists</u>	21	NCAC	16M	.0102

PHARMACY, BOARD OF

<u>Registration</u>	21	NCAC	46	.3301
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PLUMBING, HEATING AND FIRE SPRINKLER CONTRACTORS, BOARD OF EXAMINERS FOR

<u>Issuance of License</u>	21	NCAC	50	.0306
<u>Course Requirements and Limitations</u>	21	NCAC	50	.1404

RECREATIONAL THERAPY LICENSURE, BOARD OF

Minimum Level of Education and Competency for Licensed Re...

21 NCAC 65 .0301

**LIST OF APPROVED TEMPORARY RULES
May 18, 2006 Meeting**

HEALTH SERVICES, COMMISSION FOR

Reportable Diseases and Conditions

10A NCAC 41A .0101

Definitions

10A NCAC 43D .0202

Authorized WIC Vendors

10A NCAC 43D .0706

**AGENDA
RULES REVIEW COMMISSION
June 15, 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. Board of Architecture – 21 NCAC 02 .0208; .0209; .0302 (DeLuca)
 - B. Cosmetic Art Examiners – 21 NCAC 14J .0502 (DeLuca)
 - C. Cosmetic Art Examiners – 21 NCAC 14P .0105 (Bryan)
 - IV. *Review of Rules (Log Report)*
 - V. *Review of Temporary Rules (If any)*
 - VI. *Commission Business*
 - VII. *Next meeting: July 20, 2006*
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**Commission Review/Permanent Rules
Log of Filings
April 21, 2006 through May 22, 2006**

INSURANCE, DEPARTMENT OF

The rules in Chapter 12 cover life and health insurance including general provisions applicable to all rules and all life and health insurance policies (.0100 - .0300); general life insurance provisions (.0400); general accident and health insurance provisions (.0500); replacement of insurance (.0600); credit insurance (.0700); medicare supplement insurance (.0800); long-term care insurance (.1000); mortgage insurance consolidations (.1100); accelerated benefits (.1200); small employer group health coverage (.1300); HMO and point-of-service coverage (.1400); uniform claim forms (.1500); retained asset accounts (.1600); viatical settlements (.1700); and preferred provider plan product limitations (.1800).

<u>Filing Approval Life Accident and Health Forms</u> Repeal/*	11	NCAC	12	.0307
<u>Submission Requirements Form and Rate Filings</u> Adopt/*	11	NCAC	12	.0329
<u>Notice of a Closed Block of Individual Business</u> Adopt/*	11	NCAC	12	.0330

The rules in Chapter 16 are from the Actuarial Division and relate to fire and casualty statistical data (.0100); individual accident and health insurance (.0200); credit life, accident, and health rate deviation (.0400); credit unemployment minimum loss ratio standard (.0500); health maintenance organization filings and standards (.0600); health maintenance organization claim reserve data requirements (.0700).

<u>Minimum Loss Ratio Standards</u> Amend/*	11	NCAC	16	.0201
<u>Common Block</u> Adopt/*	11	NCAC	16	.0207
<u>Annual Actuarial Certifications for Long-Term Care Forms</u> Adopt/*	11	NCAC	16	.0208

The rules in Chapter 20 concern managed care health benefit plans including managed care definitions (.0100); contracts between network plan carriers and health care providers (.0200); provider accessibility and availability (.0300); network provider credentials (.0400); HMO quality management programs (.0500); and significant modifications to HMO operations (.0600).

<u>Scope and Definitions</u> Amend/*	11	NCAC	20	.0101
<u>Written Contracts</u> Amend/*	11	NCAC	20	.0201
<u>Filing Requirements</u> Amend/*	11	NCAC	20	.0205

CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

The rules in Chapter 9 are from the Criminal Justice Education and Training Standards Commission. This Commission has primary responsibility for setting statewide education, training, employment, and retention standards for criminal justice personnel (not including sheriffs).

The rules in Subchapter 9B cover minimum standards for: employment (.0100); schools and training programs (.0200); criminal justice instructors (.0300); completion of training (.0400); school directors (.0500); and certification of post-secondary criminal justice education programs (.0600).

<u>Specialized Firearms Instructor Training</u> Amend/*	12	NCAC	09B	.0226
<u>Specialized Driver Instructor Training</u> Amend/*	12	NCAC	09B	.0227
<u>Specialized Subject Control Arrest Techniques</u> Amend/*	12	NCAC	09B	.0232
<u>Specialized Physical Fitness Instructor Training</u> Amend/*	12	NCAC	09B	.0233

RULES REVIEW COMMISSION

<u>Terms and Conditions of General Instructor</u> Amend/*	12	NCAC	09B	.0303
<u>Specialized Instructor Certification</u> Amend/*	12	NCAC	09B	.0304
<u>Instructor Certification Renewal</u> Amend/*	12	NCAC	09B	.0312

The rules in Subchapter 9G are the standards for correction including scope, applicability and definitions (.0100); minimum standards for certification of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0200); certification of correctional officers, probation/parole officers, probation/parole officers intermediate and instructors (.0300); minimum standards for training of correctional officers, probation/parole officers, and probation/parole officers-intermediate (.0400); enforcement of rules (.0500); professional certification program (.0600); and forms (.0700).

<u>Terms and Conditions of General Instructor Certification</u> Amend/*	12	NCAC	09G	.0309
<u>Instructor Certification</u> Amend/*	12	NCAC	09G	.0312

LABOR, DEPARTMENT OF

The rules in Chapter 13 concern boiler and pressure vessel including definitions (.0100); administration (.0200); enforcement of standards (.0300); general requirements (.0400); non-standard boilers and pressure vessels (.0500); hot water vessels used for heating or for storage of hot water (.0600); nuclear energy systems (.0700); and forms (.0800).

<u>Definitions</u> Amend/*	13	NCAC	13	.0101
<u>Controlling Definitions</u> Repeal/*	13	NCAC	13	.0102
<u>Incorporated Standards</u> Amend/*	13	NCAC	13	.0103
<u>Name Address</u> Amend/*	13	NCAC	13	.0201
<u>Inspector Qualifications</u> Amend/*	13	NCAC	13	.0202
<u>North Carolina Commission</u> Amend/*	13	NCAC	13	.0203
<u>Conflict of Interest</u> Amend/*	13	NCAC	13	.0204
<u>Owner User Inspection Agency</u> Amend/*	13	NCAC	13	.0205
<u>Owners or Users to Notify Chief Inspector of Accidents</u> Amend/*	13	NCAC	13	.0206
<u>Inspection Reports</u> Amend/*	13	NCAC	13	.0207
<u>Insurance Companies to Notify Chief Inspector</u> Amend/*	13	NCAC	13	.0208
<u>Installers to Notify Chief Inspectors</u> Amend/*	13	NCAC	13	.0209
<u>Shop Inspections and National Board R Stamp Qualification...</u> Amend/*	13	NCAC	13	.0210
<u>Certificate Inspections</u> Amend/*	13	NCAC	13	.0211
<u>Preparation for Inspection</u> Amend/*	13	NCAC	13	.0212

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<u>Certificate and Inspection Fees</u> Amend/*	13	NCAC	13	.0213
<u>Inspection Documentation</u> Amend/*	13	NCAC	13	.0301
<u>Certificate Issuance</u> Amend/*	13	NCAC	13	.0302
<u>Inspections Revealing Deficiencies</u> Amend/*	13	NCAC	13	.0303
<u>Appeals</u> Amend/*	13	NCAC	13	.0304
<u>Menace To Public Safety Notice</u> Amend/*	13	NCAC	13	.0305
<u>Violations</u> Amend/*	13	NCAC	13	.0306
<u>Design and Construction Standards</u> Amend/*	13	NCAC	13	.0401
<u>North Carolina Stamping and Registration</u> Amend/*	13	NCAC	13	.0402
<u>Controls and Safety Devices</u> Amend/*	13	NCAC	13	.0404
<u>Pressure Relief Devices</u> Amend/*	13	NCAC	13	.0405
<u>High Pressure or Temperature Limit Control</u> Amend/*	13	NCAC	13	.0406
<u>Pressure Gauges</u> Amend/*	13	NCAC	13	.0407
<u>Gauge Glasses and Water Columns</u> Amend/*	13	NCAC	13	.0408
<u>Automatic Low-Water Fuel Cutoff Controls and Water-Feedin...</u> Amend/*	13	NCAC	13	.0409
<u>Temperature Gauges</u> Amend/*	13	NCAC	13	.0410
<u>Valves, Drains and Bottom Blowoffs</u> Amend/*	13	NCAC	13	.0411
<u>Gas-Fired Jacketed Steam Kettle</u> Amend/*	13	NCAC	13	.0414
<u>Age Limit for Certain Boilers and Pressure</u> Amend/*	13	NCAC	13	.0415
<u>Reinstallation of Certain Boilers and Pressure</u> Amend/*	13	NCAC	13	.0416
<u>Air and Ventilation Requirements</u> Amend/*	13	NCAC	13	.0419
<u>Burner Controls</u> Amend/*	13	NCAC	13	.0420
<u>North Carolina Special</u> Amend/*	13	NCAC	13	.0421
<u>Exhibition Boilers</u> Adopt/*	13	NCAC	13	.0422
<u>Model Hobby Boilers</u> Adopt/*	13	NCAC	13	.0423
<u>General Requirements</u> Amend/*	13	NCAC	13	.0501
<u>Standards</u>	13	NCAC	13	.0701

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Amend/*				
<u>Inspection During Construction</u>	13	NCAC	13	.0702
Amend/*				
<u>Inservice Inspection</u>	13	NCAC	13	.0703
Amend/*				
<u>Inspector Qualifications</u>	13	NCAC	13	.0704
Repeal/*				
<u>Semi-Annual Audit of Nuclear Inspectors</u>	13	NCAC	13	.0705
Amend/*				
<u>Construction</u>	13	NCAC	13	.0706
Repeal/*				
<u>Inspection Certificate</u>	13	NCAC	13	.0801
Amend/*				
<u>Application for a North Carolina Commission</u>	13	NCAC	13	.0802
Amend/*				
<u>North Carolina Certificate of Competency</u>	13	NCAC	13	.0803
Amend/*				
<u>North Carolina Commission</u>	13	NCAC	13	.0804
Amend/*				
<u>Owner-User Agency Applications</u>	13	NCAC	13	.0805
Amend/*				
<u>Owner-User Inspection Agency Statements</u>	13	NCAC	13	.0806
Amend/*				
<u>Inspection Request</u>	13	NCAC	13	.0807
Amend/*				
<u>Incident Report</u>	13	NCAC	13	.0808
Amend/*				
<u>Inspection Report</u>	13	NCAC	13	.0809
Amend/*				
<u>Inspection Service Agreement</u>	13	NCAC	13	.0811
Amend/*				
<u>Report of Repair or Alteration</u>	13	NCAC	13	.0812
Amend/*				
<u>Audit Report</u>	13	NCAC	13	.0813
Amend/*				
<u>Repair Letter Notice of Noncompliance</u>	13	NCAC	13	.0815
Repeal/*				

ENVIRONMENTAL MANAGEMENT COMMISSION

The rules in Chapter 2 concern environmental management and are promulgated by the Environmental Management Commission and the Department of Environment and Natural Resources.

The rules in Subchapter 2B pertain to surface water standards and monitoring including procedures for assignment of water quality standards (.0100); the standards and classifications themselves (.0200); stream classifications (.0300); effluent limitations (.0400); and monitoring and reporting requirements (.0500).

<u>Yadkin-Pee Dee River Basin</u>	15A	NCAC	02B	.0309
Amend/*				

The rules in Subchapter 2D are air pollution control requirements including definitions and references (.0100); air pollution sources (.0200); air pollution emergencies (.0300); ambient air quality standards (.0400); emission control standards (.0500); air pollutants monitoring and reporting (.0600); complex sources (.0800); volatile organic compounds (.0900); motor vehicle emission control

standards (.1000); control of toxic air pollutants (.1100); control of emissions from incinerators (.1200); oxygenated gasoline standard (.1300); nitrogen oxide standards (.1400); transportation conformity (.1500); general conformity for federal actions (.1600); emissions at existing municipal solid waste landfills (.1700); control of odors (.1800); open burning (.1900); transportation conformity (.2000); risk management program (.2100); special orders (.2200); emission reduction credits (.2300); and clean air interstate rules.

<u>Purpose and Applicability</u> Adopt/*	15A	NCAC	02D	.2401
<u>Definitions</u> Adopt/*	15A	NCAC	02D	.2402
<u>Nitrogen Oxide Emissions</u> Adopt/*	15A	NCAC	02D	.2403
<u>Sulfur Dioxide</u> Adopt/*	15A	NCAC	02D	.2404
<u>Nitrogen Oxide Emissions During Ozone</u> Adopt/*	15A	NCAC	02D	.2405
<u>Permitting</u> Adopt/*	15A	NCAC	02D	.2406
<u>Monitoring Reporting and Recordkeeping</u> Adopt/*	15A	NCAC	02D	.2407
<u>Trading Program and Banking</u> Adopt/*	15A	NCAC	02D	.2408
<u>Designated Representative</u> Adopt/*	15A	NCAC	02D	.2409
<u>Computation of Time</u> Adopt/*	15A	NCAC	02D	.2410
<u>Opt-in Provisions</u> Adopt/*	15A	NCAC	02D	.2411
<u>New Unit Growth</u> Adopt/*	15A	NCAC	02D	.2412
<u>Periodic Review and Reallocations</u> Adopt/*	15A	NCAC	02D	.2413

The rules in Subchapter 2H concern procedures for permits: approvals including point source discharges to the surface waters (.0100); waste not discharged to surface waters (.0200); coastal waste treatment disposal (.0400); water quality certification (.0500); laboratory certification (.0800); local pretreatment programs (.0900); stormwater management (.1000); biological laboratory certification (.1100); special orders (.1200); and discharges to isolated wetlands and isolated waters (.1300).

<u>Concentrated Animal Feeding Operations</u> Repeal/*	15A	NCAC	02H	.0122
<u>Requirements Evaluating Feedlot Permit Applications</u> Repeal/*	15A	NCAC	02H	.0123
<u>Purpose</u> Repeal/*	15A	NCAC	02H	.0201
<u>Scope</u> Repeal/*	15A	NCAC	02H	.0202
<u>Definition of Terms</u> Repeal/*	15A	NCAC	02H	.0203
<u>Activities Which Require a Permit</u> Repeal/*	15A	NCAC	02H	.0204
<u>Application Fees Supporting Information Requirements</u> Repeal/*	15A	NCAC	02H	.0205
<u>Submission of Permit Applications</u>	15A	NCAC	02H	.0206

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<u>Repeal/*</u>				
<u>Staff Review and Permit Preparations</u>	15A	NCAC	02H	.0208
<u>Repeal/*</u>				
<u>Final Action on Permit Applications to the Division</u>	15A	NCAC	02H	.0209
<u>Repeal/*</u>				
<u>Modification and Revocation of Permits</u>	15A	NCAC	02H	.0213
<u>Repeal/*</u>				
<u>Delegation of Authority</u>	15A	NCAC	02H	.0215
<u>Repeal/*</u>				
<u>Permitting by Regulation</u>	15A	NCAC	02H	.0217
<u>Repeal/*</u>				
<u>Local Programs for Sewer Systems</u>	15A	NCAC	02H	.0218
<u>Repeal/*</u>				
<u>Minimum Design Criteria</u>	15A	NCAC	02H	.0219
<u>Repeal/*</u>				
<u>Certification of Completion</u>	15A	NCAC	02H	.0220
<u>Repeal/*</u>				
<u>Operational Agreements</u>	15A	NCAC	02H	.0221
<u>Repeal/*</u>				
<u>The Wastewater Treatment Works Emergency Fund</u>	15A	NCAC	02H	.0222
<u>Repeal/*</u>				
<u>Demonstration of Future Wastewater Treatment Capacities</u>	15A	NCAC	02H	.0223
<u>Repeal/*</u>				
<u>Treatment Facility Operation and Maintenance</u>	15A	NCAC	02H	.0224
<u>Repeal/*</u>				
<u>Conditions for Issuing General Permits</u>	15A	NCAC	02H	.0225
<u>Repeal/*</u>				
<u>System-Wide Collection System Permitting</u>	15A	NCAC	02H	.0227
<u>Repeal/*</u>				
<u>Purpose</u>	15A	NCAC	02T	.0101
<u>Adopt/*</u>				
<u>Scope</u>	15A	NCAC	02T	.0102
<u>Adopt/*</u>				
<u>Definitions</u>	15A	NCAC	02T	.0103
<u>Adopt/*</u>				
<u>Activities Which Require A Permit</u>	15A	NCAC	02T	.0104
<u>Adopt/*</u>				
<u>General Requirements</u>	15A	NCAC	02T	.0105
<u>Adopt/*</u>				
<u>Submission of Permit Applications</u>	15A	NCAC	02T	.0106
<u>Adopt/*</u>				
<u>Staff Review and Permit Preparation</u>	15A	NCAC	02T	.0107
<u>Adopt/*</u>				
<u>Final Action on Permit Applications to the Division</u>	15A	NCAC	02T	.0108
<u>Adopt/*</u>				
<u>Permit Renewals</u>	15A	NCAC	02T	.0109
<u>Adopt/*</u>				
<u>Modification and Revocation of Permits</u>	15A	NCAC	02T	.0110
<u>Adopt/*</u>				
<u>Conditions for Issuing General Permits</u>	15A	NCAC	02T	.0111

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<u>Adopt/*</u>				
<u>Delegation of Authority</u>	15A	NCAC	02T	.0112
<u>Adopt/*</u>				
<u>Permitting by Regulations</u>	15A	NCAC	02T	.0113
<u>Adopt/*</u>				
<u>Wastewater Design Flow Rates</u>	15A	NCAC	02T	.0114
<u>Adopt/*</u>				
<u>Operational Agreements</u>	15A	NCAC	02T	.0115
<u>Adopt/*</u>				
<u>Certificate of Completion</u>	15A	NCAC	02T	.0116
<u>Adopt/*</u>				
<u>Treatment Facility Operation and Maintenance</u>	15A	NCAC	02T	.0117
<u>Adopt/*</u>				
<u>Demonstration of Future Wastewater Treatment Capabilities</u>	15A	NCAC	02T	.0118
<u>Adopt/*</u>				
<u>The Wastewater Treatment Works Emergency Fund</u>	15A	NCAC	02T	.0119
<u>Adopt/*</u>				
<u>Historical Consideration in Permit Approval</u>	15A	NCAC	02T	.0120
<u>Adopt/*</u>				
<u>Scope</u>	15A	NCAC	02T	.0201
<u>Adopt/*</u>				
<u>Permitting by Regulation</u>	15A	NCAC	02T	.0203
<u>Adopt/*</u>				
<u>Permitting</u>	15A	NCAC	02T	.0204
<u>Adopt/*</u>				
<u>Scope</u>	15A	NCAC	02T	.0301
<u>Adopt/*</u>				
<u>Definitions</u>	15A	NCAC	02T	.0302
<u>Adopt/*</u>				
<u>Permitting by Regulation</u>	15A	NCAC	02T	.0303
<u>Adopt/*</u>				
<u>Application Submittal</u>	15A	NCAC	02T	.0304
<u>Adopt/*</u>				
<u>Design Criteria</u>	15A	NCAC	02T	.0305
<u>Adopt/*</u>				
<u>Local Programs for Sewer Systems</u>	15A	NCAC	02T	.0306
<u>Adopt/*</u>				
<u>Scope</u>	15A	NCAC	02T	.0401
<u>Adopt/*</u>				
<u>Definitions</u>	15A	NCAC	02T	.0402
<u>Adopt/*</u>				
<u>Permitting by Regulation</u>	15A	NCAC	02T	.0403
<u>Adopt/*</u>				
<u>Multiple Collection Systems Under Common Ownership</u>	15A	NCAC	02T	.0404
<u>Adopt/*</u>				
<u>Implementation</u>	15A	NCAC	02T	.0405
<u>Adopt/*</u>				
<u>Scope</u>	15A	NCAC	02T	.0501
<u>Adopt/*</u>				
<u>Application Submittal</u>	15A	NCAC	02T	.0504
<u>Adopt/*</u>				
<u>Design Criteria</u>	15A	NCAC	02T	.0505
<u>Adopt/*</u>				

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<u>Setbacks</u> Adopt/*	15A	NCAC	02T	.0506
<u>Operation and Maintenance Plan</u> Adopt/*	15A	NCAC	02T	.0507
<u>Residuals Management Plan</u> Adopt/*	15A	NCAC	02T	.0508
<u>Scope</u> Adopt/*	15A	NCAC	02T	.0601
<u>Application Submittal</u> Adopt/*	15A	NCAC	02T	.0604
<u>Design Criteria</u> Adopt/*	15A	NCAC	02T	.0605
<u>Setbacks</u> Adopt/*	15A	NCAC	02T	.0606
<u>Connection to Regional System</u> Adopt/*	15A	NCAC	02T	.0607
<u>Scope</u> Adopt/*	15A	NCAC	02T	.0701
<u>Definitions</u> Adopt/*	15A	NCAC	02T	.0702
<u>Application Submittal</u> Adopt/*	15A	NCAC	02T	.0704
<u>Design Criteria</u> Adopt/*	15A	NCAC	02T	.0705
<u>Setbacks</u> Adopt/*	15A	NCAC	02T	.0706
<u>Operation and Maintenance Plan</u> Adopt/*	15A	NCAC	02T	.0707
<u>Residuals Management Plan</u> Adopt/*	15A	NCAC	02T	.0708
<u>Scope</u> Adopt/*	15A	NCAC	02T	.0801
<u>Application Submittal</u> Adopt/*	15A	NCAC	02T	.0804
<u>Design Criteria</u> Adopt/*	15A	NCAC	02T	.0805
<u>Setbacks</u> Adopt/*	15A	NCAC	02T	.0806
<u>Scope</u> Adopt/*	15A	NCAC	02T	.0901
<u>Definitions</u> Adopt/*	15A	NCAC	02T	.0902
<u>Permitting By Regulation</u> Adopt/*	15A	NCAC	02T	.0903
<u>Application Submittal Conjunctive Systems</u> Adopt/*	15A	NCAC	02T	.0904
<u>Application Submittal Non Conjunctive Systems</u> Adopt/*	15A	NCAC	02T	.0905
<u>Reclaimed Water Effluent Standards</u> Adopt/*	15A	NCAC	02T	.0906
<u>Design Criteria for Wastewater Treatment Facilities</u> Adopt/*	15A	NCAC	02T	.0907
<u>Design Criteria for Wastewater Treatment Facilities</u>	15A	NCAC	02T	.0908

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Adopt/*				
<u>Design Criteria for Distribution Lines</u>	15A	NCAC	02T	.0909
Adopt/*				
<u>Reclaimed Water Utilization</u>	15A	NCAC	02T	.0910
Adopt/*				
<u>Bulk Distribution of Reclaimed Water</u>	15A	NCAC	02T	.0911
Adopt/*				
<u>Setbacks</u>	15A	NCAC	02T	.0912
Adopt/*				
<u>Operation and Maintenance Plan</u>	15A	NCAC	02T	.0913
Adopt/*				
<u>Residuals Management Plan</u>	15A	NCAC	02T	.0914
Adopt/*				
<u>Scope</u>	15A	NCAC	02T	.1001
Adopt/*				
<u>Permitting by Regulation</u>	15A	NCAC	02T	.1003
Adopt/*				
<u>Application Submittal</u>	15A	NCAC	02T	.1004
Adopt/*				
<u>Design Criteria</u>	15A	NCAC	02T	.1005
Adopt/*				
<u>Setbacks</u>	15A	NCAC	02T	.1006
Adopt/*				
<u>Operations and Maintenance Plan</u>	15A	NCAC	02T	.1007
Adopt/*				
<u>Residuals Management Plan</u>	15A	NCAC	02T	.1008
Adopt/*				
<u>Scope</u>	15A	NCAC	02T	.1101
Adopt/*				
<u>Definitions</u>	15A	NCAC	02T	.1102
Adopt/*				
<u>Permitting by Regulation</u>	15A	NCAC	02T	.1103
Adopt/*				
<u>Application Submittal</u>	15A	NCAC	02T	.1104
Adopt/*				
<u>Pollutant Limits</u>	15A	NCAC	02T	.1105
Adopt/*				
<u>Pathogen Reduction Requirements</u>	15A	NCAC	02T	.1106
Adopt/*				
<u>Vector Attraction Reduction Requirements</u>	15A	NCAC	02T	.1107
Adopt/*				
<u>Setbacks</u>	15A	NCAC	02T	.1108
Adopt/*				
<u>Operation and Management Practices</u>	15A	NCAC	02T	.1109
Adopt/*				
<u>Operation and Maintenance Plan</u>	15A	NCAC	02T	.1110
Adopt/*				
<u>Monitoring and Reporting</u>	15A	NCAC	02T	.1111
Adopt/*				
<u>Scope</u>	15A	NCAC	02T	.1201
Adopt/*				
<u>Definitions</u>	15A	NCAC	02T	.1202
Adopt/*				

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<u>Permitting by Regulation</u> Adopt/*	15A	NCAC	02T	.1203
<u>Application Requirments</u> Adopt/*	15A	NCAC	02T	.1204
<u>Pollutant Limits</u> Adopt/*	15A	NCAC	02T	.1205
<u>Setbacks</u> Adopt/*	15A	NCAC	02T	.1206
<u>Operation and Management Practices</u> Adopt/*	15A	NCAC	02T	.1207
<u>Operation and Maintenance Plan</u> Adopt/*	15A	NCAC	02T	.1208
<u>Monitoring and Reporting</u> Adopt/*	15A	NCAC	02T	.1209
<u>Scope</u> Adopt/*	15A	NCAC	02T	.1301
<u>Definitions</u> Adopt/*	15A	NCAC	02T	.1302
<u>Permitting by Regulations</u> Adopt/*	15A	NCAC	02T	.1303
<u>State Permitting Requirements</u> Adopt/*	15A	NCAC	02T	.1304
<u>NPDES Permitting Requirements</u> Adopt/*	15A	NCAC	02T	.1305
<u>Closure Requirements</u> Adopt/*	15A	NCAC	02T	.1306
<u>Scope</u> Adopt/*	15A	NCAC	02T	.1401
<u>Definitions</u> Adopt/*	15A	NCAC	02T	.1402
<u>Permitting by Regulations</u> Adopt/*	15A	NCAC	02T	.1403
<u>Annual Reports</u> Adopt/*	15A	NCAC	02T	.1404
<u>Scope</u> Adopt/*	15A	NCAC	02T	.1501
<u>Definitions</u> Adopt/*	15A	NCAC	02T	.1502
<u>Permitting by Regulation</u> Adopt/*	15A	NCAC	02T	.1503
<u>Application Submittal</u> Adopt/*	15A	NCAC	02T	.1504
<u>Design Criteria</u> Adopt/*	15A	NCAC	02T	.1505
<u>Setbacks</u> Adopt/*	15A	NCAC	02T	.1506
<u>Closure Requirements</u> Adopt/*	15A	NCAC	02T	.1507
<u>Scope</u> Adopt/*	15A	NCAC	02T	.1601
<u>Definitions</u> Adopt/*	15A	NCAC	02T	.1602
<u>Application Submittal</u>	15A	NCAC	02T	.1604

Adopt/*				
<u>Design Criteria</u>	15A	NCAC	02T	.1605
Adopt/*				
<u>Setbacks</u>	15A	NCAC	02T	.1606
Adopt/*				
<u>Monitoring and Reporting Requirements</u>	15A	NCAC	02T	.1607
Adopt/*				
<u>Requirements for Closure</u>	15A	NCAC	02T	.1608
Adopt/*				

MARINE FISHERIES COMMISSION

The rules in Chapter 3 are from the Marine Fisheries Commission.

The rules in Subchapter 3L concern shrimp (.0100); Crabs (.0200); and lobsters (.0300).

<u>Prohibited nets Mesh Sizes and Areas</u>	15A	NCAC	03L	.0103
Amend/*				

The rules in Subchapter 3M cover harvesting of finfish including general rules (.0100), striped bass (.0200), mackerel (.0300), menhaden and Atlantic herring (.0400), and other finfish (.0500).

<u>Mutilated Finfish</u>	15A	NCAC	03M	.0101
Amend/*				
<u>Mullet</u>	15A	NCAC	03M	.0502
Amend/*				

The rules in Subchapter 3O cover various licenses (.0100); leases and franchises (.0200); license appeal procedures (.0300); Standard Commercial Fishing License Eligibility Board (.0400); and licenses, leases and franchises (.0500).

<u>Authorized Gear</u>	15A	NCAC	03O	.0302
Amend/*				
<u>Recreational Commercial Gear</u>	15A	NCAC	03O	.0303
Amend/*				

The rules in Subchapter 3R specify boundaries for various areas (.0100); and fishery management areas (.0200).

<u>Trawl Nets Prohibited</u>	15A	NCAC	03R	.0106
Amend/*				
<u>Shrimp Trawl Prohibited Areas</u>	15A	NCAC	03R	.0114
Adopt/*				

HEALTH SERVICES, COMMISSION FOR

The rules in Chapter 18 are from the Commission for Health Services and cover environmental aspects of health such as sanitation (18A), mosquito control (18B), water supplies (18C), and water treatment facility operators (18D).

The rules in Subchapter 18A deal with sanitation and include handling, packing and shipping of crustacean meat (.0100); sanitation of scallops (.0200) and shellfish (.0300 and .0400); operation of shellstock plants and reshippers (.0500); shucking and packing plants (.0600); depuration facilities (.0700); wet storage of shellstock (.0800); shellfish growing waters (.0900); summer camps (.1000); food and beverage vending machines (.1100); grade A milk (.1200); hospitals, nursing homes, rest homes, etc. (.1300); mass gatherings (.1400); local confinement facilities (.1500); residential care facilities (.1600); protection of water supplies (.1700); lodging places (.1800); sewage treatment and disposal systems (.1900); migrant housing (.2100); bed and breakfast homes (.2200); delegation of authority to enforce rules (.2300); public, private and religious schools (.2400); public swimming pools (.2500);

restaurants meat markets, and other food handling establishments (.2600); child day care facilities (.2800); restaurant and lodging fee collection program (.2900); bed and breakfast inns (.3000); lead poisoning prevention (.3100); tattooing (.3200); adult day service facilities (.3300); and primitive camps (.3500).

<u>Definitions</u>	15A	NCAC	18A	.2801
Amend/*				
<u>Handwashing</u>	15A	NCAC	18A	.2803
Amend/*				
<u>Food Supplies</u>	15A	NCAC	18A	.2804
Amend/*				
<u>Food Storage and Protection</u>	15A	NCAC	18A	.2806
Amend/*				
<u>Specifications for Kitchens, Food Preparation Areas and F...</u>	15A	NCAC	18A	.2810
Amend/*				
<u>Cleaning and Sanitizing of Equipment and Utensils</u>	15A	NCAC	18A	.2812
Amend/*				
<u>Water Supply</u>	15A	NCAC	18A	.2815
Amend/*				
<u>Toilets</u>	15A	NCAC	18A	.2817
Amend/*				
<u>Lavatories</u>	15A	NCAC	18A	.2818
Amend/*				
<u>Diapering and Diaper Changing Facilities</u>	15A	NCAC	18A	.2819
Amend/*				
<u>Storage</u>	15A	NCAC	18A	.2820
Amend/*				
<u>Beds, Cots, Mats, and Linens</u>	15A	NCAC	18A	.2821
Amend/*				
<u>Toys, Equipment and Furniture</u>	15A	NCAC	18A	.2822
Amend/*				
<u>Animal and Vermin Control</u>	15A	NCAC	18A	.2831
Amend/*				
<u>Outdoor Learning Environment and Premises</u>	15A	NCAC	18A	.2832
Amend/*				
<u>Compliance, Inspections and Reports</u>	15A	NCAC	18A	.2834
Amend/*				

REVENUE, DEPARTMENT OF

The rules in Chapter 7 are sales and use tax.

The rules in Chapter 7B concern state sales and use tax including (general provisions (.0100); general application of law to manufacturing and industrial processing (.0200); specific tangible personalty classified for use by industrial users (.0300); specific industries (.0400); exempt sales to manufacturers (.0500); sales of mill machinery and accessories (.0600); specific industry purchases (.0700); adjustments: replacements: alterations and installation sales (.0800); advertising and advertising agencies: public relations firms (.0900); barbers: beauty shop operators: shoe repairmen: watch repairmen (.1000); sales of bulk tobacco barns: farm machines and machinery (.1100); hotels: motels: tourist camps and tourist cabins (.1200); sales in interstate commerce (.1300); sales of medicines: drugs and medical supplies (.1400); finance companies: finance charges and carrying charges (.1500); sales to or by hospitals: educational: charitable or religious institutions: etc.: and refunds thereto (.1600); sales to or by the state: counties: cities: and other political subdivisions (.1700); hospitals and sanitariums (.1800); tire recappers and retreaders: tire and tube repairs (.1900); sales and gifts by employers to employees or other users (.2000); electricity: piped natural gas: bottled gas: coal: coke: fuel oil: oxygen: acetylene: hydrogen: liquefied petroleum gas and other combustibles (.2100); food and food products for human consumption (.2200); sales to out-of-state merchants for resale (.2300); sales of medical supplies and equipment to veterinarians (.2400); furniture and storage warehousemen (.2500); liability of contractors: use tax on equipment brought into state: building

materials (.2600); dentists: dental laboratories and dental supply houses (.2700); florists: nurserymen: greenhouse operators and farmers (.2800); vending machines (.2900); articles taken in trade: trade-ins: repossessions: returned merchandise: used or secondhand merchandise (.3000); radio and television stations: motion picture theatres (.3100); telecommunications and telegraph companies (.3200); orthopedic appliances (.3300); memorial stone and monument dealers and monument manufactures (.3400); machinists: foundrymen: pattern makers (.3500); funeral expenses (.3600); lubricants: oils and greases (.3700); premiums: gifts and trading stamps (.3800); containers: wrapping: packing and shipping materials (.3900); fertilizer: seeds: feed and insecticides (.04000); artists: art dealers: photographers: etc. (.4100); sales to the united states government or agencies thereof (.4200); refunds to interstate carriers (.4300); lease or rental (.4400); laundries: dry cleaning plants: launderettes: linen rentals: and solicitors for such businesses (.4500); motor vehicles and boats (.4600); printers and newspaper or magazine publishers (.4700); basis or reporting (.4800); transportation charges (.4900); eyeglasses and other ophthalmic aids and supplies oculists: optometrists and opticians (.5000); leased departments and transient sellers (.5100); baby chicks and poults (.5200); certificate of authority: bond requirements (.5300); and forms used for sales and use tax purposes (.5400).

<u>Tax on Manufacturing and Processing Machinery</u> Repeal/*	17	NCAC	07B	.0201
<u>Classification of Manufacturing Activities</u> Repeal/*	17	NCAC	07B	.0202
<u>Sales by Manufacturers</u> Repeal/*	17	NCAC	07B	.0206
<u>Purchases by Manufacturers</u> Repeal/*	17	NCAC	07B	.0207
<u>Mill Machinery</u> Repeal/*	17	NCAC	07B	.0301
<u>Items Not Mill Machinery</u> Repeal/*	17	NCAC	07B	.0302
<u>Specific Industries Classifications</u> Repeal/*	17	NCAC	07B	.0401
<u>Furniture Factories</u> Repeal/*	17	NCAC	07B	.0402
<u>Bottling Plants</u> Repeal/*	17	NCAC	07B	.0403
<u>Electric Power Companies</u> Repeal/*	17	NCAC	07B	.0404
<u>Mining and Quarrying</u> Repeal/*	17	NCAC	07B	.0405
<u>Other Mills and Processors</u> Repeal/*	17	NCAC	07B	.0406
<u>Dairies and Creameries</u> Repeal/*	17	NCAC	07B	.0407
<u>Packaging Materials</u> Repeal/*	17	NCAC	07B	.0502
<u>In General</u> Repeal/*	17	NCAC	07B	.0601
<u>Packaging Machinery</u> Repeal/*	17	NCAC	07B	.0602
<u>Tape Dispensing Machines</u> Repeal/*	17	NCAC	07B	.0603
<u>Strapping Machine</u> Repeal/*	17	NCAC	07B	.0604
<u>Mixing Tanks</u> Repeal/*	17	NCAC	07B	.0605
<u>Pollution Abatement Equipment</u> Repeal/*	17	NCAC	07B	.0606
<u>Gas Stacks</u>	17	NCAC	07B	.0607

RULES REVIEW COMMISSION

Repeal/*				
<u>Printing Plates</u>	17	NCAC	07B	.0608
Repeal/*				
<u>Pollution Abatement Chemicals</u>	17	NCAC	07B	.0609
Repeal/*				
<u>Water Purification Equipment and Chemicals</u>	17	NCAC	07B	.0610
Repeal/*				
<u>Chemicals for Boilers</u>	17	NCAC	07B	.0613
Repeal/*				
<u>Identification and Instruction Tickets</u>	17	NCAC	07B	.0614
Repeal/*				
<u>Insulation Materials Manufacturers</u>	17	NCAC	07B	.0615
Repeal/*				
<u>Sandblast Sand</u>	17	NCAC	07B	.0616
Repeal/*				
<u>Lift Trucks</u>	17	NCAC	07B	.0617
Repeal/*				
<u>Single Article Application System</u>	17	NCAC	07B	.0618
Repeal/*				
<u>Welding Rods</u>	17	NCAC	07B	.0619
Repeal/*				
<u>Combustible Soot Removers</u>	17	NCAC	07B	.0620
Repeal/*				
<u>Electric Light Bulbs</u>	17	NCAC	07B	.0621
Repeal/*				
<u>Printing Presses</u>	17	NCAC	07B	.0622
Repeal/*				
<u>Calcium Chloride and Salt</u>	17	NCAC	07B	.0623
Repeal/*				
<u>Elevators</u>	17	NCAC	07B	.0624
Repeal/*				
<u>Insulation Materials Contractors</u>	17	NCAC	07B	.0625
Repeal/*				
<u>Paper Stock</u>	17	NCAC	07B	.0626
Repeal/*				
<u>Hang Tags and Labels</u>	17	NCAC	07B	.0627
Repeal/*				
<u>Stock Control Cards</u>	17	NCAC	07B	.0628
Repeal/*				
<u>Office Supplies Stencils</u>	17	NCAC	07B	.0629
Repeal/*				
<u>Scales</u>	17	NCAC	07B	.0630
Repeal/*				
<u>Sewage Treatment Plants</u>	17	NCAC	07B	.0631
Repeal/*				
<u>Grain Elevators</u>	17	NCAC	07B	.0632
Repeal/*				
<u>Animals and Animal Cages</u>	17	NCAC	07B	.0633
Repeal/*				
<u>Electric Power Drive</u>	17	NCAC	07B	.0634
Repeal/*				
<u>In General</u>	17	NCAC	07B	.0701
Repeal/*				

RULES REVIEW COMMISSION

<u>Furniture Factories</u> Repeal/*	17	NCAC	07B	.0702
<u>Bottling Plants</u> Repeal/*	17	NCAC	07B	.0703
<u>Mining and Quarrying</u> Repeal/*	17	NCAC	07B	.0704
<u>Textile Mills</u> Repeal/*	17	NCAC	07B	.0705
<u>Sawmills</u> Repeal/*	17	NCAC	07B	.0706
<u>Concrete Manufacturers</u> Repeal/*	17	NCAC	07B	.0707
<u>Ice Manufacturers</u> Repeal/*	17	NCAC	07B	.0708
<u>Purification Plants</u> Repeal/*	17	NCAC	07B	.0709
<u>Food Processors</u> Repeal/*	17	NCAC	07B	.0710
<u>Modular Home Manufacturers</u> Repeal/*	17	NCAC	07B	.0711
<u>Monument Manufacturers</u> Repeal/*	17	NCAC	07B	.0712
<u>Electroplating Industries</u> Repeal/*	17	NCAC	07B	.0713
<u>Refractory Manufacturers</u> Repeal/*	17	NCAC	07B	.0714
<u>Hatcheries</u> Repeal/*	17	NCAC	07B	.0715
<u>State Agencies</u> Repeal/*	17	NCAC	07B	.0716
<u>Privilege Tax on Manufacturing and Processing Machinery</u> Adopt/*	17	NCAC	07D	.0101
<u>Classification of Manufacturing Activities for Privilege Tax</u> Adopt/*	17	NCAC	07D	.0102
<u>Sales by Manufacturers</u> Adopt/*	17	NCAC	07D	.0103
<u>Purchases by Manufacturers</u> Adopt/*	17	NCAC	07D	.0104
<u>Mill Machinery</u> Adopt/*	17	NCAC	07D	.0201
<u>Items Not Mill Machinery</u> Adopt/*	17	NCAC	07D	.0202

CHIROPRACTIC EXAMINERS, BOARD OF

The rules in Chapter 10 are from the Board of Chiropractic Examiners and include organization of Board (.0100); practice of chiropractic (.0200); rules of unethical conduct (.0300); rule-making procedures (.0400); investigation of complaints (.0500); contested cases (.0600); hearings in contested cases (.0700); and miscellaneous (.0800).

<u>Acupuncture</u>	21	NCAC	10	.0208
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MEDICAL BOARD

The rules in Chapter 32 are from the Board of Medical Examiners.

The rules in Subchapter 32M concern approval of nurse practitioners including definitions (.0100).

<u>Annual Renewal</u>	21	NCAC	32M	.0106
Amend/*				

The rules in Subchapter 32S regulate physician assistants.

<u>Prescriptive Authority</u>	21	NCAC	32S	.0109
Amend/*				

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>Faculty</u>	21	NCAC	36	.0318
Amend/*				

PSYCHOLOGY BOARD

The rules in Chapter 54 are from the Board of Psychology and cover general provisions (.1600); application for licensure (.1700); education (.1800); examination (.1900); supervision (.2200); renewal (.2100); professional corporations (.2200); administrative hearing procedures (.2300); rulemaking procedures (.2400); rulemaking hearings (.2500); declaratory rulings, (.2600); health services provider certification (.2700); and ancillary services (.2800).

<u>Senior Psychologist</u>	21	NCAC	54	.1707
Amend/*				

<u>Psychological Associate</u>	21	NCAC	54	.1802
Amend/*				

SOIL SCIENTISTS, BOARD FOR LICENSING OF

The rules in Chapter 69 are from the Board for Licensing of Soil Scientists including statutory and administrative provisions (.0100); licensing of soil scientists (.0200); continuing professional competency (.0300); standards of professional conduct (.0400); and disciplinary action and procedure (.0500).

<u>Fees</u>	21	NCAC	69	.0104
Amend/*				

COMMUNITY COLLEGES, BOARD OF

The rules in Subchapter 3A cover proprietary schools including business, trade, and technical schools (.0100); and correspondence schools (.0200).

<u>Student Refund</u>	23	NCAC	03A	.0113
Amend/*				

CONTESTED CASE DECISIONS

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.

OFFICE OF ADMINISTRATIVE HEARINGS

*Chief Administrative Law Judge
JULIAN MANN, III*

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

ADMINISTRATIVE LAW JUDGES

Sammie Chess Jr.

Beryl E. Wade

Beecher R. Gray

Melissa Owens Lassiter

A. B. Elkins II

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
<u>ALCOHOL AND BEVERAGE COMMISSION</u>				
Richard S Blazak, Park View Lounge v. ABC	96 ABC 0053	Gray	07/06/05	
ABC Comm. & City of Asheville v. Elijah Ulysses Jones T/A Jones Convenience Store	98 ABC 0962	Gray	07/12/05	
ABC Comm v. Rudean Robinson Harris T/A Rudean's Diner & Lounge 3	03 ABC 1214	Conner	06/28/05	
ABC Comm v. Desperado's Inc T/A Desperado's	04 ABC 1192	Wade	07/20/05	
ABC Commission v. Don Mariachi Ventures, Inc, T/A El Mariachi Gordo	05 ABC 0188	Morrison	02/01/06	
ABC Comm. v Nuntia Ester Davis T/A N and R Grocery 2	05 ABC 0209	Lassiter	09/13/05	
Cameron's One Stop, Sank Cameron v. ALE Agent B Haynes, Ann H. Johnson, Permit Comm Mgr.	05 ABC 0799	Elkins	07/28/05	
Guillermo Leon Macias, T/A Clubb Biltmore v. NC ABC Comm and City of Ashville	05 ABC 1452	Gray	04/06/06	
ABC Commission v Carlos Salas, T/A Boom Room Night Club	05 ABC 1831	Conner	01/11/06	
ABC Commission v. Loeffler Enterprises, Inc.,	05 ABC 1842	Conner	01/11/06	
ABC Commission v. Partnership, T/A John Boys County Store	05 ABC 1843	Conner	01/11/06	
Kristies 220 LLC v. NC ABC Comm	06 ABC 0064	Elkins	05/11/06	
<u>BOARD OF LICENSING OF GEOLOGISTS</u>				
James W King, PG v Board of Licensing of Geologists	05 BOG 0149	Morrison	08/10/05	
<u>BOARD OF MEDICAL EXAMINERS</u>				
Ricky E. Townsend v. Medical Board	05 BME 1435	Morrison	12/12/05	
Perry Reese, MD v. NC Medical Board	06 BME 0489	Chess	05/10/06	
<u>ACUTIONEERS LICENSING BOARD</u>				
Robert H. Rankin, Jr., NCAL #6727 v. Auctioneers Licensing Board	04 CFA 1497	Mann	05/13/05	
Alan D. Loeser, Sr. v Auctioneer Licensing Board	05 CFA 1644	Morrison	03/14/06	
<u>COMMERCE, DEPARTMENT OF</u>				
Land-of-Sky Regional Council v. Dept of Commerce, Div of Emp. & Trning	96 COM 1921	Gray	07/05/05	
<u>CRIME VICTIMS COMPENSATION</u>				
Dwight D Hoover Sr. v. Victims Compensation Commission	04 CPS 0988	Conner	07/07/05	
Moreno Edoardo Lovejoy v. Crime Control & Public Safety, Victime Comp. Services Division, Crime Victims Compensation Commission	04 CPS 1176	Wade	09/22/05	
Myrtle Perry v. Crime Victims Compensation Commission	04 CPS 1190	Chess	06/21/05	
Katherine Smith v. Crime Victims Compensation Commission	04 CPS 1207	Wade	02/21/06	
Marion A Liles v Dept. of Crime Control & Public Safety, Victims Compensation Service Division	05 CPS 0150	DeLuca	07/29/05	
Cecelia Reid v DCCPS, Div of Vic Comp Svcs, Crime Vic Comp Comm	05 CPS 0220	Lassiter	08/08/05	
Rhonda Lynnette Rhodes v. Crime Victims Compensation Program	05 CPS 0484	Gray	06/23/05	
Brenda Edwards, d/b/a B&H Wrecker Service v. Dept. of Crime Control & Public Safety, Div. of State Highway Patrol	05 CPS 0510	Lassiter	10/19/05	

CONTESTED CASE DECISIONS

Terry Ramey, d/b/a Ramey Wrecker Service v. Dept. of Crime Control & Public Safety, Division of State Highway Patrol	05 CPS 0511	Lassiter	10/18/05	
Curtis Glenn Davis v. Crime Control and Public Safety Crime Victims Compensation Commission	05 CPS 0529	Bryan	10/10/05	
Ignacio Gonzalez Partida v. Crime Victims Compensation Commission	05 CPS 0687	Morrison	02/02/06	
Jamaal O Staten v. Crime Victims Compensation Commission	05 CPS 0711	Elkins	07/28/05	
Paula Kelsey v. Crime Control & Public Safety, Div. of Victims Compensation	05 CPS 0783	Gray	01/25/06	
Sandra A. Tinsley v. Crime Victims Compensation Services	05 CPS 0850	Lassiter	12/02/05	
Randy Jeryl Richardson v. Victim and Justice Services	05 CPS 0972	Wade	04/10/06	
Brenda Stephens v. Crime Control & Public Safety, Div. of Victim Compensation Services	05 CPS 1258	Chess	03/06/06	
Patricia Ann Wilkins v. Crime Victims Compensation Commission	05 CPS 1424	Wade	04/21/06	
Ora Evan v. Crime Control and Public Safety, Division of Victim Compensation Services	05 CPS 1578	Gray	11/18/05	
Seawind Lamberto-Egan v. Crime Victims Compensation Commission	05 CPS 1666	Mann	04/13/06	
Robert Eugene Blue, Jr. v. OAH	05 CPS 1678	Chess	02/13/06	
BOARD OF ELECTIONS				
Republican Governors Association & Holly Lynn Koerber v. State Board of Elections	04 BOE 2051	Morrison	06/30/05	20:02 NCR 100
HEALTH AND HUMAN SERVICES				
MedVisit, Inc. v. Div. of Medical Assistance (DHR)	94 DHR 0012	Gray	07/12/05	
Patsy Norris v. Department of Human Resources	94 DHR 0895	Gray	07/06/05	
Small World DC II, Trena McDaniel v DHHS, Div of Child Dev.	00 DHR 2202 ²	Gray	08/08/05	
Michelle and Doug Sanders, DHHS	01 DHR 0002	Gray	01/27/06	
Trena S McDaniel & Small World DC II v. DHHS, Div of Child Dev.	01 DHR 0321 ²	Gray	08/08/05	
Richard McKinley Whited v. DHHS	02 DHR 0024	Gray	08/04/05	
Jeffrey D. Cannon v. DHHS, Walter B Jones ADACT	03 DHR 0488	Conner	06/29/05	
Aundria Shante Edwards v DHHS, Division of Facility Services	03 DHR 0806	Gray	08/10/05	
Jamie Kearney v. DHHS	03 DHR 0924	Gray	10/04/05	
John Butner v. DHHS/Broughton Hospital	03 DHR 1038	Wade	04/10/06	
Constance Pierce v. DHHS	03 DHR 1236	Conner	01/11/06	
Thomas Reiter, a minor, by his mother & legal guardian, Kathryn Reiter	03 DHR 1253	Gray	06/27/05	20:03 NCR 144
Theresa B. Flynn v. DHHS and DMA	03 DHR 1493	Gray	05/03/06	
Teresa South and Michael South v. DHHS, DMA, Third Party Recovery Section	03 DHR 1515	Gray	10/04/05	
Nina Sherean Hughes v. DHHS, Div of Facility Services	03 DHR 1595	Gray	10/03/05	
Patricia Faye McNeill v. NC Nurse Board	03 DHR 1620	Wade	05/11/06	
Louise Li Lai Fong v. DHHS, Division of Facility Services	03 DHR 1714	Wade	06/27/05	
Lenwood E Hargrove, Wilma Hargrove v. Div. of Medical Assistance	03 DHR 1737	Conner	07/27/05	
Geana E. Anderson v. DHHS, Division of Facility Services	03 DHR 2063	Gray	06/24/05	
Friendly Elm Rest Home (60)	03 DHR 2402	Conner	01/04/06	20:16 NCR
Gaile Thomas v. DHHS, Division of Facility Services	04 DHR 0110	Lassiter	06/21/05	
Mecca L Stewart v DHHS, Division of Facility Services	04 DHR 0213	Elkins	08/15/05	
Fatmata Gbondo v. DHHS, DFS	04 DHR 0241	Elkins	10/05/05	
Otis D. Wyche, Jr., v. DHHS, Div. of Facility Services	04 DHR 0294	Chess	05/16/05	
Charles Mitchell Williams v. Broughton Hospital	04 DHR 0357	Gray	04/13/06	
Stanley Ingram v. DOC	04 DHR 0361	Conner	01/11/06	
North Brook Rest Home, Inc v. DHHS, Adult Licensure Section	04 DHR 0407	Conner	07/26/05	
Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development	04 DHR 0539 ¹	Mann	06/03/05	
Patricia Lowe Tiller v. DFS, Health Care Personnel Registry Section, DHHS	04 DHR 0598	Gray	02/16/06	
Onslow County Behavioral Healthcare Services, Daniel M. Jones, Area Director v. DFS, Stephanie Alexander, Chief	04 DHR 0768	Conner	11/29/05	
Jamie Lynn Hensley v. DHHS, Div. of Facility Services	04 DHR 0917	Wade	05/16/05	
Aaron Anderson v. DHHS, Div. of Medical Assistance (DMA)	04 DHR 0929	Gray	08/10/05	
Carolyn W. Cooper, Happy Days Child Care v. Div. of Child Development	04 DHR 0931	Gray	03/15/06	
Lauren Robinson, Gifton Robinson v. DHHS	04 DHR 0950	Chess	02/22/06	
Charlene L. Powell v. DHHS and DMA	04 DHR 0986	Gray	05/03/06	
Stanley Ingram v. DOC	04 DHR 1007	Conner	01/11/06	
Carla Jean Summers v. DHHS, DFS	04 DHR 1020	Lassiter	09/21/05	
Bernice Haddock v. DHHS	04 DHR 1058	Gray	12/29/06	
Patricia A. Reece v. DHHS, Division of Facility Services	04 DHR 1062	Mann	07/27/05	20:05 NCR 266
Mario Flores v. DHHS, Division of Facility Services	04 DHR 1110	Mann	08/01/05	
Patricia Lowe Tiller v. Wake Co. Human Services, DHHS, DFS	04 DHR 1116	Gray	02/16/06	
Kid's Day Out Child Care and Learning Cneter, Inc, ID #76000079 v. DHHS, Division of Child Development	04 DHR 1119	Conner	10/27/05	
Sarah Ada Keller and John George Keller, Jr., for Justin Dean Keller v DHHS Division of Medical Assistance	04 DHR 1158	Wade	11/18/05	
Charleese K Garrison, mother of Jasmine C Garrison v. DHHS, Division of Medical Assistance	04 DHR 1168	Gray	08/03/05	
Carla Jean Summers v. DHHS, DFS	04 DHR 1222	Lassiter	09/19/05	
Betty Louise Bridges v. DHHS, DFS	04 DHR 1300	Conner	09/22/05	20:09 NCR
Starr Meadows v. DHHS, Div. of Medical Assistance	04 DHR 1334	Wade	10/18/05	

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Priscilla Thomas d/b/a Thomas, Priscilla Small Day Care Home-ID#4605036 v. DHHS, Division of Child Development	04 DHR 1413 ¹	Mann	06/03/05
Wake Forest University Health Sciences (Lessor) and Huntersville Dialysis Center of Wake Forest University d/b/a Huntersville Dialysis Center (Lessee) v. DHHS, Div. of Facility Services, CON Section and Bio-Medical Applications of NC, Inc. and Total Renal Care of North Carolina, LLC	04 DHR 1406	Conner	05/18/05
Dawn Allison v. Div. of Medical Assistance	04 DHR 1444	Mann	05/27/05
Stanlina Williams v. DHHS, DFS	04 DHR 1473	Conner	10/31/05
Julia Carver Thompson v DHHS	04 DHR 1498	Conner	09/13/05
Rosa E. Arias v. Patricia M. Epps – HCPR Nurse Investigator, Health Care Personnel Registry	04 DHR 1505	DeLuca	10/07/05
Autumn Green Adult Care Home, Patricia L. Tiller v. DHHS, DFS	04 DHR 1526	Gray	10/03/05
Filippo Porco v. DHHS, Health Care Personnel Registry Investigations	04 DHR 1647	Elkins	09/29/05
Graves Center for Community Development and Social Change v. DHHS, DFS	04 DHR 2137	Chess	02/08/06
Dorothy S Coleman v DHHS	04 DHR 2247	Elkins	07/28/05
Maxine L Froneberger v DHHS, Division of Facility Services, Health Care Personnel Registry Section	04 DHR 2286	Chess	08/25/05
Gloria Keller v. Health Care Personnel Registry Investigation	05 DHR 0096	DeLuca	10/05/05
LaKenya S. Perry v Division of Child Development	05 DHR 0112	Gray	08/24/05
Katherine Lewis (guardian) in lieu of Francis Curran Lewis (son) v. Wilson-Greene Mental Health Center, CAP Program	05 DHR 0117	Wade	10/06/05
Keith's Kids, Inc, Keith Richardson v DHHS, Div. of Facility Services	05 DHR 0196	Wade	08/31/05
Lakisha Sessoms v. DHHS, DFS	05 DHR 0227	Wade	01/10/06
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A list of Child Support Decisions may be obtained by accessing the OAH Website: www.ncoah.com/decisions.

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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	
Bardusch Corporation v. DENR	97 EHR 1265	Gray	01/10/06	
Country Lake Estates Associates, by and through, David T. Hawks, Managing Principal, Permit No. NC0055051 v. Div. of Water Quality, Raleigh Regional Office, Department of Human and Natural Resources, by and Through, William G. Ross, Secretary	01 EHR 0413	Gray	04/10/06	
Heath Dobson v. DENR, Water Pollution Control System Operators Certification Commission	01 EHR 1381	Gray	04/20/06	
Tall Pines Plantation Property Owners Assoc. Inc. v. DENR	01 EHR 1638	Gray	08/17/05	
Heater Utilities, Inc v. NCDENR, Division of Water Quality	02 EHR 0009	Gray	07/06/05	
Tera B Slaughter v DENR	02 EHR 1286	Conner	08/01/05	
Charles C. Barker, Kenneth W. Frazier v. DENR	02 EHR 1714	Wade	11/01/05	
John & Elizabeth Kaylor v. DENR	03 EHR 0046	Conner	06/29/05	
Colonial Pipeline Co. v DENR, Division of Water Quality	03 EHR 0112 ³	Connor	09/12/05	
Landstar Properties, LLC v. DENR	03 EHR 0738	Wade	05/05/06	
Colonial Pipeline Co. v DENR, Division of Water Quality	03 EHR 0815 ³	Connor	09/12/05	
Rial Corporation v. DENR	03 EHR 1391	Conner	01/09/06	
Federal Land & Timer Corp v. DENR	03 EHR 1718	Gray	07/28/05	
Terry D. Gregory and wife, Pennie Gregory v. DENR, Div. of Coastal Management and Michael D. Swearingen, Jr.	03 EHR 2201	Gray	09/30/05	20:10 NCR
Cynthia Williamson Putnam v DENR	03 EHR 2383	Conner	09/12/05	
Rial Corporation v. DPI	04 EHR 0074	Conner	01/09/06	
International Paper Company-Roanoke Rapids Mill v. DENR, Div. of Air Quality	04 EHR 0085	Gray	02/13/06	
Pacemaker Leasing Company v. DENR	04 EHR 0223	Gray	04/20/06	
Brenda Severt, David and Nancie Wilson v. DENR	04 EHR 0383	Gray	10/25/05	
Rebecca Page v. DENR	04 EHR 0458	Bryan	09/20/05	
Milton T. Gibson v. Cumberland County Health Dept., Environmental Health	04 EHR 0990	Lassiter	10/11/05	
Robert L. Grissett v. DENR	04 EHR 1237	Chess	05/16/05	
Southern Cleaners and Laundry, Inc. v. DENR	04 EHR 1431	Lassiter	03/27/06	20:22 NCR
Ellen Darrigrand & husband Charles Darrigrand v. DENR, Div/Coastal Mgmt	04 EHR 1469	Mann	06/30/05	20:05 NCR 270
Yvonne D. Bledsoe, Bledsoe Construction Co., v. DENR, Div. of Land Quality	04 EHR 1562	Creech	01/04/06	20:16 NCR
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	
Jan Harris, Brunswick Environmental Action Team v. DENR, Div. of Coastal Management and Edward M. Gore and Dinah E. Gore, and Tidal Ventures, LLC	05 EHR 0834	Wade	01/24/06	20:22 NCR
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	
Freedman Farms v. Fayetteville, Div of Water Quality Office	05 EHR 0905	Conner	11/21/05	
Daniel J Smith v State of NC Environmental Health	05 EHR 0925	Lassiter	08/08/05	
John C Gallop, Jane Gallop Newbern v. DENR/Div of Coastal Mgmt	05 EHR 0941	Gray	07/29/05	
Robert B. Montouri GC v. New Hanover Co. Health Dept.	05 EHR 1001	Morrison	10/03/05	
Rosalind Nixon, All Good Detail Inc, v. DENR	05 EHR 1215	Lassiter	10/13/05	
George R. Gelsinger Jr. v. DENR, Land Quality Section	05 EHR 1253	Elkins	10/31/05	

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Keith Spain, Rosewood Farms, LLC v. DENR	05 EHR 1442	Wade	12/07/05
Betty C. Penuel v. Duplin Co. Environmental Health	05 EHR 1476	Conner	12/21/05
Wood Lake Utilities, Jeffrey B House, MV-2005-0010 v. DENR, Mr. Dan Oakley, General Counsel	05 EHR 1629	Morrison	02/10/06
John Darlington v. DENR	05 EHR 2016	Chess	05/10/06
Dean Thomas Duff v. DENR, Mary Penny Thompson, General Counsel	05 EHR 2180	Morrison	03/28/06
Danny R. Strickland v. DENR, Division of Air Quality	06 EHR 0119	Lassiter	04/07/06
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Betsy Yvonne Villines v. Alamance County Health Department Environmental Health Section	06 EHR 0221	Elkins	04/06/06
Homestead Building Co. v. Franklin County Health Department	06 EHR 0245	Elkins	04/26/06
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DEPARTMENT OF INSURANCE

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
Rachael Elizabeth Ragin v. Teachers' and State Employees' Comprehensive Major Medical Plan	04 INS 1299	Conner	09/26/05
Susan B. Clayton v. Teachers' and State Employees' Comprehensive Major Medical Plan	05 INS 1062	Elkins	01/01/06
Sandra Walsh Tilley v. NC State Health Plan Teachers' and State Employees' Comprehensive Major Medical Plan	05 INS 1360	Gray	04/13/06

MISCELLANEOUS

Aaron Lewis v. General Court of Justice, District Court, Div-Small Claims Chris Hardison, Magistrate	06 MIS 0037	Morrison	03/02/06
Robert A. Sartori v. John Connell Clerk NCCOA, Heather M Freeman Attorney General	06 MIS 0125	Gray	04/10/06

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Clorie Bivens Owen on behalf of William Baxter Bivens v. OAH	06 OAH 0063	Chess	04/20/06
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OFFICE OF STATE PERSONNEL

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
Jodi M. Dolan v. Dept. of Correction	02 OSP 2300	Lassiter	03/23/06
Vicki B Tamer v. Department of Public Instruction	03 OSP 0243	Gray	08/15/05
Brenda Haug v. Employment Security Commission of North Carolina, Harry Payne, Commissioner, Sharon Morris, Director of Human Resources, Rick Elingburg, Office Manager	03 OSP 0589	Gray	03/08/06
Arlene R Burwell v Department of Corrections	03 OSP 0621	Conner	09/12/05
Howard Len Henderson v. DHHS, Cherry Hospital	03 OSP 0705	Chess	02/20/06
Eddie Ray Creech v. Department of Corrections	03 OSP 0831	Wade	05/17/05
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Kathy Sledge v. Department of Corrections	03 OSP 1092	Conner	06/27/05
Arlene Burwell v. DOC, Division of Prisons, Polk Youth Institution	03 OSP 1141 ⁵	Conner	11/07/05
Michael B. Carraway v. Wildlife Resources Commission, Div. of Wildlife Management	03 OSP 1545	Gray	09/07/05
Jack Mason v. Wildlife Resources Commission, Div. of Wildlife Mgt.	03 OSP 1555	Gray	09/07/05
David Thomas Sawyer v. Wildlife Resources Commission, Div. of Wildlife Mgt.	03 OSP 1556	Gray	09/07/05
Arlene Burwell v. DOC, Division of Prisons, Polk Youth Institution	03 OSP 1743 ⁵	Conner	11/07/05
Robert Earl Regan, Jr v DCCPS, State Highway Patrol	03 OSP 2321	Conner	09/12/05
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James A Ray v. UNC at Greensboro, Facility Services	04 OSP 0751	Elkins	06/28/05
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Jack E. Curtis v. DOC	04 OSP 1005	Conner	01/10/06
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Mona Dale Batten v Columbus Co Department of Social Services	04 OSP 1194	Gray	09/07/05
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
Demeatress Gholston v. NCSU, Computer Science Department	04 OSP 1279	Mann	02/01/06
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
Carroll (ED) Swain v. UNC-Chapel Hill	04 OSP 1476	Gray	09/20/05
Daisy L. Smith v. Cumberland Co Mental Health Center	04 OSP 1558	Elkins	07/28/05

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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
James O. Mitchell v. DOT	04 OSP 1639	Elkins	11/28/05
V Wayne Johnson v Department of Transportation	04 OSP 1716	Elkins	07/06/05
Beverly R Lee v. Employment Security Commission of NC	04 OSP 1742	Conner	08/03/05
David J. Savage v. DOI	04 OSP 1773	Lassiter	01/18/06
Linda Wiggs v. DENR	04 OSP 1863	Mann	01/11/06
Robert D Jones v Hendeson County Dept. of Public Health	04 OSP 2081	Gray	08/01/05
Mary Cogdell v. Wayne Co. Dept. of Social Services, Judy Pelt, Director	04 OSP 2117	Wade	10/11/05
Regina C Gaither v. Forsyth Co Department of Social Services	05 OSP 0047	Conner	06/27/05
Thomas Freeman, Jr. v. DHHS/Murdoch Center	05 OSP 0071	Wade	08/15/05
Tracy L. Phillips v. North Carolina A & T State University	05 OSP 0183	Mann	03/03/06
Percy L. Edwards v. Dept. of Juvenile Justice & Delinquency Prevention	05 OSP 0252	Lassiter	11/30/05
Thomas A Horton v. Dept. of Crime Control and Public Safety	05 OSP 0389	Lassiter	06/02/05
Anthony Bruce Allen v Department of Transportation	05 OSP 0418	Chess	06/09/05
Peggy Anderson v. Whitaker School, NC DHHS	05 OSP 0427	Gray	10/25/05
Angela Twitty v. DOC, Marion Correctional Institution	05 OSP 0491	Wade	08/31/05
Alan Bradford v. Avery Co.	05 OSP 0493	Wade	10/06/05
Derek H. Babson v. Department of Transportation	05 OSP 0515	Chess	05/31/05
James Albert Keyes v. DOT	05 OSP 0553	Gray	12/15/06
Mary K French Fornes v DOC Eastern Correctional Institution	05 OSP 0584	Gray	07/08/05
James R Campbell v Forsyth Co Department of Social Services	05 OSP 0587	Elkins	08/26/05
Gloria Woodard v. Lyndo Tippet, Secretary, NC DOT	05 OSP 0588	Lassiter	06/24/05
William Rhodney Reep v. DOT, DMV	05 OSP 0717	Lassiter	11/08/05
Kenneth Ray Sholar v. New Hanover County Health Department	05 OSP 0774	Wade	04/21/06
Glendora Key v. UNC at Chapel Hill	05 OSP 0784	Gray	09/23/05
Deborah Faye Murray v NW Peidmont Council of Governments	05 OSP 0802	Chess	07/13/05
Joey Todd v. Bladen County Dept. of Social Services	05 OSP 0804	Conner	01/06/06
Milton W. Nobles v. DHHS/Dorothea Dix Hospital	05 OSP 0815	Gray	06/15/05
Sandra Thomas v Department of Correction	05 OSP 0824	Wade	07/21/05
Stacy D Bazemore v NCSU CVM-VTH	05 OSP 0874	Gray	08/01/05
Donna P. Minelli v. DOC, Div. of Community Corrections	05 OSP 0889	Conner	10/21/05
Willie Gadden v. Winston-Salem State University	05 OSP 0904	Chess	10/10/05
Destrik A. Burns v. Albemarle Correctional Institution	05 OSP 0924	Gray	03/13/06
Susan Hilbourn v. Cumberland County Department of Social Services	05 OSP 0970	Gray	12/07/05
Albert Ridley v. Odom Correctional Institution, Lawrence Solomon	05 OSP 0989	Gray	10/25/05
Tammy F. Brogdon v. Durham Co. Dept. of Social Services	05 OSP 1009	Elkins	03/07/06
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
Elva Catalina Lay v. Durham Dept. of Social Services	05 OSP 1112	Chess	02/22/06
Thomas M. Chamberlin v. Vance-Granville Community College	05 OSP 1170	Chess	09/30/05
Johnnie V. Carpenter v. DOA	05 OSP 1199	Morrison	03/29/06
Joe L. Harris, MSW, LCSW v. Alamance Caswell MHDDSA/LME	05 OSP 1221	Chess	10/11/05
Lolita B. Keel v. Dept. of Revenue	05 OSP 1228	Elkins	10/12/05
David N. Smith v. NC School of Science and Math	05 OSP 1236	Chess	10/04/05
Gerald R. Tripp v. NC School of Science and Math	05 OSP 1242	Chess	09/22/05
Teresa Johnson v. Fayetteville State University	05 OSP 1252	Gray	03/27/06
Tommy Frank Sykes v. Nash County Government	05 OSP 1334	Chess	12/15/05
Damon T. Smith v. Tillery Correctional Center	05 OSP 1353	Wade	04/10/06
David Fleming v. DOT, Divison of Highways	05 OSP 1437	Morrison	03/21/06
Debra D Moore v. Irene Wortham Center	05 OSP 1445	Gray	11/02/05
Samuel Faminiba v. DOT	05 OSP 1468	Morrison	12/13/05
Natalynn P (Para) Tollison v. NCSU Human Resources, Diane Sortini, Director and Galen Jones, Assistant Director	05 OSP 1501	Morrison	12/14/05
Frank G. Bermel v. UNC	05 OSP 1563	Lassiter	12/05/05
Athena Prevatte v. UNC-Pembroke, Police Department	05 OSP 1604	Chess	02/28/06
William J. Pendleton v. Butner Public Safety MW Hobgood	05 OSP 1720	Lassiter	01/09/06
Michael D. Beal v. Butner Public Safety MW Hobgood	05 OSP 1722	Lassiter	01/09/06
Walter B. Williams v. Butner Public Safety MW Hobgood	05 OSP 1723	Lassiter	01/09/06
Mimi Jakelsky v. DHHS	05 OSP 1731	Chess	01/13/06
Mary D. Taylor v. Cumberland County Department of Public Health	05 OSP 1899	Morrison	04/11/06
John S. Cmelo v. DOC	05 OSP 1900	Mann	03/24/06
Donna Pierce v. DOC	05 OSP 1901	Wade	05/05/06
Mary F. Parker v. Wilson Technical Community College	05 OSP 1905	Lassiter	01/04/06
Clifton Eugene Middleton II v. Cherry Hospital (Department of Health And Human Services)	05 OSP 2044	Elkins	03/13/06
Johnnie R. Davis v. DOC	05 OSP 2079	Morrison	03/16/06
Aboubiehi G. Kablan v. UNC Charlotte	05 OSP 2115	Lassiter	03/13/06
Terry Michael Williams v. East Carolina University	05 OSP 2116	Lassiter	02/06/06
Thomas F. Lewin v. DOC	05 OSP 2195	Lassiter	04/07/06
Clifton Eugene Middleton II v. Cherry Hospital (Department of Health	06 OSP 0028	Elkins	03/13/06
Rafael Leon Garcia v. Dept. Juvenile Justice and Delinquency Prevention	06 OSP 0031	Gray	05/09/06
Sergeant Brandon James Graham v. DOC	06 OSP 0109	Gray	03/21/06
Lisa A. Forbes v. Dorothea Dix Hospital	06 OSP 0134	Gray	03/29/06

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Lisa A. Forbes v. Dorothea Dix Hospital	06 OSP 0135	Gray	03/29/06
Robert Brian Honeycutt v. DOC and Lanesboro Correctional Institution	06 OSP 0381	Gray	05/02/06
Steve Eugene Parker v. Lanesboro Correctional Inst. (4865)	06 OSP 0467	Gray	05/02/06
Donald D. Coley v. Winston-Salem State University	06 OSP 0596	Lassiter	05/12/06

SECRETARY OF STATE

Monica A Chitwood v. Dept. of Secretary of State	05 SOS 0237	Conner	06/17/05
Janice W. Craver v. Dept. of Secretary of State	05 SOS 0286	Conner	06/06/05
Barbara Jane Kelly v Secretary of State	05 SOS 0310	Elkins	08/22/05
Richard C Capps v. Dept of Secretary of State	05 SOS 0560	Gray	07/14/05
Silvia Rodriguez v Department of Secretary of State	05 SOS 0926	Lassiter	09/09/05
Curtis Eugene Haynes v. Department of Secretary of State	05 SOS 1031	Wade	10/28/05
Curtis C. Lyons v. Dept. of Secretary of State	05 SOS 1129	Chess	12/12/05
Blanca Rivera v. SOS	05 SOS 1509	Morrison	03/27/06
Harvey White v. Dept. of Secretary of State	05 SOS 2130	Lassiter	02/23/06

UNC HOSPITALS

Bhimjibhai Lanani v UNC Hospitals	04 UNC 0008	Conner	09/12/05
Amanda Mathis Miller v. UNC Hospitals	05 UNC 0247	Lassiter	06/02/05
Darian C. Jones Ph.D v. UNC Hospitals	05 UNC 0315	Lassiter	06/02/05
Tereasa King v. UNC Hospitals	05 UNC 0376	Lassiter	06/02/05
Lenora White v. UNC Hospitals	05 UNC 0574	Bryan	09/13/05
Ellen Griffith v. UNC Hospitals	05 UNC 0585	Conner	07/26/05
Dawn B & John A Gladden v. UNC Hospitals via Dept. of Revenue	05 UNC 0608	Conner	07/26/05
Joyce Porter v UNC Hospitals	05 UNC 0623	Elkins	08/11/05
Martin T Myers v UNC Hospitals	05 UNC 0632	Elkins	08/11/05
Bettie Brame v UNC Hospitals	05 UNC 0638	Conner	08/01/05
Joyce Daugherty v. UNC Hospitals	05 UNC 0663	Elkins	08/11/05
Margarida Goulart v UNC Hospitals	05 UNC 0683	Conner	07/26/05
Tashuia Williams v UNC Hospitals	05 UNC 0684	Conner	07/26/05
Robert C. Green v. UNC Hospitals	05 UNC 0751	Wade	01/06/06
Audrey Ghia v UNC Hospitals	05 UNC 0856	Gray	09/14/05
DeJuana Middleton v UNC Chapel Hill Hospital	05 UNC 0701	Conner	07/26/05
Joshua Ryan Lloyd v. UNC Hospitals	05 UNC 1000	Elkins	01/10/06
Marjorie Hindsdale-Shouse v UNC Hospitals	05 UNC 1002	Elkins	09/15/05
Dawn R Dickerson v UNC Hospitals	05 UNC 1028	Elkins	08/11/05

WILDLIFE RESOURCES COMMISSION

Linville Land Harbor POA, Inc., by Kevin N. McCracken v. Wildlife Resources Commission	05 WRC 1268	Gray	03/07/06
Josephine Perdue v. WRC	05 WRC 1440	Gray	11/18/05

- 1 – Combined Cases
- 2 – Combined Cases
- 3 – Combined Cases
- 4 – Combined Cases
- 5 – Combined Cases

STATE OF NORTH CAROLINA

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
05 DHR 1077

COUNTY OF GASTON

ROSEWOOD ASSISTED LIVING (48))
HAL-036-004)
Petitioner,)
v.)
NORTH CAROLINA DEPARTMENT)
OF HEALTH & HUMAN SERVICES,)
DIVISION OF FACILITY SERVICES,)
ADULT CARE LICENSURE SECTION,)
Respondent.)

DECISION

This matter was heard before Beecher R. Gray, Administrative Law Judge, on January 31, 2006 in Gastonia, North Carolina. Petitioner filed its Proposed Decision on April 7, 2006, and Respondent filed its Proposed Decision on April 13, 2006.

APPEARANCES

Deborah A. Whitfield
Attorney at Law
P.O. Box 480160
Charlotte, NC 28269
Counsel for Petitioner

Thomas M. Woodward
Assistant Attorney General,
North Carolina Department of Justice
P. O. Box 629
Raleigh, NC 27602
Counsel for Respondent

ISSUE

Whether Respondent

1. exceeded its authority or jurisdiction;
2. acted erroneously;
3. failed to use proper procedure;
4. acted arbitrarily or capriciously; or
5. failed to act as required by law or rule

when Respondent assessed a Type A administrative penalty in the amount of \$6,000.00 against Petitioner for violation of the Adult Care Law.

APPLICABLE STATUTES AND RULES

N.C.G.S. §§ 131D-4.4, -21, -26, -34; 10 NCAC 42C .3601; and
N.C.G.S. § 150B-23

EXHIBITS

The following exhibits were admitted into evidence:

1. Petitioner's Exhibit #1 N.C.G.S. §131D Controlling Statutes, Rules, Regulations.

2. Petitioner's Exhibit #2 Business Records Affidavit—Gaston County EMS Dispatch Record.
3. Petitioner's Exhibit #3 Affidavit of Ifeanylichukwu O. Okafor, M.D.
4. Petitioner's Exhibit #4 Gaston Memorial Hospital Medical Records.
5. Petitioner's Exhibit #5 Death Certificate for Resident #2.
6. Petitioner's Exhibit #6 Resident #2 Care Plan & Medical Evaluations.
7. Petitioner's Exhibit #7 Statements Attached to Administrative Penalty Proposal (*Attachment 13 of the Administrative Penalty Proposal*).
8. Petitioner's Exhibit #8 Emergency Procedure & Physicians Eldercare, P.A. Standing Orders.
9. Petitioner's Exhibit #9 Gaston Memorial Hospital Fax to Petitioner.
10. Petitioner's Exhibit #10 Business Records Affidavit—Gaston County 911 Communications Dispatch Record.
11. Petitioner's Exhibit #11 Business Records Affidavit—Lowell Police Department Call Record.
12. Petitioner's Exhibit #12 Ombudsman's In-Service Training Handouts.
13. Petitioner's Exhibit #13 Keith Moon March 2, 2005 Letter to Petitioner.
14. Petitioner's Exhibit #14 Job Description for Med. Tech.
15. Petitioner's Exhibit #15 February 2, 2005 Letter from Linda Lancaster to Doug Barrick.
16. Petitioner's Exhibit #16 February 10, 2005 Letter from Peg Argent to Linda Lancaster.
17. Petitioner's Exhibit #17 DSS March 2, 2005 letter to Nick Rose.
18. Petitioner's Exhibit #18 Penalty Proposal Summary Sheets.
19. Petitioner's Exhibit #19 June 16, 2005 Letter from Barbara Ryan to Petitioner.
20. Petitioner's Exhibit #20 Respondent's Response to Petitioner's First Set of Interrogatories, Request for Production of Documents, and Request for Admissions along with the documents attached thereto including:
 - Gaston County DSS's Administrative Penalty Proposal—Respondent's Exhibit A.
 - Respondent's *Complaint Investigation & Penalty Proposal Procedures in Adult Care Homes—Workbook for Adult Home Specialists (Sept., 2001 Revision)*—Respondent's Exhibit B.
 - Respondent's *Adult Care Home Procedures Manual—Licensing & Monitoring of Adult Care Homes (Aug., 1998)*—Respondent's Exhibit C.
21. Petitioner's Exhibit # 21 Business Records Affidavit—Denise J. Jones (*The News & Observer*).
22. Joint Exhibit #1 Gaston County EMS dispatch records.
23. Joint Exhibit #2 Gaston County DSS's January 14, 2005 Notice of Intent to Submit Penalty Proposal.
24. Joint Exhibit #3 Gaston County DSS's February 16, 2005 Notice of Intent to Submit Penalty Proposal.
25. Joint Exhibit #4 Respondent's June 16, 2005 Notice of Penalty Assessment.
26. Joint Exhibit #5 Respondent's Penalty Proposal.

27. Joint Exhibit #6 Respondent's Penalty Proposal Summary Sheet.
28. Joint Exhibit #7 Respondent's *Adult Care Home Procedures Manual—Licensing & Monitoring of Adult Care Homes* (Aug., 1998).
29. Joint Exhibit #8 Respondent's *Complaint Investigation & Penalty Proposal Procedures in Adult Care Homes—Workbook for Adult Home Specialists* (Sept., 2001 Revision).
30. Respondent's Exhibit # 1 Complaint Intake Form.
31. Respondent's Exhibit #2FL-2 dated 7/24/04.
32. Respondent's Exhibit #3 Nursing Notes for Resident #2.
33. Respondent's Exhibit #4 Medication Administration Records for Resident #2.
34. Respondent's Exhibit #5 Cover Fax with Rosewood Assisted Living's Emergency Procedures for Staff.
35. Respondent's Exhibit #6 Death Certificate for Resident #2.
36. Respondent's Exhibit #7 Job Description for Med. Tech. at Petitioner's Facility.
37. Respondent's Exhibit #8 Job Description for CAN/PCA at Petitioner's facility.
38. Respondent's Exhibit #9 Charting Information from Down Probst, Home Health Nurse, concerning Resident #2.
39. Respondent's Exhibit #10 Statement from 3rd shift SIC.
40. Respondent's Exhibit #11 Statement from 1st shift SIC.
41. Respondent's Exhibit #13 Adult Care Home Care Plan for Resident #2.
42. Respondent's Exhibit #14 Gaston Memorial Hospital ("GMH") Emergency Dept. Admission for Resident #2.
43. Respondent's Exhibit #15 GMH History and Physical for Resident #2.
44. Respondent's Exhibit #16 GMH Consultation Report for Resident #2.
45. Respondent's Exhibit #17 GMH patient profile/admission orders for Resident #2.
46. Respondent's Exhibit #18 GMH Discharge/Death Summary for Resident #2.
47. Respondent's Exhibit #19 CAR.
48. Respondent's Exhibit #20 January 25, 2005 email from Lori Giang to Petitioner.
49. Respondent's Exhibit #21 February 28, 2005 email from Lori Giang to Petitioner.
50. Respondent's Exhibit #22 March 2, 2005 letter from Lori Giang to Nick Rose.
51. Respondent's Exhibit #24 March 2, 2005 letter from Keith Moon to Petitioner.
52. Respondent's Exhibit #25 April 18, 2005 letter from Sandra Tatum to Petitioner.
53. Respondent's Exhibit #26 PRC Recommendations.

STIPULATIONS—UNDISPUTED FACTS

1. On December 13th and again on December 22, 2004, Gaston County DSS initiated an onsite complaint investigation to determine compliance with licensure rules of adult care homes in response to a resident's death that had occurred on December 1, 2004 at Gaston Memorial Hospital, Gastonia, NC. At the conclusion of the investigation, on January 14, 2005, DSS issued a Directed, Type A Corrective Action Report signed by the Gaston County DSS Adult Home Specialist and mailed to the administrator on January 14, 2005.

2. By letter dated March 2, 2005, Gaston County DSS recommended to Respondent its administrative penalty proposal against Petitioner, Rosewood Assisted Living.

3. By letter dated June 7, 2005, counsel for Rosewood Assisted Living submitted additional information at Respondent's invitation requesting that the administrative penalty process be closed as the medical conclusion reached by Gaston County DSS is unsupported by and contrary to the medical evidence in this case.

4. By letter dated June 16, 2005, the Adult Care Licensure Section notified Petitioner of its intent to assess a Type A administrative penalty in the amount of \$6,000.00 against Petitioner. In accordance with its appeal rights, on July 12, 2005, Petitioner timely filed its Petition for a Contested Case Hearing with the Office of Administrative Hearings in which it challenged the penalty assessment at issue in this contested case.

Based upon the documents filed in this matter, exhibits admitted into evidence, stipulations of the parties, and the sworn testimony of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

1. Resident #2 was a resident at Rosewood Assisted Living Facility on November 30, 2004 when he first experienced rectal bleeding. According to the most current FL-2 dated, February 24, 2004, Resident #2 had the following diagnoses: hypertension, cardiovascular disease; hypothyroidism; Meniere's disease; and Alzheimer's type dementia. T pp. 114-5; P Exh 20; R Ex 2, Jt Ex 5

2. On or about November 30, 2004, at approximately 4:50 a.m., third shift staff at the Rosewood Assisted Living Facility noticed a pile of bloody bowel movement ("BM") in the hallway. T pp. 117-118, 384; P Exh 20; Jt Ex 5

3. Third shift staff (LaShey Dillard, staff in charge, and Frances Burchfield, personal care assistant) responded by searching from room to room to trace the source of the bloody BM until they traced the source to Resident #2. T pp 118; Jt Ex 5

4. Resident #2 denied having left the bloody BM, but Dillard and Burchfield found Resident #2 in bed with sheets and pants full of blood. Resident #2 cursed staff telling them to, "Get the hell out of here" and refusing to go for medical evaluation or treatment. T pp 118-119; Jt Ex 5

5. Third shift staff (Burchfield) repeatedly asked Resident #2 if he wanted to go to the hospital, but he cursed and refused. Having received no training to the contrary, Burchfield believed that once a resident refused treatment, facility staff could not override the resident's refusal without a court order declaring the resident incompetent. T pp 362-365

6. Third shift staff (Dillard) repeatedly asked Resident #2 if he wanted to go to the hospital, but he refused. Dillard believed that once a resident refused treatment, facility staff could not override the resident's right since there is nothing in writing authorizing staff to do so even if the resident has dementia. T pp 386-388

7. Third shift staff (Dillard and Burchfield) cleaned up Resident #2 and monitored him every 10-15 minutes until the shift change at 6:45 a.m. when Dawn Probst, Home Health Nurse, was expected on duty. The staff gave uncontroverted testimony that these regular, periodic checks were made, even though they did not document them in the agency records. T p. 367

8. LeShey Dillard, the staff member in charge on the third shift, testified that she was not aware of Petitioner's emergency procedures, did not take Resident #2's pulse, did not take Resident #2's vital signs, and did not contact a health care professional concerning Resident's #2's condition. Petitioner's emergency procedures require that if a resident is experiencing a major reduction in pulse or blood pressure, staff should check vital signs, pupils and observe patient's general condition; summon an ambulance if condition warrants emergency treatment; and notify physician, describing all events fully. Petitioner's Physicians Eldercare Standing Orders state that "if in doubt about a patient's condition call the triage service or 911."

9. At approximately 7:00 a.m., third shift staff (Dillard) saw Resident #2 sitting up front with other residents. She asked Resident #2 if he was okay. He responded that he was. T pp 56, 388.

10. At some point between 7:00 a.m. and 8:40 a.m., Resident #2 had a second bloody BM on the toilet. At the change of shift, third shift staff (Burchfield) told first shift staff (Marie Bollinger) about the bloody BM. At 8:40 a.m., Bollinger told Probst about problems with Resident #2 and told her that he was now on the toilet with a second bloody BM. Probst went down the hall to the bathroom and observed Resident #2 on the toilet and “that there was stool and blood on toilet, halls, etc.” She talked with him about going to the emergency room (“ER”), but Resident #2 again refused. Shortly thereafter, Probst again checked on Resident #2 and again discussed with him the need to go out for evaluation, but Resident #2 again refused. Probst then directed first shift staff to call EMS, explain the situation and, “see what recommendations EMS would make.” T pp 251-254, 257-258, 365-366; P Exh 7; Jt Exh 5; R. Ex. 9.

11. Home Health Nurse Dawn Probst made the decision to call EMS 10-15 minutes after first seeing Resident #2 on the toilet. Probst believed Resident #2 needed to be evaluated, “but with his refusing, what do you do?” Her 10-15 minute delay in calling EMS was due to: i) her own personal knowledge of Resident #2 (having treated him since July of 2003); ii) her belief (based upon the fact that she had treated him monthly, had seen him periodically in between treatments, and knew his demeanor and capabilities) that he was competent to refuse treatment; and based upon iii) her own questions about what to do when a resident like Resident #2, with an FL-2 of dementia, is blatantly refusing treatment. She has never seen a rule, regulation, policy procedure or protocol that provides guidance with regard to the right of residents with dementia to refuse treatment. She further testified that her agency has a health care professional on call 24 hour a day and that staff could have contacted the health care professional when they first discovered Resident #2’s bleeding. T pp 254, 258-260,474

12. At 8:59 a.m. on November 30, 2004, Rosewood Assisted Living staff called EMS and EMS was dispatched at that time. The EMS Unit arrived on the scene at 9:05 a.m. and arrived at Resident #2 at 9:06 a.m. P Exh 2; Jt Exh 1

13. According to the EMS trip report and attachments, Resident #2 was alert and oriented to normal level. Resident #2’s initial pulse oximeter reading was 100%. He was pale though his pulses were equal and strong. At 9:09 a.m., baseline vitals were taken evidencing a pulse rate of 96 and blood pressure reading of 86/?. At 9:22 a.m., Resident #2’s vitals were again taken evidencing a pulse rate of 78, blood pressure of 100/? and that he was experiencing atrial fibrillation. EMS prepared Resident #2 for transport to Gaston Memorial Hospital (“GMH”) and moved him to the stretcher/ambulance for evaluation of possible GI bleed. EMS transported Resident #2 at 9:22 a.m., non-emergent, no lights or sirens. Resident #2’s response to treatment administered included improved blood pressure, and his color returned to his face. At 9:35 a.m., Resident #2 arrived at GMH at which time EMS noted Resident #2’s condition as “stable.” Resident #2 was then turned over to GMH ER staff. Tr pp 23-35; P Exh. 2; Jt Exh 1

14. Upon arrival at GMH, Resident #2’s condition was stable. He was placed in the ER under the care of treating physician Ifeanyichukwu O. Okafor. Dr. Okafor is board certified in internal medicine and geriatrics. T pp 41, 19, 74; P Exh 3, 4 p 21

15. GMH/ER history & physical reports document the physical examination performed on Resident #2 at admission on November 30, 2004. Vital signs showed blood pressure of 140/60, pulse 94, respiratory rate of 18, temperature 97.9 degrees Fahrenheit with oxygen saturation of 95% on room air. This report goes on to state that the atrial fibrillation is probably new onset with controlled ventricular response. T pp 44-45; P Exh 3, 4 pp 7-8, 11

16. On November 30, 2004, when Resident #2 was admitted to GMH, Resident #2’s hemoglobin reading was 10.7 with a hematocrit reading of 31.9 which are objective medical measures of blood loss. Dr. Okafor opined that patients with comorbid conditions should maintain hemoglobin levels of above 10.0; and that Resident #2’s hemoglobin level stayed consistently above 10.0 from his arrival at GMH until the time of his death on December 1, 2004. T pp 37, 40, 46-48; P Exh 4 pp 18, 59

17. At 2:13 p.m. on December 1, 2004, Resident #2 died at GMH from atrial fibrillation. Dr. Okafor states as to cause of death, that: i) “the patient’s atrial fibrillation was presumed new onset”; ii) that the patient was “admitted with lower GI bleeding, though with stable hemoglobin and hematocrit”; and that iii) the patient “suddenly developed cardiopulmonary arrest from which he could not be resuscitated.” Of particular significance is Dr. Okafor’s final diagnoses which in no way suggests that the delay in transport resulted in Resident #2’s death. Instead, he lists atrial fibrillation as the first, final diagnosis. T pp 48-51; P Exh 3, 4 p 1; R 6; Jt Exh 5

18. As to the adequacy and appropriateness of Resident #2’s care, Dr. Okafor opined that Resident #2’s care was adequate, and that although Resident #2 would have benefited, medically, from being admitted to the hospital four (4) hours earlier, the four hour lapse in time, however, neither resulted in death or serious physical harm to Resident #2, nor otherwise resulted in substantial risk that death or serious physical harm would occur. While Dr. Okafor gave his opinion on the adequacy of Resident #2’s care, he could not come to grips with what “appropriate” care meant, under the circumstances. He said the care was adequate, but not ideal. T pp 49, 92, 94-99, 474; P Exh 3

19. On December 13, 2004, Gaston County Department of Social Services (“DSS”) initiated a complaint investigation “to determine compliance with licensure rules of adult care homes” which was concluded on January 14, 2005. T p 105; Jt Exh 5

20. As a result of its investigation, DSS generated and mailed to Petitioner a directed, Type A corrective action report (“CAR”) based upon N.C. Gen. Stat. §131D-4.4, Adult Care Home Minimum Safety Requirements, and N.C. Gen. Stat. §131D-21(2), Declaration of Residents’ Rights, but no licensure rule violations for Adult Care Homes were cited as grounds for the Type A administrative penalty. T pp 106-109; P Exh 13, 16-18, Jt Exh 5

21. Based upon its investigation, DSS concluded that Resident #2 did not receive adequate and appropriate care on November 30, 2004 at Rosewood Assisted Living Facility. The basis for DSS’s administrative penalty recommendation was the failure of Rosewood’s third shift staff at 4:50 a.m. on November 30, 2004 to notify EMS, the resident’s physician, or another licensed health care professional of Resident #2’s condition which DSS asserted placed Resident #2 in substantial risk of death or serious physical harm. T p 204; Jt Exh 5; R Exh 22, 24

22. Although DSS (Lori Giang) believes that facility staff should have known to override Resident #2’s refusal to treat given his history of Alzheimers, neither DSS, directly, nor the Regional Ombudsman for the protection of residents’ rights on behalf of DSS, has ever provided written policy guidance or training to facility staff concerning the right of a resident, with an FL-2 diagnosis of Alzheimers type dementia, to refuse treatment. T pp 121, 259, 417, 426; P Exh 12

23. On January 27, 2005, DSS provided Petitioner a local conference to discuss its intent to propose an administrative Type A penalty based upon N.C. Gen. Stat. §§131D-4.4, -21(2). T pp 110-112; R Exh 22

24. On February 2, 2005, Linda Lancaster, Rosewood Assisted Living facility owner, wrote to Doug Barrick, Policy Coordinator for Respondent, requesting an interpretation of N.C. Gen. Stat. §§131D-21(2), specifically the definition of “adequate and appropriate care in our particular situation.” T pp 212-213; P Exh 15

25. On February 7, 2005, Barrick’s response to Lancaster’s interpretation request was directed to Peg Argent of DSS and states, in part, that: “Since appropriateness has to do with the specifics as to how and when care was provided in this case, the penalty proposal and review process will determine this based on the facts presented. This case cannot and should not be deal with by a broad interpretive definition of appropriate.” Barrick did not consult with the Attorney General in his preparation and formulation of a response to Lancaster’s interpretation request. T pp 213, 216, 218-219; P Exh 16

26. On March 1, 2005, DSS again provided Petitioner a local conference to discuss its intent to propose an administrative Type A penalty based upon N.C. Gen. Stat. §§131D-4.4, -21(2). T pp 110-112; R Exh 22

27. On March 2, 2005, DSS submitted its Type A administrative penalty proposal to Respondent recommending a Type A administrative penalty in this case based upon violations of N.C. Gen. Stat. §§131D-4.4, -21(2) without citing violations of relevant federal and State laws, rules, or regulations for the licensure of adult care homes. T pp 176, 287, 337; P Exh 18, 20; R Exh 19; Jt Exh 5

28. By letter dated June 16, 2005, Barbara Ryan, Section Chief for the Adult Care Licensure Section for Respondent, informed Petitioner that she assessed a \$6,000.00 administrative penalty against Petitioner based upon Petitioner’s violation of N.C. Gen. Stat. §131D-21. This letter does not, however, also cite N.C. Gen. Stat. §131D-4.4 as grounds for the penalty assessment. T p 336; Jt Exh 4

29. Although Ryan’s June 16, 2005 letter cites “the licensing rules for Adult Care Homes (T10A: 13F),” Ryan’s discovery response to Petitioner’s Request for Admissions question #2 (“Admit or deny that the Type A CAR cites no licensure rule or regulatory violation”) states that: “The [CAR] cites to N.C. Gen. Stat. §131D-21 (‘Resident’s Right #2’). The Agency contends that statutory provision [N.C. Gen. Stat. §131D-21] constitutes a mandatory rule and/or requirement established by the General Assembly.” Jt Exh 4; P Exh 20.

30. When asked about the (T10A:13F) citation appearing in her June 16, 2005 penalty assessment letter, Ryan stated that: “We took the action, and I imposed the penalty, based on what was cited, which was a 4.4, General Statute 4.4, safety, and then the resident right at 131D-21, and also the definition of Type A penalty in that this situation, to me, clearly meant a Type A violation.” T pp 336-337; Jt Exh 4.

31. Libby Kinsey, Branch Manager, admitted that in a previous administrative penalty case brought by Wake County DSS in 2004, where the penalty proposal failed to show that any broken rule could be directly tied to the violation, Respondent in that case turned down Wake County DSS’ administrative penalty request and recommended that the penalty proposal be revised because the findings did not support the rule violation. T pp 228-233; P Exh 21.

32. N.C. Gen. Stat. §131D-21(2) states, in part, that: “Every resident shall have the following rights: (2)—To receive care and services which are adequate, appropriate, and in compliance with relevant federal and state laws and rules and regulations.” One of the key phrases contained in N.C. Gen. Stat. §131D-21(2) is “to receive care and services which are adequate, appropriate, and in compliance with relevant federal and state law, rules and regulations.” While Respondent can cite violations based upon this statute alone, §131D-21(2) needs the assistance of promulgation of rules that clarify the legislative intent and that make its application objective. The legislature clearly intended adoption of rules since §131D-21(2) itself says, “*in compliance with relevant . . . State laws and rules and regulations.*” (*emphasis added.*)

33. N.C. Gen. Stat. §131D-21(15) states, in part, that: “Every resident shall have the following rights: (15)—To have freedom to participate by choice in accessible community activities and in social, political, medical, and religious resources and to have freedom to refuse such participation.” Subsection 15 contains no language that extinguishes a resident’s right to refuse treatment when the resident has an FL-2 with a diagnosis of Alzheimer’s dementia. T p 181

34. Section 220 of Respondent’s *Adult Care Home Procedures Manual for the Licensing and Monitoring of Adult Care Homes* (“*Manual*”) *Homes* directs Respondent to provide interpretive guidelines for clarification and application of licensure rules and Residents’ Rights. It states, in part, that: “Interpretations of General Statute 131D-21, Declaration of Residents’ Rights, will be prepared in consultation with the Office of the Attorney General.”

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings has jurisdiction over the parties and the subject matter pursuant to Chapter 131D and 150B of the North Carolina General Statutes.

2. All parties correctly have been designated and there is no question as to misjoinder or nonjoinder.

3. The North Carolina Department of Health and Human Services, Division of Facility Services, Adult Care Licensure Section is authorized by N.C. Gen. Stat. § 131D to regulate, monitor, and promulgate rules and regulations pertaining to adult care homes in the State of North Carolina. Respondent further is authorized by N.C. Gen. Stat. § 131D-34 to assess administrative penalties against adult care facilities for violations of relevant federal and State laws, rules, and regulations of adult care homes.

4. Petitioner’s February 2, 2005 letter to Doug Barrick requesting an interpretation of N.C. Gen. Stat. §131D-21(2) met Respondent’s minimum criteria and qualified as a proper interpretation request that required consultation with the Attorney General. Respondent failed to give its interpretation of this provision or otherwise to provide guidance or clarification as to its meaning, nor did Respondent consult with the Attorney General in responding to Petitioner’s request for rule interpretation as required by the Manual.

5. Neither N.C. Gen. Stat. §131D-21, Declaration of Residents’ Rights, nor the rules or regulations for the licensure of adult care homes abridge, or in any way modify, the right of a resident, with an FL-2 diagnosis of Alzheimers type dementia, to refuse treatment; nor does there currently exist any written policy guidance or training material that directs facility staff in this regard. However, it would not have been a violation of a resident’s right to refuse treatment for staff members of the facility’s third shift to have contacted a health care professional for guidance even though Resident #2 was refusing treatment.

6. Without citing any specific rule, regulation or otherwise providing interpretive guidance for clarification and application, N.C. Gen. Stat. §131D-21(2), by itself, is too vague to uphold Respondent’s assessment of an administrative penalty in this case.

7. Respondent failed to present sufficient evidence for the court to uphold the Type A penalty assessment in this case.

DECISION

That the North Carolina Department of Health and Human Services, Division of Facility Services, Adult Care Licensure Section, failed to use proper procedure and failed to act as required by law when it assessed an administrative penalty in the amount of \$6,000.00 against Petitioner for violation of the Adult Care Law.

ORDER

It is hereby ordered that the Agency serve a copy of the FINAL DECISION on the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714, in accordance with N.C. Gen. Stat. § 150-36(b).

NOTICE

The Agency making the FINAL DECISION in this contested case is required to give each party an opportunity to file exceptions to this decision and to present written arguments to those in the Agency who will make the final decisions. N.C. Gen. Stat. § 150-36(a).

The Agency is required by N.C. Gen. Stat. § 150-36(b) to serve a copy of the FINAL DECISION on all parties and to furnish a copy to the parties' attorney of record and to the Office of Administrative Hearings.

The agency that will make the FINAL DECISION in this contested case is the North Carolina Department of Health and Human Services, Division of Facility Services.

This the 18th day of April, 2006.

Beecher R. Gray
Administrative Law Judge

CONTESTED CASE DECISIONS

STATE OF NORTH CAROLINA
COUNTY OF GUILFORD

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
05 DHR 1392

HOSPICE AT GREENSBORO, INC. d/b/a HOSPICE AND)
PALLIATIVE CARE OF GREENSBORO and HOSPICE OF)
THE PIEDMONT, INC.,)
)
Petitioners,)
)
v.)
)
NORTH CAROLINA DEPARTMENT OF HEALTH AND)
HUMAN SERVICES, DIVISION OF FACILITY SERVICES,)
LICENSURE AND CERTIFICATION SECTION and NORTH)
CAROLINA DEPARTMENT OF HEALTH AND HUMAN)
SERVICES, DIVISION OF FACILITY SERVICES,)
CERTIFICATE OF NEED SECTION,)
)
Respondents,)
)
and)
)
CARROLTON HOME CARE, INC. d/b/a COMMUNITY)
HOME CARE AND HOSPICE,)
)
Respondent-Intervenor.)
)

RECOMMENDED DECISION by SUMMARY JUDGMENT

Upon consideration of Petitioners Hospice at Greensboro, Inc. d/b/a Hospice and Palliative Care of Greensboro's (HPCG) and Hospice of the Piedmont, Inc.'s (Piedmont) Motion for Summary Judgment and Request for Stay and Respondent-Intervenor Carrolton Home Care, Inc. d/b/a Community Home Care and Hospice's (Community) Motion for Summary Judgment; and after review of the parties' (Petitioners, Respondents, and Respondent-Intervenor) memoranda, filings, affidavits, supporting documents, and pleadings; and after hearing oral argument by all parties on March 7, 2006 in High Point, North Carolina; and after review of the relevant law, the undersigned Administrative Law Judge, Augustus B. Elkins II, determines the Motions for Summary Judgment are ripe for disposition.

The issuance of this decision was delayed due to the request, filing, and consideration of Respondent-Intervenor's providing of comments with regard to the proposals submitted by Petitioner that were received by the Undersigned on April 11, 2006.

APPEARANCES

For Petitioners HPCG and Piedmont

Smith Moore LLP
Susan M. Fradenburg, Esq.

For Respondent North Carolina Department of Health and Human Services, Division of Facility Services, Certificate of Need Section and Licensure and Certification Section

North Carolina Department of Justice, Office of the Attorney General
Amy Y. Bason, Esq.

For Respondent-Intervenor Community:

Maupin Taylor
Marcus C. Hewitt, Esq.
Roy H. Wyman, Jr., Esq.

PARTIES, PROCEDURE AND CONDUCT OF HEARING

1. Hospice at Greensboro, Inc. d/b/a Hospice and Palliative Care of Greensboro (HPCG) is a North Carolina non-profit corporation with its principal place of business at 2500 Summit Avenue, Greensboro, Guilford County, North Carolina. HPCG has been in existence since 1980 and provided 51,303 days of hospice care to residents of Guilford County in 2004 and 60,296 days of hospice care to residents of Guilford County in 2005. 2005 and 2006 State Medical Facilities Plans (SMFPs).
2. Hospice of the Piedmont, Inc. (Piedmont) is a North Carolina non-profit corporation with its principal place of business at 1801 Westchester Drive, High Point, Guilford County, North Carolina. Piedmont has been in existence since 1980 and provided 17,338 days of hospice care to residents of Guilford County in 2004 and 17,657 days of hospice care to residents of Guilford County in 2005. 2005 and 2006 SMFPs.
3. Defendant North Carolina Department of Health and Human Services, Division of Facility Services (DFS), Certificate of Need Section (CON Section), is the Section of the Department that administers the Certificate of Need Act (CON Act), N.C. Gen. Stat. Chapter 131E, Article 9.
4. Defendant North Carolina Department of Health and Human Services, Division of Facility Services, Licensure and Certification Section (Licensure and Certification Section) is the Section of the Department that licenses hospices, as well as other health care facilities. The Licensure and Certification Section also surveys hospices and other facilities as the State Survey Agency for the Medicare program.
5. Respondent-Intervenor Carrolton Home Care, Inc. d/b/a Community Home Care and Hospice (Community) is a North Carolina for-profit limited liability company with a principal place of business at 3124 Zebulon Road, Rocky Mount, North Carolina.
6. On August 1, 2005, Community submitted a letter to the CON Section, requesting a response from the CON Section that it could open a branch office in Guilford County of its Fayetteville, Cumberland County hospice without obtaining a CON.
7. On August 8, 2005, the CON Section sent a letter to Community stating that Community could open a new hospice office in Guilford County without a CON.
8. On August 16, 2005, the Licensure and Certification Section issued a license effective August 4, 2005 to Community for a new hospice in Guilford County, relying in part upon the determination by the CON Section that no CON was required to establish this hospice.
9. On September 7, 2005, HPCG and Piedmont filed a Petition for Contested Case Hearing with OAH, appealing the CON Section's determination that no CON was required for Community to establish a hospice in Guilford County, and the Licensure and Certification Section's issuance of a license for a hospice in Guilford County to Community.
10. On September 30, 2005, Community was allowed to intervene in the contested case.
11. The parties have engaged in discovery in this case through the court ordered deadline of February 13, 2006, including preparing and responding to interrogatories, and requests for production of documents.
12. The parties submitted the following affidavits:
 - A. Pamela Barrett, CEO, HPCG;
 - B. Leslie Kalinowski, CEO, Piedmont;
 - C. Michael Rovinsky, Expert witness for Petitioners;
 - D. Azzie Conley, Assistant Chief, Licensure and Certification Section;
 - E. Ronald T. Luke, Ph.D, Expert witness for Respondent-Intervenor;
 - F. Sonya Rozier, V.P. Operations, Community Health, Inc.;
 - G. Natalie Sharpe, V.P. Clinical Services, Community Health, Inc., and;
 - H. C. Saunders Roberson, Jr., CEO, Community Health, Inc.

FINDINGS OF FACT

1. F.C. (to protect the confidentiality of the patient, all parties have agreed to use the patient's initials), a resident of Sanford, North Carolina, was a patient of Community's Lee County hospice. F.C. was transferred to the care of Community's Siler City, Chatham County hospice branch location on July 27, 2005. *See* Medical Records attached as Ex. F to Respondent-Intervenors Memorandum in Support of Motion for Summary Judgment. (filed under seal) (7/21/05 "Patient transfer", "Discharged to" "Other Agency -- CHCH-Chatham County," p. 104-105, 120; "Notified Nikkie at the Chatham County office that patient would be official as of today [7/27/05]. Chart is being sent to Chatham County office." p. 149; 8/15/05 "GIP visit by Chaplain, at patient's request for Siler City [Chatham County] office" p. 162).
2. Staff from the Chatham County location provided services to F.C. until F.C. revoked the hospice benefit on September 18, 2005. Community's Medical Records of F.C. (filed under seal).
3. On August 1, 2005, Community submitted a letter to the Certificate of Need Section (CON Section), representing that it was currently providing services to a hospice patient in Guilford County from its Fayetteville, Cumberland County, North Carolina hospice location and requesting that it be permitted to open an office in Greensboro.
4. In support of its "no review" request, Community submitted a typewritten sheet that provided that one resident of Guilford County, presumably F.C., received unspecified services beginning on July 26, 2005. In response to an inquiry from the CON Section, Community resubmitted the same sheet of paper on August 5, 2005, this time with the notation that alleged hospice services were provided to a single patient in Guilford County.
5. Community did not report serving any hospice patients in Guilford County on its 2004 or 2005 license renewal applications for its Fayetteville, Cumberland County hospice office. 2005 and 2006 SMFPs.
6. In August 2005, Community did not represent that Guilford County was in its service area. *See* "Service Area" Map from Community's Website, attached as Exhibit 34 to HPCG and Piedmont's Motion for Summary Judgment.
7. Community did not relocate existing staff, patients or medical records from its Fayetteville hospice office to Guilford County to provide hospice services in Guilford County. Instead, F.C. was provided care by staff at the Chatham County branch office location. Community's Medical Records of F.C. (filed under seal). Additionally, Community has advertised for and sought to hire new staff for a Guilford County office. *See* Community Documents, attached as Exhibit 18 to HPCG and Piedmont's Motion for Summary Judgment (filed under seal).
8. Community did not have a contract with any Guilford County hospital for inpatient services for hospice patients in August 2005.
9. In August 2005, the 2005 SMFP and the draft 2006 SMFP showed no need determination for additional hospice home care programs in Guilford County. Both the 2005 SMFP and the draft SMFP were available to the CON Section in August 2005.
10. The 2005 SMFP and the draft 2006 SMFP showed that, according to licensure data and information submitted by Community, Community provided no hospice days of care to any patient from Guilford County in 2003 or 2004 from any hospice location or branch location.
11. F.C. is the only hospice patient that Community represented to the CON Section that it had served in Guilford County.
12. In 2005, the CON Section did not have any written, published regulations, criteria or guidelines concerning when a branch hospice office could be opened without a CON.
13. The CON Section did not request any information from Community to determine whether the single patient was in fact receiving hospice services from the Cumberland County parent location, as represented in Community's request. *See* 2/10/06 Stipulations of Respondents.
14. The CON Section also did not request from Community nor review any information regarding Community's policies concerning its geographic service area. *See* 2/10/2006 Stipulations of Respondents.
15. The CON Section did not review Community's annual license renewal forms for Community's Fayetteville, Cumberland County hospice office, which were available at the Licensure and Certification Section. *See* 2/10/2006 Stipulations of Respondents.
16. The CON Section did not request any information from Community to ascertain whether opening an additional office in Guilford County would involve a substantial change in its services. *See* 2/10/2006 Stipulations of Respondents.

17. The CON Section did not review the data available in the SMFPs regarding whether Community had provided hospice days of care to any patient in Guilford County. *See* 2/10/2006 Stipulations of Respondents.
18. The CON Section was aware that Guilford County was 97 miles away from Fayetteville, the office from which Community asserted it was providing hospice services to the one patient in Guilford County.
19. Guilford County is not a contiguous county to Cumberland County, where Community's Fayetteville hospice is located. There are three counties between Cumberland and Guilford Counties. 2005 SMFP Appendix C, "List of 'Contiguous Counties'."
20. The CON Section relied on the representations made by Community in its letters of August 1, 2005 and August 5, 2005 and accepted these representations as true when informing Community that it could proceed to develop a hospice in Guilford County without a certificate of need. *See* 2/10/2006 Stipulations of Respondents.
21. Other than requesting confirmation that the patient referenced in Community's August 1, 2005 letter was actually served in Guilford County and checking to determine if Community's Cumberland County office had a valid hospice license, the CON Section took no other affirmative action or investigation prior to informing Community that it could proceed to develop a hospice in Guilford County without a certificate of need. *See* 2/10/06 Stipulations of Respondents.
22. Based on Community's August 1 and August 5, 2005 letters, the CON Section issued a letter dated August 8, 2005 to Community stating that Community could open an additional hospice office in Guilford County without a CON. The August 8, 2005 letter explicitly states that it is valid only if the facts in Community's August 1 and August 5, 2005 letters to the CON Section were accurate.
23. On or about August 12, 2005, Community submitted a 2005 Hospice License Application form and a copy of the CON Section's August 8, 2005 no review letter to the Licensure and Certification Section as a basis for its request for a license for a new hospice office in Guilford County. Community's license application did not provide any documentation regarding contracts for services to be provided at its proposed Guilford County location. Community's license application also did not provide any documentation regarding any existing contracts for inpatient care in Guilford County or documentation regarding a medical director for a hospice branch location in Guilford County.
24. In response to licensure applications from other providers, the Licensure and Certification Section has required information above and beyond that requested on the licensure application form, including documentation regarding the medical director of the branch office, parent on-call schedule for the previous two months, branch office projected on-call schedule for four weeks, and names and addresses of employees covering on-call responsibilities. *See* HPCG's and Piedmont's Motion for Summary Judgment, Ex. 33.
25. The Licensure and Certification Section did not request any further information from Community nor conduct any survey to determine whether Community's Guilford County office satisfied hospice licensure requirements or whether Community's Fayetteville hospice office could adequately supervise and provide hospice services in Guilford County. *See* 2/10/2006 Stipulations of Respondents.
26. Other than reviewing Community's Cumberland County hospice's compliance history and the information submitted by Community to the Licensure and Certification Section in and with its 2005 license application for a Guilford County hospice, the Licensure and Certification Section took no other affirmative action or investigation prior to issuing a license to Community for a hospice in Guilford County.
27. On August 16, 2005 the Licensure and Certification Section issued a full license to Community for a hospice in Guilford County, effective August 4, 2005. The effective date of the license was four days before Community received its no review letter from the CON Section and approximately 8 days before the license application was received by the Licensure and Certification Section. The license did not identify the Guilford County office as a branch of Community's hospice office in Fayetteville or show any limitations on the face of the license.

CONCLUSIONS OF LAW

1. The CON Section treated Community's August 1, 2005 request as a letter of intent pursuant to 10A N.C.A.C. 14C.0201 regarding whether Community must apply for a CON prior to opening a hospice office in Guilford County. The CON Section's August 8, 2005 letter was a response to Community's August 1, 2005 letter of intent pursuant to 10A N.C.A.C. 14C.0202.

2. This contested case is not governed by N.C. Gen. Stat. § 131E-188 because it is an appeal from the CON Section's August 8, 2005 response to Community's August 1, 2005 letter of intent and not a "[d]ecision of the Department to issue, deny or withdraw a CON or exemption or to issue a CON pursuant to a settlement agreement."

3. The Licensure and Certification Section issued to Community a license for a hospice office in Guilford County effective August 4, 2005, pursuant to its authority under the Hospice Licensure Act and regulations. N.C. Gen. Stat. §131E-200 *et seq.* The Hospice Licensure Act does not establish any procedure for appeal of hospice licensure actions other than the North Carolina Administrative Procedures Act.

4. This contested case is governed by N.C. Gen. Stat. § 150B-23.

5. An Administrative Law Judge may rule on any prehearing motions authorized by the North Carolina Rules of Civil Procedure, including summary judgment motions. N.C.G.S. §150B-33(b)(3a); 26 N.C.A.C. 3.0105(1) and (6).

6. Summary judgment shall be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. N.C. R. Civ. P. 56(c). The party moving for summary judgment meets its burden of proof by showing that an essential element of the non-movant's claim does not exist, or by showing that the non-movant cannot produce evidence of an essential element of his or her claim. *Roumillat v. Simplistic Enters., Inc.*, 331 N.C. 57, 63, 414 S.E.2d 339, 342 (1992). Once such a showing is made, the non-movant must "produce a forecast of evidence demonstrating specific facts, as opposed to allegations, showing that [it] . . . can at least establish a *prima facie* case at trial." *Hoffman v. Great American Alliance Insurance Co.*, 166 N.C. App. 422, 426, 601 S.E.2d 908, 911 (2004).

7. Interpretation of appellate opinions in CON cases is a judicial function that does not require any deference to agency interpretation.

8. When a statute is ambiguous, a court should consider the language of the statute, the spirit of the statute, and what the statute seeks to accomplish. *Tellado v. Ti-Caro Corp.*, 119 N.C. App. 529, 459 S.E.2d 27 (1995).

9. "The fundamental purpose of the CON law is to limit the construction of health care facilities in this state to those that the public needs and that can be operated efficiently and economically for their benefit." *Humana Hosp. Corp., Inc. v. N.C. Dep't. of Human Res.*, 81 N.C. App. 628, 632, 345 S.E.2d 235, 237 (1986).

10. The CON Act's legislative findings indicate that unregulated development of health care facilities leads to increased health care costs and "geographic maldistribution" of health care resources, which in turn burdens the public and has a negative impact on quality of care. N.C. Gen. Stat. § 131E-175. The CON Act establishes the Department of Health and Human Services as the State Health Planning and Development Agency, with the responsibility to develop a State Medical Facilities Plan (SMFP). N.C. Gen. Stat. §131E-177.

11. The purpose of the SMFP is to provide policies and projections of need to guide health planning for certain health care services, including hospice services. 2005 SMFP. The SMFP is also significant in that it defines the service area for a particular health care facility or service, such as a hospice. N.C. Gen. Stat. §131E-176(24a)

12. Community's proposal to open a new hospice office in Guilford County constitutes a relocation of its hospice from one service area to another that requires a CON under the CON Act in effect prior to December 31, 2005.

13. A CON is required to relocate "a health service facility from one service area to another." N.C. Gen. Stat. § 131E-176(16)(q). Such relocation is considered a new institutional health service that must undergo CON review and satisfy applicable CON criteria. N.C. Gen. Stat. §§131E-178(a) and 183. Because a hospice is a health service facility under N.C. Gen. Stat. §131E-176(9b), relocation of a hospice from one service area to another requires a CON.

14. An expansion or partial relocation of a health service facility to a second location is considered a relocation. *See Christenbury Surgery Center v. N.C. Dep't of Health & Human Services*, 138 N.C. App. 309, 312, 531 S.E.2d 219, 222 (2000) (describing expansion of a portion of an existing ambulatory surgical program to a second site as a "relocation and expansion"). The *Christenbury* court determined that an existing health service facility may only expand to a second or additional site without a CON if the second site is within the same service area for which it received a CON. *Id.* at 312-313, 531 S.E.2d at 222.

15. “Service area” is defined in the CON Act to mean “the area of the State, as defined in the State Medical Facilities Plan or in the rules adopted by the Department, which receives services from a health service facility.” N.C. Gen. Stat. § 131E-176(24a). This is the only definition of “service area” in the CON Act. The CON Act does not state a different definition of “service area” for a relocation or expansion of an existing health service facility as compared to a new facility.

16. In August 2005, there was no CON rule or regulation that defined the service area for a hospice. The 2005 SMFP, which was in effect at the time of Community’s August 1, 2005 no review letter to the CON Section and at the time of the agency actions at issue, defines the service area for a hospice as the county in which it is located, and provides that each county in North Carolina constitutes a hospice service area. *See* 2005 SMFP, p. 270-72.

17. Under the 2005 SMFP, a hospice service area was the county in which the hospice is located. This is the only definition of hospice service area in the 2005 SMFP. This definition, therefore, applies to the opening of any hospice office.

18. Applying a different, broader definition of “service area” to relocations or expansions of existing hospice offices as compared to establishment of new hospices would allow the proliferation of unnecessary and duplicative hospice services, undermine the need methodology for hospices in the SMFP that is based upon a county service area, and be contrary to the clear language, intent and purposes of the CON Act as set forth by the North Carolina General Assembly and stated in N.C. Gen. Stat. § 131E-175.

19. Community’s proposal to open a hospice office in Guilford County is a relocation of an existing health service facility outside of that hospice’s existing service area of Cumberland County, and as such, requires a CON.

20. Based upon the Findings of Fact, pursuant to Conclusions of Law set forth in the above paragraphs, the CON Section erred as a matter of law by not requiring Community to obtain a CON before opening an additional hospice office in Guilford County. These Conclusions of Law alone are sufficient to warrant summary judgment in favor of Petitioners.

21. Alternatively, under *In re Total Care*, 99 N.C. App. 517, 393 S.E.2d 338 (1990) Community is required to obtain a CON to develop and offer a hospice office in Guilford County.

22. The CON Section based its decision that no CON was required for Community to open a hospice office in Guilford County on its interpretation of *In re Total Care*, 99 N.C. App. 517, 518, 393 S.E.2d 338, 339 (1990). 11/7/2005 Hoffman Dep. at 30.

23. *Total Care* concerned the opening of additional administrative offices by a home health agency in counties in which it had an established history of service, and was expressly limited to its facts. *Id.* at 522, 393 S.E.2d at 342. The definitions of home health agency and hospice in the CON Act are different.

24. Judicial review of *Total Care* provides the Undersigned with guidance regarding when an existing hospice can open an additional hospice office without a CON.

25. The CON Section erred by not fully and properly applying the criteria and limits established by the Court of Appeals in *Total Care*. The *Total Care* opinion held that a CON was not required to open an additional home health office in the home health agency’s existing, current service area as determined by the CON law and regulations in effect at that time.

26. The basic philosophy of the *Total Care* case centers on the proposition that if a health care provider, (in *Total Care*, a home health agency), has a history of serving patients in nearby counties, a no review request to put an office in those counties to better serve its existing patients is reasonable.

27. The *Total Care* Court relied in effect upon the definition of “service area” for home health agencies that was in force at the time. At that time, a home health agency’s service area was defined by rule as “a county in which a proponent proposes to establish a home health agency or contiguous counties whose boundaries touch the boundary of the county in which the office of the home health agency will be located and whose grouping is consistent with established medical care utilization patterns.” 10 N.C.A.C. 03R.2002 (1989).

28. The CON Act in effect in 2005 prior to December 31, 2005 defines the service area for a hospice as the county in which the hospice is located. N.C. Gen. Stat. § 131E-176(24a); 2005 SMFP.

29. Under *Total Care*, therefore, the opening of an additional hospice office outside the county in which the hospice is located requires a CON.

30. Community's hospice is located in Fayetteville in Cumberland County. Under the 2005 SMFP, the service area for Community's hospice was Cumberland County. Guilford County is not within Cumberland County, the service area for Community's hospice located in Fayetteville. Therefore, under *Total Care*, a CON is required for Community to open a hospice office in Guilford County.

31. Based upon the Findings of Fact and pursuant to the Conclusions of Law set forth above, the CON Section erred as a matter of law in failing to determine that Guilford County was outside the current service area for Community's hospice in Cumberland County pursuant to *Total Care*, and thereby failing to require Community to obtain a CON to open a hospice office in Guilford County. These Conclusions of Law alone are sufficient to warrant summary judgment in favor of Petitioners.

32. At the time of the *Total Care* case, the service area for home health agencies was defined by rule to include "contiguous counties where boundaries touch the boundary of the county in which the office of the home health agency will be located and whose grouping is consistent with established medical care utilization patterns." 10 N.C.A.C. 03R.2002 (1989).

33. The Court in *Total Care* relied upon the rule defining a home health agency's service area and did not base its decision on any description of geographic service area proposed by the proponent in its submittal to the agency or the proponent's own policies.

34. The Court in *Total Care* relied upon information reported in *Total Care's* annual license renewal forms to determine the "established medical care utilization patterns." *Total Care* at 522, 393 S.E.2d at 341. The Court explicitly noted that the *Total Care* agency had an established history of serving patients in what the Court described as a "fourteen county area block" as evidenced by the *Total Care* agency's annual licensure renewal reports. It was in this block that *Total Care* wished to establish new offices. *Id.*

35. Community's annual license renewal forms showed that it had not provided hospice services to patients in Guilford County from any of its hospice offices in 2003 and 2004. Community did not provide any evidence of a history of serving hospice patients in Guilford County. Community acknowledged that it represented to the CON Section that it had only provided hospice services to one patient in Guilford County.

36. The *Total Care* opinion does not state nor can it be interpreted that services to one patient for some period of time establishes a "current geographic service area."

37. Even if *Total Care* is interpreted as allowing a broader geographic area than a single county to be the service area for a hospice, the CON Section failed as a matter of law to apply the appropriate criteria under *Total Care* because it never examined the annual SMFP data or Community's licensure renewal reports to determine that Community reported no history of days of care to hospice patients in Guilford County.

38. Moreover, in establishing the CON laws, the General Assembly intended that multiple factors be reviewed to establish a certificate of need. Likewise, those factors must have at least some reasonable review in order to establish that a certificate of need is not required.

39. In June of 2005, Guilford County was not within Community's existing, current service area because Community had only provided hospice services to one patient in Guilford County, nor did Community hold itself out as providing services in Guilford County.

40. Guilford County was not within Community's existing, current hospice service area under *Total Care* because Community provided services to a single patient only, which is not sufficient to create an "established medical care utilization pattern" or, current service area under *Total Care*.

41. Based upon the Findings of Fact, and pursuant to the above paragraphs, the CON Section erred as a matter of law in failing to determine that Guilford County was outside the current service area for Community's hospice in Cumberland County pursuant to *Total Care*, and in failing to require Community to obtain a CON to open a hospice office in Guilford County. These Conclusions of Law alone are sufficient to warrant summary judgment in favor of Petitioners.

42. *Total Care* also requires that the health service facility not "substantially change its services" when opening an additional site without a CON. *Total Care* at 522, 393 S.E.2d at 342. The Department has interpreted *Total Care* to mean that there is no substantial change in hospice services if existing staff, medical records and patients are relocated to the additional site to serve the same service area and no new capabilities are added. DFS Declaratory Ruling to Wake Hospice (2/15/94).

43. The CON Section failed to obtain any information to evaluate whether Community was “substantially changing its services” by opening an additional hospice office in Guilford County. The CON Section failed to review an important factor in deciding whether a CON was needed or whether no review was warranted both in truth and in fact.

44. Community did not relocate existing hospice staff or Guilford County patients and records to an additional office in Guilford County to continue a history of service to hospice patients in Guilford County. Community substantially changed its services by advertising for and hiring new hospice staff, requesting referrals of new hospice patients, and trying to obtain a contract for inpatient services for hospice patients in Guilford County. *See* HPCG’s and Piedmont’s Motion for Summary Judgment, Exhibits 17 and 19.

45. A CON is required to “develop” or “offer” a hospice home care program. N.C. Gen. Stat. § 131E-176(7), (9c), (13a), (16) and (18) and 178(a).

46. Because Community did not have an established history of serving hospice patients in Guilford County from its hospice in Fayetteville in Cumberland County as demonstrated by its annual license renewal reports and because it did not relocate existing hospice staff, patients and records from Cumberland to Guilford County, Community substantially changed its services and its actions constituted developing and offering a new hospice in Guilford County that requires a CON. Based upon these conclusions, the CON Section erred as a matter of law in failing to determine that Community established a new hospice in Guilford County that required a CON before a valid hospice license could be issued. *See* N.C. Gen. Stat. § 131E-176(13a). These Conclusions of Law alone are sufficient to warrant summary judgment in favor of Petitioners.

47. As a matter of law, the Licensure and Certification Section erred in issuing a license to Community for a new hospice in Guilford County based on an incorrect determination by the CON Section that a CON was not required. This Conclusion of Law alone is sufficient to invalidate the license issued to Community and to warrant summary judgment in favor of Petitioners.

48. Moreover, the Licensure and Certification Section also did not fully and appropriately evaluate the licensure application submitted by Community to determine whether licensure requirements for a hospice office in Guilford County were satisfied.

49. The Licensure and Certification Section did not request any information nor conduct any survey to determine whether Community’s Fayetteville hospice was capable of providing direct, core hospice services from the Fayetteville office on a 24 hour a day basis to patients in Guilford County and supervising the staff at the Guilford County location from 97 miles away.

50. The Licensure and Certification Section has stated that a provider must demonstrate that it had a contract for inpatient services in Guilford County to satisfy requirements to obtain a license for a hospice office in Guilford County. 11/8/2005 Williams Dep. at 28.

51. Community did not provide the Licensure and Certification Section with a copy of a contract for inpatient services in Guilford County, nor did it ever provide information regarding with whom it purportedly had an inpatient contract.

52. Despite requesting detailed information regarding nursing staff schedules, staff names, addresses and schedules and information regarding medical directors from some applicants the Licensure and Certification Section did not require Community to provide the basic information requested on the license application form.

53. The Licensure and Certification Section failed as a matter of law to determine that Community’s license application did not demonstrate compliance with licensure requirements and, therefore, failed as a matter of law in issuing a license to Community for the hospice office in Guilford County.

54. The Licensure and Certification Section did not request any information or do any inquiry to determine whether Community’s Fayetteville hospice office provided hospices services to F.C.

55. Independent of whether a CON was required for Community to open a hospice office in Guilford County, the Licensure and Certification Section erred as a matter of law in failing to assure that Community complied with licensure requirements before issuing to Community a discrete license for a hospice office in Guilford County. This Conclusion of Law alone is sufficient to invalidate the license issued to Community and to warrant summary judgment in favor of Petitioners.

56. The actions of the CON Section and the Licensure and Certification Section were contrary to the intent and spirit of the CON Act and of *Total Care*.

57. In analyzing a no review request, the CON Section should give reasonable scrutiny to the CON Act provisions and regulations that a provider asserts do not apply to its project in order to make a fair and informed decision. The CON Section failed to do so in this case.

58. If a statute administered by an agency is silent or ambiguous with respect to a specific issue, a court must consider whether the agency's interpretation is reasonable and based on a permissible construction of a statute. *Teasley v. Beck*, 155 N.C. App. 282, 289, 574 S.E.2d 137, 141 (2002). In issuing an interpretation of the *Total Care* case, the CON Section's construal of the case is a nonbinding statement that need not be given deference.

59. As articulated in the CON Act's legislative findings, the purpose of CON review is to regulate capital expenditures and prevent unnecessary duplication of health care facilities and services, in order to ensure that North Carolinians have equal access to safe, affordable health care. N.C. Gen. Stat. § 131E-175.

60. The SMFP articulates areas of need for new health care services and facilities and prevents unnecessary duplication of health care services by dictating that new services may only be established in areas in which a need is determined to exist.

61. Neither *Total Care* nor the CON Act as it relates to hospices are meant to encourage, endorse, or ratify the actions of a hospice provider in seeking out a single patient in a county in which the provider has no history of service in order to establish a branch office in that county and thus escape the scrutiny of the CON review process.

62. In granting Community's no review request, the CON Section considered only whether Community had a location in North Carolina that was licensed to provide hospice services, and whether Community was serving a single patient in Guilford County. The CON Section failed to consider the type or nature of the license, the distance of the licensed location from Guilford County, or the type, quality, or duration of services provided to the patient.

63. In issuing a license to Community, the Licensure and Certification Section considered only the compliance history of Community's Cumberland County location and the information submitted by Community in and with its 2005 license application, including the deficient no review determination by the CON Section. The Licensure and Certification Section failed to consider whether Community in fact had contracts in place to provide needed hospice services, had a medical director, or was able to provide a hospice program in Guilford County that complies with the requirements of the Hospice Licensure Act.

64. A court will not follow an administrative interpretation that is in direct conflict with the intent and purpose of the act or with the interpretation of the courts. *See Duke Power Co. v. Clayton*, 274 N.C. 505, 164 S.E.2d 289 (1968).

65. The CON Section's faulty review of Community's no review request, and the Licensure and Certification Section's reliance on that no review and subsequent actions, thwart the intent of the General Assembly in its enactment of the CON Act. Further, the actions of the Respondents are in opposition to the spirit of both the CON Act and the *Total Care* case.

66. Petitioners have standing as aggrieved persons and are substantially prejudiced as a matter of law by Respondents' actions.

67. An aggrieved party is one that is affected substantially in his or its person, property, or employment by an administrative decision. N.C. Gen. Stat. § 150B-2(6).

68. In *In re Wilkesboro*, 55 N.C. App. 313, 319, 285 S.E.2d 626, 630 (1982), the Court expressly acknowledged that it could "think of no better person [than the existing competitor] to assure complete review" of the Agency's decision, and determined that such existing facility had a "substantial stake" in the outcome of any request by a potential competitor that would allow the potential competitor to develop a similar health service in the same area. The Court in *Wilkesboro* determined that the existing provider was aggrieved and thus "affected substantially."

69. In *Empire Power Co. v. N.C. Department of Environmental and Natural Resources*, 112 N.C. App. 566, 436 S.E.2d 594 (1993), the Court concluded that an existing power company met the definition of an aggrieved person because it had an interest in having the prospective competitor be required to follow the same rules as all other registered entities before being issued a permit. *Id.* at 571, 436 S.E.2d at 598.

70. The *Empire Power* court also held that unless an organic statute, such as the CON Act, expressly provides otherwise, the North Carolina Administrative Procedure Act confers upon any person aggrieved the right to bring a petition for a contested case hearing to challenge an agency action. *Id.* at 584, 447 S.E.2d at 777.

71. When one party must go through the CON process and a competitor is subsequently allowed to open an office offering comparable health services without equal scrutiny, the first party is substantially prejudiced as a matter of law.
72. The CON Section's and Licensure and Certification Section's failure to properly and thoroughly evaluate Community's no review request and licensure application was arbitrary and capricious and substantially prejudiced HPCG and Piedmont, existing Guilford County providers who underwent CON review.
73. The CON Section's failure to appropriately apply the Court's holding in *Total Care* alone substantially prejudiced HPCG and Piedmont as a matter of law.
74. The Licensure and Certification Section's issuance of a license to Community for a hospice in Guilford County based on an incorrect determination by the CON Section that a CON was not required substantially prejudiced HPCG and Piedmont as a matter of law.
75. The Licensure and Certification Section's issuance of a license to Community for a hospice in Guilford County without determining whether hospice licensure requirements were satisfied failed to subject Community to equal scrutiny and prejudiced HPCG and Piedmont as a matter of law.
76. Community's argument that the case is moot because Community has already received a license and is operating its hospice is not consistent with the CON Act, the Hospice Licensure Act or the North Carolina Administrative Procedures Act.
77. There is "no authority that a court cannot take action to remedy a wrong resulting from an action that has taken place." *Roberts v. Madison County Realtors Ass'n, Inc.*, 344 N.C. 394, 402, 474 S.E.2d 783, 789 (1996).
78. N.C. Gen. Stat. §150B-23 provides that "[a]ny person aggrieved may commence a contested case hereunder." In order for this statute to have meaning, the Office of Administrative Hearings must have the authority to rule on the propriety of the agency action at issue.
79. N.C. Gen. Stat. §150B-23, does not contemplate that this statutorily mandated right can be removed by a respondent-intervenor's own actions. To permit Community's argument to succeed would in fact nullify this statutory language, which is contrary to legislative intent. See *Porsh Builders, Inc. v. City of Winston-Salem*, 302 N.C. 550, 556, 276 S.E.2d 443, 447 (1981).
80. N.C. Gen. Stat. §131E-190(h) provides that a health care provider may not proceed with a project requiring a CON if it does not in fact have a CON and that an injunction may be issued to stop the health care provider from proceeding. The CON Act, therefore, provides relief to the State and a person aggrieved even if a provider, such as Community, has already proceeded to offer a health service, establish a health service facility or incur a capital expenditure in connection with such a health service or health service facility. The legislature clearly intended that the right to obtain relief would not become moot simply because the provider has proceeded with operations or obtained a license.
81. In its Memorandum of Law in Support of Summary Judgment, Community relied upon the case of *Mooreville Hospital Management Association, Inc. v. N.C. Department of Health and Human Services*, 360 N.C. 156, 622 S.E.2d 621 (2005) in support of its argument that this case or controversy is moot. This reliance is misplaced.
82. *Mooreville's* facts distinguish it from the case at hand. In *Mooreville*, the Department issued a CON to Presbyterian Hospital and the North Carolina Supreme Court did not invalidate that CON. See HPCG's and Piedmont's Response to Community's Motion for Summary Judgment, Exhibits 1 and 2. In contrast, Community has not received a certificate of need or any judicial ruling upholding its actions. This situation is quite different from that presented in *Mooreville*.
83. The Supreme Court has not found other cases moot simply because a project has been completed. In *Presbyterian-Orthopaedic Hospital v. N.C. Dep't of Human Resources*, 122 N.C. App. 529, 538, 470 S.E.2d 831, 836 (1996), a petitioner challenged an agency decision to award certificates of need to develop rehabilitation beds to two different hospitals. The hospitals argued that the case was moot because the rehabilitation beds at issue were licensed and operational when the issue was being considered by the Supreme Court. The Supreme Court, however, did not determine that the appeal was moot. See HPCG's and Piedmont's Response to Community's Motion for Summary Judgment, Exhibits 3 and 4.
84. A holding to the effect that this case is moot would permit Community to circumvent the certificate of need review process.

85. Petitioners brought their Petition for a Contested Case Hearing in a timely manner. Community was aware of the pending appeal when it entered into the lease and sought additional patients. Community's alleged reliance on the improper no review letter by the Agency is not a basis to find this contested case appeal moot.

86. The mootness doctrine is an "equitable one, applicable in only limited circumstances, and used to ensure that a losing party's right of appellate review is not frustrated by circumstances out of that party's control." *Mellen v. Bunting*, 327 F.3d 355, 364 (4th. Cir. 2003). Dismissal of an action for mootness is proper only when the mootness occurs through happenstance, such as the passing of time or graduation of a student, "rather than through the voluntary action of the losing party." *Id.*

87. Allowing a party to render an appeal moot by its own voluntary action of completing and licensing a project that is contended to be in violation of the CON Act is contrary to the spirit and purpose of the CON Act and the Hospice Licensure Act.

88. The result of the CON Section's failure to apply N.C. Gen. Stat. § 131E Article 9 to Community's request to open a hospice office in Guilford County resulted in an unequal application of the CON law, allowed Community to open a hospice office in Guilford County without a CON, and thwarted the intent of the General Assembly in its establishment of the CON law.

89. Based upon the Findings of Fact, when considering Community's August 1, 2005 request, the CON Section did not consider the 2005 SMFP, information available in prior SMFPs or the draft 2006 SMFP, Community's annual license renewal forms, the location of Guilford and Cumberland Counties, the distance between Fayetteville and Greensboro or any information other than that contained in Community's August 1 and 5, 2005 letter and that Community held a license for a hospice in Fayetteville. The CON Section did not request any information or do any inquiry to determine whether Community was providing hospice services from its licensed hospice in Fayetteville, whether Community had a history of providing hospice services to patients in Guilford County, or whether Community was substantially changing its services by opening a hospice office in Guilford County. The only information that the CON Section considered was Community's representation that it was serving one hospice patient, F.C., in Guilford County, from its Fayetteville hospice office. This review was not legally sufficient, was erroneous, was arbitrary, substantially prejudiced HPCG and Piedmont, and warrants summary judgment in favor of the Petitioners as a matter of law.

BASED UPON the foregoing Findings of Fact and Conclusions of Law, the Undersigned makes the following:

RECOMMENDED DECISION by SUMMARY JUDGMENT

Based upon the foregoing findings of fact and conclusions of law, it is hereby found and so decided that Petitioner's motion for summary judgment is GRANTED and Respondent-Intervenor's motion for summary judgment is DENIED. As a matter of law, Community must obtain a CON before developing or offering a hospice office in Guilford County.

The findings and conclusion of this matter warrant, and it is hereby recommended that, the CON Section's August 8, 2005 letter be considered invalid and stayed, and the CON Section be stayed from permitting Community to develop or offer a hospice office in Guilford County without a CON. As the findings and conclusions of this matter further warrant, it is also recommended that the Licensure and Certification Section be stayed from treating as effective the August 4, 2005 license it issued to Community for a hospice office in Guilford County and be stayed from issuing any future licenses to Community for a hospice office in Guilford County unless and until Community obtains a CON to develop and offer a hospice office in Guilford County or properly acquires a legally existing hospice office in Guilford County.

NOTICE

Before the Agency makes the Final Decision, it is required by G.S. 150B-36(a) to give each party an opportunity to file exceptions to this Decision, and to present written arguments to those in the Agency who will make the final decision.

The Agency is required by G.S. 150B-36(b) to serve a copy of the Final Decision on all parties and to furnish a copy to the parties' attorneys of record. The agency that will make the Final Decision in this case is the North Carolina Department of Health and Human Services.

IT IS SO ORDERED.

This the 24th day of April, 2006.

Augustus B. Elkins II
Administrative Law Judge