

# NORTH CAROLINA REGISTER

VOLUME 22 • ISSUE 03 • Pages 146 - 217

August 1, 2007

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## **Contact List for Rulemaking Questions or Concerns**

For questions or concerns regarding the Administrative Procedure Act or any of its components, consult with the agencies below. The bolded headings are typical issues which the given agency can address, but are not inclusive.

### **Rule Notices, Filings, Register, Deadlines, Copies of Proposed Rules, etc.**

Office of Administrative Hearings  
Rules Division  
Capehart-Crocker House (919) 733-2678  
424 North Blount Street (919) 733-3462 FAX  
Raleigh, North Carolina 27601-2817

contact: Molly Masich, Codifier of Rules molly.masich@ncmail.net (919) 733-3367  
Dana Vojtko, Publications Coordinator dana.vojtko@ncmail.net (919) 733-2679  
Julie Edwards, Editorial Assistant julie.edwards@ncmail.net (919) 733-2696  
Felicia Williams, Editorial Assistant felicia.s.williams@ncmail.net (919) 733-3361

### **Rule Review and Legal Issues**

Rules Review Commission  
1307 Glenwood Ave., Suite 159 (919) 733-2721  
Raleigh, North Carolina 27605 (919) 733-9415 FAX

contact: Joe DeLuca Jr., Commission Counsel joe.deluca@ncmail.net (919) 715-8655  
Bobby Bryan, Commission Counsel bobby.bryan@ncmail.net (919) 733-0928

### **Fiscal Notes & Economic Analysis**

Office of State Budget and Management  
116 West Jones Street (919) 807-4700  
Raleigh, North Carolina 27603-8005 (919) 733-0640 FAX

contact: Nathan Knuffman, Economist III nathan.Knuffman@ncmail.net (919)807-4728  
Jonathan Womer, Asst. State Budget Officer jonathan.womer@ncmail.net (919)807-4737

### **Governor's Review**

Reuben Young reuben.young@ncmail.net  
Legal Counsel to the Governor (919) 733-5811  
116 West Jones Street(919)  
Raleigh, North Carolina 27603

### **Legislative Process Concerning Rule-making**

Joint Legislative Administrative Procedure Oversight Committee  
545 Legislative Office Building  
300 North Salisbury Street (919) 733-2578  
Raleigh, North Carolina 27611 (919) 715-5460 FAX

contact: Karen Cochrane-Brown, Staff Attorney karenc@ncleg.net  
Jeff Hudson, Staff Attorney jeffreyh@ncleg.net

### **County and Municipality Government Questions or Notification**

NC Association of County Commissioners  
215 North Dawson Street (919) 715-2893  
Raleigh, North Carolina 27603

contact: Jim Blackburn jim.blackburn@ncacc.org  
Rebecca Troutman rebecca.troutman@ncacc.org

NC League of Municipalities (919) 715-4000  
215 North Dawson Street  
Raleigh, North Carolina 27603

contact: Anita Watkins awatkins@nclm.org

**NORTH CAROLINA REGISTER**  
 Publication Schedule for January 2007 – December 2007

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 <sup>th</sup> day from publication in the Register
21:13	01/02/07	12/07/06	01/17/07	03/05/07	03/20/07	05/01/07	05/08	09/29/07
21:14	01/16/07	12/20/06	01/31/07	03/19/07	03/20/07	05/01/07	05/08	10/13/07
21:15	02/01/07	01/10/07	02/16/07	04/02/07	04/20/07	06/01/07	05/08	10/29/07
21:16	02/15/07	01/25/07	03/02/07	04/16/07	04/20/07	06/01/07	05/08	11/12/07
21:17	03/01/07	02/08/07	03/16/07	04/30/07	05/21/07	07/01/07	05/08	11/26/07
21:18	03/15/07	02/22/07	03/30/07	05/14/07	05/21/07	07/01/07	05/08	12/10/07
21:19	04/02/07	03/12/07	04/17/07	06/01/07	06/20/07	08/01/07	05/08	12/28/07
21:20	04/16/07	03/23/07	05/01/07	06/15/07	06/20/07	08/01/07	05/08	01/11/08
21:21	05/01/07	04/10/07	05/16/07	07/02/07	07/20/07	09/01/07	05/08	01/26/08
21:22	05/15/07	04/24/07	05/30/07	07/16/07	07/20/07	09/01/07	05/08	02/09/08
21:23	06/01/07	05/10/07	06/16/07	07/31/07	08/20/07	10/01/07	05/08	02/26/08
21:24	06/15/07	05/24/07	06/30/07	08/14/07	08/20/07	10/01/07	05/08	03/11/08
22:01	07/02/07	06/11/07	07/17/07	08/31/07	09/20/07	11/01/07	05/08	03/28/08
22:02	07/16/07	06/22/07	07/31/07	09/14/07	09/20/07	11/01/07	05/08	04/11/08
22:03	08/01/07	07/11/07	08/16/07	10/01/07	10/22/07	12/01/07	05/08	04/27/08
22:04	08/15/07	07/25/07	08/30/07	10/15/07	10/22/07	12/01/07	05/08	05/11/08
22:05	09/04/07	08/13/07	09/19/07	11/05/07	11/20/07	01/01/08	05/08	05/31/08
22:06	09/17/07	08/24/07	10/02/07	11/16/07	11/20/07	01/01/08	05/08	06/13/08
22:07	10/01/07	09/10/07	10/16/07	11/30/07	12/20/07	02/01/08	05/08	06/27/08
22:08	10/15/07	09/24/07	10/30/07	12/14/07	12/20/07	02/01/08	05/08	07/11/08
22:09	11/01/07	10/11/07	11/16/07	12/31/07	01/21/08	03/01/08	05/08	07/28/08
22:10	11/15/07	10/25/07	11/30/07	01/14/08	01/21/08	03/01/08	05/08	08/11/08
22:11	12/03/07	11/08/07	12/18/07	02/01/08	02/20/08	04/01/08	05/08	08/29/08
22:12	12/17/07	11/26/07	01/01/08	02/15/08	02/20/08	04/01/08	05/08	09/12/08

## 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.*

**NOTICE OF EXTENDED COMMENT PERIOD**

The public comment period for the proposed set of rules comprising the Jordan Reservoir Nutrient Strategy, 15A NCAC 02B .0262-.0272 and .0311, as published in the 21:24 North Carolina Register, has been extended from the original 60-day period of June 15 to August 14, 2007. The Division of Water Quality will accept comments for an additional month, until September 14, 2007. Please direct your comments to Rich Gannon or Jason Robinson as follows:

US Mail:  
1617 Mail Service Center  
Raleigh, NC 27699-1617

Fax: (919) 715-5637  
Email: Rich.Gannon@ncmail.net or Jason.T.Robinson@ncmail.net

You will find information on the strategy, including a summary, proposed text of rules, and approved fiscal analysis on the Internet at: <http://h2o.enr.state.nc.us/nps/JordanNutrientStrategy.htm>. You can also request information from Division staff members Rich Gannon or Jason Robinson at the above contact points or by phone at 919-733-5083, ext. 356 or 537, respectively.

Please share this announcement with others who may be interested.

NOTICE OF RULE MAKING PROCEEDINGS AND PUBLIC HEARING

NORTH CAROLINA BUILDING CODE COUNCIL

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

Citation to Existing Rule Affected by this Rule-Making: NC Residential Code.

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

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

Public Hearing: September 10, 2007, 1:00PM, NC Department of Insurance, SHIIP, 11 South Boylan Avenue, Raleigh, NC 27603.

Comment Procedures: Written comments may be sent to Chris Noles, Secretary, NC Building Code Council, c/o NC Department of Insurance, 1202 Mail Service Center, Raleigh, NC 27699-1202. Comment period expires on October 1, 2007.

Statement of Subject Matter:

1. Request by David Smith, Chairman of the Residential Standing Committee, to amend the 2006 NC Residential Code for One and Two Family Dwellings, Section R202. The proposed amendment is as follows:

R202 DEFINITIONS. WINDBORNE DEBRIS REGION. Areas within hurricane-prone regions ~~within 1500 feet (0.452 km) of the mean high water line of the Atlantic Ocean~~ defined as that area east of the inland waterway from the NC/SC State line north to Beaufort Inlet; from that point to include the barrier islands to the NC/VA State line.

2. Request by Bryan Reading, APA, to amend the 2006 NC Residential Code for One and Two Family Dwellings, Sections 4404.4, 4406.3 and 4408.4. The proposed amendments are as follows:

4404.4 Exterior Concrete Slab-on-grade Footings. Vertical reinforcement shall be installed at intervals not to exceed Table 4404.1.1 and shall terminate in a double sole plate.

Exception: Vertical reinforcement (anchorage) shall be installed at intervals not to exceed Table 4404.1a where the bars terminate in a single sole plate. Approved strap anchors or wood structural panels shall be installed to provide a continuous load-path from the single sole plate to the wall.

4406.3 Gable endwalls. Gable endwalls in the 110, 120, and 130 mph wind zones shall either be supported by lateral bracing at the ceiling or have continuous studs from the floor to the roof. 2 x 4 studs at 16 inches on center are limited to 10 feet in length between supports. Nonbearing 2 x 6 SPF#2 studs at 16 inches on center with 3/8" wood structural panel sheathing are limited to unsupported lengths of 18 feet in 110 mph, 16 feet in 120 mph and 14 feet in 130 mph wind zones. ~~Wood structural panel sheathing shall extend 12 inches beyond construction joints.~~

4408.4 Anchorage using wood structural panels. Wood structural panel sheathing may be used to resist both lateral load and uplift simultaneously. Panels shall be installed as follows:

(items 1-4 and 6-7 remain unchanged)

~~5. Panels shall extend 12 inches beyond construction joints and shall overlap girders their full depth.~~

3. Request by David Smith/Barry Gupton, Residential Ad Hoc Committee, to amend the 2006 NC Residential Code, Figure R403.1(1), Section R403.1.4, Table R403.1. The proposed amendment is as follows:

Figure R403.1(1), Note 1

Foundation shall extend not less than 12-inches below the ~~finished~~ natural grade or engineered fill and in no case less than the frost line depth. The bottom of the footing shall be supported on natural soil or engineered fill.

R403.1.4 Minimum depth. All exterior footings and foundation systems shall extend below the frost line specified in Table R301.2(1). In no case shall the bottom of the exterior foot be less than 12 inches below ~~finished~~ the natural grade or engineered fill.

Exception: Frost protected footings constructed in accordance with Section R403.3 and footings and foundations erected on solid rock shall not be required to extend below the frost line.

In Seismic Design Categories D<sub>1</sub> and D<sub>2</sub>, interior footingss supporting bearing walls or bracing walls and cast monolithically with a slab on grade shall extend to a depth of not less than 18 inches (457mm) below the top of the slab.

Table R403.1 – In 1,500 and 2,000-psf columns, change all values 12 and 15-inch widths to 16-inch.

Add Footnote: b. A minimum footing width of 12 inches is acceptable for monolithic slab foundations.

**STATE OF NORTH CAROLINA  
ENVIRONMENTAL MANAGEMENT COMMISSION  
1617 MAIL SERVICE CENTER  
RALEIGH, NORTH CAROLINA 27699-1617**

**PUBLIC NOTICE OF INTENT TO ISSUE STATE GENERAL  
NPDES STORMWATER PERMITS**

Public notice of intent to reissue State National Pollutant Discharge Elimination System (NPDES) General Permits for Point Source Discharges of Stormwater for the following types of discharges:

NPDES General Permit No. NCG030000 for stormwater point source discharges associated with establishments primarily engaged in the rolling, drawing, and extruding of nonferrous metals (standard industrial classification (SIC) 335), heat treating of metal (SIC 3398), fabricating of metal products (SIC34), manufacturing of industrial and commercial machinery (SIC 35), manufacturing of electronic equipment (SIC 36), manufacturing of transportation equipment (SIC 37), and the manufacturing of measuring and analyzing instruments (SIC 38). The Division is noticing intent to reissue a revised version of this permit with changes in permit conditions.

NPDES General Permit No. NCG060000 for stormwater point source discharges associated with establishments primarily engaged in activities classified as Food and Kindred Products (SIC 20), Tobacco Products (SIC 21), Soaps, Detergents and Cleaning Preparations; Perfumes, Cosmetics and Other Toilet Preparations (SIC 284), Drugs (SIC 283), and Public Warehousing and Storage (SIC 4221-4225). The Division is noticing intent to reissue a revised version of this permit with changes in permit conditions.

NPDES General Permit No. NCG080000 for stormwater point source discharges associated with establishments that have Vehicle Maintenance Areas associated with activities classified as Rail Transportation (SIC 40), Local and Suburban Transit and Interurban Highway Passenger Transportation (SIC 41), Motor Freight Transportation and Warehousing (SIC 42), except Public Warehousing and Storage (SIC 4221-4225), Postal Service (SIC 43), Petroleum Bulk Stations and Terminals (SIC 5171) with total petroleum storage capacity of less than one million gallons. Other activities such as point source stormwater discharges from oil water separators, secondary containments structures at petroleum storage facilities, and vehicle maintenance areas at facilities other than those listed above may be permitted on a case-by-case basis. The Division is noticing intent to reissue a revised version of this permit with changes in permit conditions.

NPDES General Permit No. NCG090000 for stormwater point source discharges associated with establishments primarily engaged in manufacture of paints, varnishes, lacquers, enamels, and allied products (SIC 285). The Division is noticing intent to reissue a revised version of this permit with changes in permit conditions.

NPDES General Permit No. NCG100000 for stormwater point source discharges associated with establishments primarily engaged in activities classified as Used Motor Vehicle Parts (SIC 5015) and Automobile Wrecking for Scrap (a portion of SIC 5093). The Division is noticing intent to reissue a revised version of this permit with changes in permit conditions.

NPDES General Permit No. NCG120000 for stormwater point source discharges associated with Landfills that are permitted by the North Carolina Division of Waste Management under the provisions of North Carolina General statute 130A-294. The Division is noticing intent to reissue a revised version of this permit with changes in permit conditions.

On the basis of preliminary staff review and application of Article 21 of Chapter 143 of the General Statutes of North Carolina, Public Law 92-500 and other lawful standards and regulations, the North Carolina Environmental Management Commission proposes to reissue State NPDES General Permits for the discharges as described above.

**INFORMATION:** Copies of the NPDES Stormwater General Permits referenced above are available for download at: <http://h2o.enr.state.nc.us/su/publicnotice.htm> or by writing or calling:

Stormwater Permitting Unit  
NC Div of Water Quality  
1617 Mail Service Center  
Raleigh, NC 27699-1617  
(919) 733-5083 ext 502

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*IN ADDITION*

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Written comments regarding the proposed permits will be accepted until August 31, 2007. All comments received prior to that date will be considered in the final determination regarding permit issuance. A public meeting may be held where the Director of the Division of Water Quality finds a significant degree of public interest in any proposed permit issuance. The draft Permits and other information are on file at the Division of Water Quality, 512 N. Salisbury Street, Room 1219, Archdale Building, Raleigh, North Carolina. They may be inspected during normal office hours. Copies of the information on file are available upon request and payment of the costs of reproduction. Comments should be submitted to the address above or by email to [stormwater@ncmail.net](mailto:stormwater@ncmail.net). Please include the NPDES permit number (as referenced above) on all comments and requests.



**SUMMARY OF NOTICE OF  
INTENT TO REDEVELOP A BROWNFIELDS PROPERTY  
City of Wilmington**

Pursuant to N.C.G.S. § 130A-310.34, the City of Wilmington has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Wilmington, New Hanover County, North Carolina. The Property, which is known as the former CSX Transportation site, consists of 9.22 acres and is located at 525 Nutt Street. Environmental contamination exists on the Property in soil and groundwater. The City of Wilmington has committed itself to redevelopment of the Property for no other uses than a convention center, parking deck, open space and mixed commercial use, including a hotel and restaurant. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and the City of Wilmington, 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 New Hanover County Public Library, 201 Chestnut St., Wilmington, NC 28401 by contacting Phyllis Smith at that address, at (910) 798-6301 or by email at psmith@nhcgov.com; or at the offices of the N.C. Brownfields Program, 401 Oberlin Rd., Suite 150, Raleigh, NC 27605 (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents) by contacting Shirley Liggins at that address, at shirley.liggins@ncmail.net, or at (919) 508-8411.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if the City of Wilmington, 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 August 2, 2007. 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  
WDL Holdings, LLC**

Pursuant to N.C.G.S. § 130A-310.34, WDL Holdings, LLC has filed with the North Carolina Department of Environment and Natural Resources ("DENR") a Notice of Intent to Redevelop a Brownfields Property ("Property") in Gastonia, Gaston County, North Carolina. The Property, which is known as the former ATS Manufacturing site, consists of 6.65 acres and is located at the intersection of N.C. Highway 321 and Rankin Lake Road. Environmental contamination exists on the Property in groundwater. WDL Holdings, LLC has committed itself to redevelop the Property for retail and commercial uses. The Notice of Intent to Redevelop a Brownfields Property includes: (1) a proposed Brownfields Agreement between DENR and WDL Holdings, LLC, which in turn includes (a) a map showing the location of the Property, (b) a description of the contaminants involved and their concentrations in the media of the Property, (c) the above-stated description of the intended future use of the Property, and (d) proposed investigation and remediation; and (2) a proposed Notice of Brownfields Property prepared in accordance with G.S. 130A-310.35.

The full Notice of Intent to Redevelop a Brownfields Property may be reviewed at the Gaston County Public Library, 1555 E. Garrison Boulevard, Gastonia, NC 28054 by contacting Anne Gometz, Reference Services, at that address or at (704) 868-2164 ext. 2; or at the offices of the N.C. Brownfields Program (where DENR will provide auxiliary aids and services for persons with disabilities who wish to review the documents), 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.

Written public comments may be submitted to DENR within 30 days after the date this Notice is published in a newspaper of general circulation serving the area in which the brownfields property is located, or in the North Carolina Register, whichever is later. Written requests for a public meeting may be submitted to DENR within 21 days after the period for written public comments begins. Thus, if WDL Holdings, LLC, as it plans, publishes this Summary in the North Carolina Register after it publishes the Summary in a newspaper of general circulation serving the area in which the brownfields property is located, and if it effects publication of this Summary in the North Carolina Register on the date it expects to do so, the periods for submitting written requests for a public meeting regarding this project and for submitting written public comments will commence on August 2, 2007. 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 02 – DEPARTMENT OF AGRICULTURE & CONSUMER SERVICES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to amend the rules cited as 02 NCAC 48A .1706.*

**Proposed Effective Date:** December 1, 2007

**Instructions on How to Demand a Public Hearing:** (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rule by submitting a request in writing no later than August 16, 2007, to David S. Mcleod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

**Reason for Proposed Action:** To provide for issuance of certificates or limited permits for movement of seedlings and sod when the premises have been fumigated or otherwise treated to eliminate pests and to require certificates or limited permits for shipments originating in other states.

**Procedure by which a person can object to the agency on a proposed rule:** Any person may object to the proposed rule by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

**Comments may be submitted to:** David S. Mcleod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919)733-7125 –x238, fax (919)716-0090, david.mcleod@ncmail.net

**Comment period ends:** October 1, 2007

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

**Fiscal Impact:**

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

**CHAPTER 48 - PLANT INDUSTRY**

**SUBCHAPTER 48A - PLANT PROTECTION**

**SECTION .1700 - STATE NOXIOUS WEEDS**

**02 NCAC 48A .1706 ISSUANCE OF CERTIFICATES AND LIMITED PERMITS**

(a) Certificates may be issued by a specialist for the movement of regulated articles under the following conditions:

- (1) In the judgment of the specialist, they have not been exposed to infestations;
- (2) They have been examined and found to be free of noxious weeds;
- (3) They have been treated under the direction of the specialist with approved control measures known to be effective under the conditions applied;
- (4) They have been grown, produced, stored, or handled in such manner that, in the judgment of the specialist, designated noxious weeds would not be transmitted by movement of the article.

(b) Limited permits may be issued by a specialist for the movement of noncertified regulated articles to specified destinations for limited handling, utilization, processing or treatment when the specialist determines no hazard of spread of noxious weeds exists.

(c) Scientific permits may be issued by the Administrator to allow the movement of noxious weeds in any living stage and any regulated articles for scientific purposes under such conditions as may be prescribed in each specific case by the Plant Pest Administrator. Scientific permits will be issued pursuant to 2 02 NCAC 48A .1300.

(d) Certificates or limited permits, which ensure the pest-free premises for the following:

- (1) Nurseries growing seedlings for afforestation or reforestation purposes; and
- (2) Sod farms producing sod for establishment of ornamental turf, shall be issued by an inspector for intrastate and interstate shipments of conifer seedlings, hardwood seedlings and sod.

To ensure pest-free premises, forest seedling nurseries and sod farms designated for crop production may be fumigated or

treated with a registered fumigant such as methyl bromide or other registered pesticide. Each shipment originating from another state shall be accompanied by a certificate or limited permit issued by the state of origin to verify fumigation or other treatments.

(d)(e) As a condition of issuance of certificates or limited permits for the movement of regulated articles, any person engaged in purchasing, assembling, exchanging, handling, processing, utilizing, treating, or moving such articles may be required to sign a compliance agreement stipulating that he will maintain such safeguards against the establishment and spread of infestation and comply with such conditions as to the maintenance of identity, handling and subsequent movement of such articles, and the cleaning and treatment of means of conveyance and containers used in the transportation of such articles, as may be required by the specialist.

Authority G.S. 106-420.

TITLE 02 – DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Board of Agriculture intends to adopt the rules cited as 02 NCAC 52B .0701-.0707, amend the rule cited as 02 NCAC 52B .0209 and repeal the rule cited as 02 NCAC 52B .0208.

Proposed Effective Date: December 1, 2007

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person may request a public hearing on the proposed rules by submitting a request in writing no later than August 16, 2007, to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Reason for Proposed Action: To make North Carolina's sheep and goat importation requirements compatible with other states' rules and regulations by removing the requirement that sheep and goats from states that are certified and accredited as brucellosis and tuberculosis free be tested upon their arrival in North Carolina. To bring North Carolina into compliance with the requirements of USDA's accelerated scrapie eradication program so that North Carolina can maintain its status as a consistent state pursuant to 9 C.F.R. 79.

Procedure by which a person can object to the agency on a proposed rule: Any person may object to the proposed rules by submitting a written statement of objection(s) to David S. McLeod, Secretary, NC Board of Agriculture, 1001 Mail Service Center, Raleigh, NC 27699-1001.

Comments may be submitted to: David S. McLeod, 1001 Mail Service Center, Raleigh, NC 27699-1001, phone (919)733-7125-x238, fax (919)716-0090, email david.mcleod@ncmail.net.

Comment period ends: October 1, 2007

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

Fiscal Impact:

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

CHAPTER 52 - VETERINARY DIVISION

SUBCHAPTER 52B - ANIMAL DISEASE

SECTION .0200 - ADMISSION OF LIVESTOCK TO NORTH CAROLINA

02 NCAC 52B .0208 IMPORTATION REQUIREMENTS: GOATS

(a) All goats entering the state except those consigned to a federal or state inspected slaughtering establishment shall be accompanied by a health certificate from the state of origin. The health certificate shall state that the goats were clinically free of any infectious or communicable disease. The health certificate shall include a description of each animal, the age, sex, breed and color or marking shall be given. Goats over six months of age and sexually intact imported from out of state shall have a negative brucellosis test within 30 days prior to import, and all imports over six months of age must have a negative tuberculosis test within 60 days prior to import unless they originate from a United States Department of Agriculture-certified and accredited herd or unless they are consigned to a slaughtering establishment under state or federal inspection.

(b) The brucellosis and tuberculosis testing requirements of this Rule shall not apply to goats entering the state only for exhibition purposes from states that are United States Department of Agriculture Tuberculosis Accredited Free and Brucellosis Certified Free, when accompanied by an official health certificate. Such animals shall remain in the state for exhibition purposes for no more than 30 days from the date of issuance of the health certificate.

Authority G.S. 106-307.5; 106-396.

02 NCAC 52B .0209 IMPORTATION REQUIREMENTS: SHEEP AND GOATS

~~(a) The health certificate covering the importation of sheep shall include a report of inspection by a veterinarian approved by the chief livestock sanitary official of the state of origin indicating the sheep are not under quarantine and are free from signs of any infectious or communicable disease. The health certificate shall contain a statement that the flock of origin has not had scrapie diagnosed within the past 42 months.~~

~~(b) Sheep which have not been handled in stockyards, stock pens or on premises in public use for livestock may be imported without dipping, from a state or area designated as scabies free by the United States Department of Agriculture.~~

~~(c) Unless waived by the State Veterinarian, sheep for purposes other than immediate slaughter that have not been dipped in accordance with the regulations of the Animal and Plant Health Inspection Service, Veterinary Services, United States Department of Agriculture shall not be imported into the state. The requirements for dipping will be waived when it can be determined that the sheep will be isolated from other animals at the North Carolina destination until dipped. While in transit they shall be accompanied by a certificate of such dipping.~~

~~(d) Sheep consigned for the purpose of immediate slaughter to a livestock market licensed under G.S. 106, Article 35, or to a slaughtering establishment with state or federal inspection may be imported without a health certificate. A waybill or certificate marked for immediate slaughter must accompany such shipments.~~

~~(e) Sheep over six months of age and sexually intact imported from out of state shall have a negative brucellosis test within 30 days prior to import, and all imports must have a negative tuberculosis test within 60 days prior to import unless they originate from a United States Department of Agriculture-certified and accredited herd or unless they are consigned to a slaughtering establishment under state or federal inspection.~~

~~(f) The brucellosis and tuberculosis testing requirements of this Rule shall not apply to sheep entering the state only for exhibition purposes from states that are United States Department of Agriculture Tuberculosis Accredited Free and Brucellosis Certified Free, when accompanied by an official health certificate. Such animals shall remain in the state for exhibition purposes for no more than 30 days from the date of issuance of the health certificate.~~

~~(a) All sheep and goats imported into the state, regardless of age, must be officially identified prior to leaving the farm of origin (see "official scrapie identification" in Subparagraph (c)(2) of this Rule), except:~~

~~(1) Sheep and goats less than 12 months of age moving directly to slaughter;~~

~~(2) Sheep and goat wethers.~~

~~(b) Sheep and goats consigned for the purpose of immediate slaughter to a livestock market licensed under G.S. 106, Article 35, or to a slaughtering establishment with state or federal inspection may be imported without a health certificate. A waybill or certificate marked for immediate slaughter must accompany such shipments. No sheep or goats consigned for immediate slaughter may be removed from slaughter channels.~~

~~(c) Sheep and goats not consigned for the purpose of immediate slaughter must be accompanied by an official health certificate from the state of origin signed by a veterinarian accredited in that state.~~

(1) The health certificate covering the importation of sheep and goats shall include a report of inspection indicating the sheep and goats are not under quarantine and are free from signs of any infectious or communicable disease.

(2) The health certificate shall contain a statement that the flock of origin has not had scrapie diagnosed within the past 42 months. The health certificate shall include United States Department of Agriculture-approved scrapie identification, age, sex, breed and markings for each animal. Official scrapie identification shall consist of one of the following:

(A) Official ear tags which are approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service for use in the Scrapie Eradication Program or the Scrapie Flock Certification Program;

(B) Electronic implants: which are approved for use in animals participating in a scrapie flock certification program and when accompanied by a certificate of veterinary inspection or owner statement that includes the implant numbers and name of the chip manufacturer; or which are used in animals registered with a national registry association and the implant number is recorded by the registry on the registration certificate accompanying the animal; and the animal is accompanied by an implant reader which can read the implant in the animal;

(C) Legible official registry tattoos that have been recorded in the record of a sheep or goat registry association when the animal is accompanied by either a registration certificate or certificate of veterinary inspection upon which the tattoo number is recorded.

(3) Sheep and goats not consigned for the purpose of immediate slaughter that originate from United States Department of Agriculture-certified and accredited free states are exempt from brucellosis and tuberculosis testing requirements. Sheep and goats that do not originate from a United States Department of Agriculture-certified and accredited free state shall have a negative brucellosis test within 30 days prior to import and shall have a negative tuberculosis test within 60 days prior to import unless they originate from a United States Department of Agriculture-certified and accredited free herd.

- (4) Dairy goats and sheep over six months of age and sexually intact imported from out-of-state shall have a negative brucellosis test within 30 days prior to import and shall have a negative tuberculosis test within 60 days prior to import unless they originate from a United States Department of Agriculture-certified and accredited free herd.
- (5) The brucellosis and tuberculosis testing requirements of this Rule shall not apply to sheep and goats entering the state for only exhibition purposes, coming from states or herds that are United States Department of Agriculture-certified and accredited free, when accompanied by an official health certificate which shall include a United States Department of Agriculture-approved scrapie identification. Such animals shall remain in the state for exhibition purposes for no more than 30 days from the date of issuance of the health certificate.

Authority G.S. 106-307.5; 106-348; 106-396.

**SECTION .0700 - SCRAPIE DISEASE**

**02 NCAC 52B .0701 IDENTIFICATION REQUIREMENTS**

- (a) All sheep and goats, regardless of age, must be officially identified prior to leaving the farm of origin.
- (b) The following animals are exempt from being officially identified:
  - (1) Sheep and goats less than 12 months of age moving directly to slaughter;
  - (2) Sheep and goats wethers.
- (c) No sheep or goat consigned for immediate slaughter may be removed from slaughter channels.

Authority G.S. 106-307.5.

**02 NCAC 52B .0702 IDENTIFICATION METHODOLOGY**

Official identification shall consist of one of the following:

- (1) Official ear tags which are approved by the United States Department of Agriculture, Animal and Plant Health Inspection Service for use in the Scrapie Eradication Program or the Scrapie Flock Certification Program;
- (2) Electronic implants:
  - (a) which are approved for use in animals participating in a scrapie flock certification program and when accompanied by a certificate of veterinary inspection or owner statement that includes the implant numbers and name of the chip manufacturer; or
  - (b) which are used in animals registered with a national registry association

and the implant number is recorded by the registry on the registration certificate accompanying the animal; and

- (c) the animal is accompanied by an implant reader which can read the implant in the animal;
- (3) Legible official registry tattoos that have been recorded in the record book of a sheep or goat registry association when the animal is accompanied by either a registration certificate or certificate of veterinary inspection upon which the tattoo number is recorded.

Authority G.S. 106-307.5.

**02 NCAC 52B .0703 RECORDKEEPING**

Persons who purchase, acquire, sell, or dispose of sheep or goats must maintain the following applicable records for a period of five years:

- (1) Date and number of animals purchased or acquired;
- (2) Name and address of the person from whom the animals were purchased or acquired;
- (3) Date and number of animals sold or disposed of;
- (4) Name and address of the buyer or person who acquired the animals;
- (5) Species, age, breed and sex of the animal;
- (6) Identification number.

Authority G.S. 106-307.5.

**02 NCAC 52B .0704 REPORTING REQUIREMENT**

State or Federal animal health officials shall be notified, by the flock owner or veterinarian, within 24 hours when a clinically suspicious animal or test is found.

Authority G.S. 106-307.5.

**02 NCAC 52B .0705 QUARANTINE**

When a clinical or test suspect, or test positive animal is found, the animal and entire flock will be placed under quarantine until the status of the animal is determined. The suspect animal(s) must be officially identified under the direction of a State or Federal representative.

Authority G.S. 106-307.5.

**02 NCAC 52B .0706 TISSUE COLLECTION**

Owners must allow the collection and submission of tissues from all scrapie-suspect animals to a laboratory authorized by the United States Department of Agriculture, Animal and Plant Health Inspection Service, Veterinary Services to conduct scrapie tests.

Authority G.S. 106-307.5.

**02 NCAC 52B .0707 CARCASS DISPOSAL**

If the suspect animal is euthanized, after diagnostic tissues are collected, the carcass must be completely destroyed under the supervision of State or Federal officials.

Authority G.S. 106-307.5.

TITLE 04 – DEPARTMENT OF COMMERCE

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Cemetery Commission intends to amend the rules cited as 04 NCAC 05C .0301, .0307.

Proposed Effective Date: December 1, 2007

Instructions on How to Demand a Public Hearing: (must be requested in writing within 15 days of notice): Any person who demands a public hearing shall submit a letter of objection in writing by US Postal Service to Jimmy Miller at the address given below. The letter of demand must be postmarked no later than August 16, 2007.

Reason for Proposed Action: S.L. 204-202 effective August 17, 2004 amended 65-58(c) to change form an annual preneed license costing \$10.00 to a two-year license with a cost ceiling of \$100.00. The Cemetery Commission voted to establish this cost to be \$50.00 at its May 11, 2005 meeting. Consistent with this action, the change to rule 04 NCAC 05C .0301 was approved by the Rules Review Commission at its June 16, 2005 meeting with an effective date of July 1, 2005 subsequent to consultation on February 23, 2005 as required by 26 NCAC 02C .0115. 04 NCAC 05C .0301 as approved above has caused some confusion among the 176 Perpetual Care Cemeteries throughout the State and the staff at the Cemetery Commission. 04 NCAC 05C .0307 regarding renewal of preneed licenses was intended to also be changed as above but was inadvertently omitted. This omission was only recently discovered in that this is the end of the first cycle of two-year licenses.

Procedure by which a person can object to the agency on a proposed rule: Any person who objects to a proposed rule amendment shall submit a letter of objection in writing to Jimmy Miller at the address given below.

Comments may be submitted to: Jimmy Miller, 1001 Navaho Drive, Suite 100, Raleigh, NC 27609, phone (919) 981-2536, fax (919) 981-2538, email jmiller@nccommerce.com

Comment period ends: October 1, 2007

Procedure for Subjecting a Proposed Rule to Legislative Review: If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in

G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

Fiscal Impact:

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

CHAPTER 05 - CEMETERY COMMISSION

SUBCHAPTER 05C – LICENSING

SECTION .0300 - INDIVIDUAL PRE-NEED SALESPEOPLE

04 NCAC 05C .0301 APPLICATION AND FILING FEE

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

North Carolina Cemetery Commission
1001 Navaho Drive, Suite 100
Raleigh, North Carolina 27609.

This license shall be for a period of no less than 12 months and no more than 24 months and has an expiration date of June 30 in each of its expiration year, and is not transferable from the cemetery to which it is issued.

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

04 NCAC 05C .0307 RENEWAL

Before July 1 of each the license expiration year, each licensed salesperson shall pay a license renewal fee of ten dollars (\$10.00) per year, fifty dollars (\$50.00) per license for a two-year renewal. Any individual preneed salesperson that does not renew their license by January 1 after its expiration on July 1 shall be denied renewal privileges. If the person wishes a license they must apply for a new license.

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

**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the NC Department of Health and Human Services intends to adopt the rule cited as 10A NCAC 01G .0103.*

**Proposed Effective Date:** January 1, 2008

**Public Hearing:**

**Date:** September 11, 2007

**Time:** 10:00 a.m.

**Location:** 1020 Richardson Drive, Raleigh, NC 27603, Room 116, Royster Building, Dorothea Dix Campus

**Reason for Proposed Action:** *This rule is being proposed for adoption to comply with a segment of rule 10A NCAC 01G .0101 which calls for a rule to be submitted for adoption by October 2007 addressing development/revision of the NC NOVA Provider Information Manual as defined in G.S. 131E-154.13(4).*

**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:** *Susan Harmuth, 2001 Mail Service Center, Raleigh, NC 27699-2001, phone (919) 733-4534, fax (919) 715-4645, email Susan.Harmuth@ncmail.net*

**Comment period ends:** October 1, 2007

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

**Fiscal Impact:**

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

**CHAPTER 01 – OFFICE OF THE SECRETARY**

**SUBCHAPTER 01G – NORTH CAROLINA NEW**

**ORGANIZATIONAL VISION AWARD (NC NOVA)**

**SECTION .0100 - NORTH CAROLINA NEW ORGANIZATIONAL VISION AWARD (NC NOVA)**

**10A NCAC 01G .0103 PROCESS REVIEW**

(a) Beginning with the effective date of this Rule and not less than once every two years, the Partner Team, as defined in G.S. 131E-154.13(3), shall review the process by which the NC NOVA special licensure designation is awarded.

(b) Any changes to the process that are proposed by the Partner Team shall be posted on the NC NOVA web site at: [www.ncnova.org](http://www.ncnova.org) for 60-days to elicit public comment. The web site shall include instructions for submitting comments via email or U.S. Postal Service mail.

(c) The Partner Team shall convene a meeting within 60 calendar days following the public comment period for the purpose of considering public comments. Any changes to the process shall only be adopted when not less than 85 percent of the Partner Team members are in agreement with the proposed changes and the changes shall be posted on the NC NOVA web site within 30 calendar days after adoption.

*Authority G.S. 131E-154.12; 131E-154.13; 131E-154.14.*

**TITLE 11 – DEPARTMENT OF INSURANCE**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Department of Insurance intends to amend the rule cited as 11 NCAC 10 .0718 and repeal the rule cited as 11 NCAC 10 .0711.*

**Proposed Effective Date:** December 1, 2007

**Public Hearing:**

**Date:** August 21, 2007

**Time:** 10:30 a.m.

**Location:** 3<sup>rd</sup> Floor Hearing Room, Dobbs Building, 430 N. Salisbury St., Raleigh, NC

**Reason for Proposed Action:** *Technical corrections to comply with changes in the General Statutes.*

**Procedure by which a person can object to the agency on a proposed rule:** *The Department of Insurance will accept written objections to these rules until the expiration of the comment period on October 1, 2007.*

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

**Comment period ends:** October 1, 2007

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the*



Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

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

**CHAPTER 10 - PROPERTY AND CASUALTY DIVISION**

**SECTION .0700 - INSURANCE IN UNLICENSED FOREIGN AND ALIEN COMPANIES**

**11 NCAC 10 .0711 FORM F**

~~Form F, "Application to the Commissioner of Insurance (of North Carolina) to Procure Insurance From an Insurance Company Not Licensed in North Carolina", is used by surplus lines licensees to obtain approval from this department for procuring insurance from eligible surplus lines insurers. This form, which is an affidavit, must be filed within 30 days after the placing of any surplus lines insurance. It shall include, but not be limited to, a signed statement by the applicant that insurance is not available from licensed companies, the name and address of the insured, a description of the risk, the nature and amount of insurance, the premium charged, policy period, policy number and, a statement by the surplus lines licensee that the insurance is not available from licensed companies.~~

*Authority G.S. 58-2-40(1); 58-21-35.*

**11 NCAC 10 .0718 "FORM F" REPORT**

~~The affidavit. In addition to the information required by G.S. 58-21-35(a), the report required by G.S. 58-21-35(b) G.S. 58-21-35 shall contain a signed statement by the applicant-insured that insurance is not available from licensed companies, the name and address of the insured, a description of the risk, and the nature and amount of insurance. insurance, the premium charged, policy period, policy number, and a statement by the surplus lines licensee that the insurance is not available from licensed companies.~~

*Authority G.S. 58-2-40; 58-21-35.*

*Notice is hereby given in accordance with G.S. 150B-21.2 that the Department of Environment and Natural Resources intends to amend the rules cited as 15A NCAC 01N .0101-.0103, .0201-.0202, .0301, .0303, .0401-.0402, .0502, .0701, .0704, .0801, .0902 and repeal the rules cited as 15A NCAC 01N .0403, .0601-.0606.*

**Proposed Effective Date:** December 1, 2007

**Public Hearing:**

**Date:** August 22, 2007

**Time:** 10:00 a.m.

**Location:** Room 1B420, 2728 Capital Boulevard, Raleigh, NC

**Reason for Proposed Action:** To implement S.L. 2005-454 (H1095)

**Procedure by which a person can object to the agency on a proposed rule:** Contact Sid Harrell or Robin Peele (see below) for contact information. Written submittals, phone calls, facsimile or emails are accepted.

**Comments may be submitted to:** Sid Harrell, 1634 Mail Service Center, Raleigh, NC 27699-1634, phone (919)715-3216, fax (919)715-4374, email sid.harrell@ncmail.net or Robin Peele, 1634 Mail Service Center, Raleigh, NC 27699-1634, phone (919)715-3898, fax (919)715-4374, email robin.peele@ncmail.net.

**Comment period ends:** October 1, 2007

**Procedure for Subjecting a Proposed Rule to Legislative Review:**

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

**Fiscal Impact:**

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

**CHAPTER 01 - DEPARTMENTAL RULES**

**SUBCHAPTER 01N - DRINKING WATER TREATMENT FUND RULES**

**SECTION .0100 - GENERAL PROVISIONS**

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

**15A NCAC 01N .0101 PURPOSE**

Loans for public water systems from the Drinking Water ~~Treatment State Revolving Loan Fund~~ Fund established by ~~G.S. 159G-5(d)~~ the Water Infrastructure Act S.L. 2005-454 (H1095) shall be made in accordance with this Subchapter.

*Authority G.S. 159G-5; 159G-15; 159G-22.*

**15A NCAC 01N .0102 DEFINITIONS**

The following definitions shall apply to this Subchapter:

- (1) "Act" means the N.C. Drinking Water Act, G.S. 130A-311 et. seq;
- (2) "Division" means the Division of Environmental Health, Department of Environment and Natural Resources;
- (3) "Fund" means the Drinking Water ~~Treatment State Revolving Loan Fund~~ Fund established by ~~G.S. 159G-5(d); 159G-22;~~
- (4) "Intended Use Plan" means an annual plan to identify the proposed uses of the amount available in the ~~state revolving fund;~~ Fund;
- (5) "MCL" means maximum contaminant level which is the permissible level of a contaminant in water which is delivered to any user of a public water system;
- (6) ~~"Operating Agreement (OA)" means the Capitalization Grant Operating Agreement between the United States Environmental Protection Agency and the Department.~~
- (6)(7) "Receiving agency" means the Division of Environmental Health.

*Authority G.S. 159G-5; 159G-15; 159G-22.*

**15A NCAC 01N .0103 APPLICABLE PROCEDURES**

Loans from the Fund shall be made in accordance with the August 7, 2000 40 CFR Part 9 and 35 and the Operating Agreement guidelines found in the "Drinking Water State Revolving Fund Program Guidelines," published by the United States Environmental Protection Agency, Office of Water, on February 28, 1997 (EPA 816-R-97-005) which is hereby incorporated by reference including any subsequent amendments and additions. This material is available for inspection at the Department of Environment and Natural Resources, Division of Environmental Health, 2728 Capital Boulevard, Raleigh, North Carolina. Free copies may be obtained from the U.S. Environmental Protection Agency by telephoning 1-800-426-4791. The guidelines Operating Agreement and the INTERIM FINAL RULE are also available on-line at <http://www.epa.gov/OGWDW/regs/intro.html>. <http://www.deh.enr.state.nc.us/pws/srf/rules/072506-operating-agreement.doc> and <http://www.epa.gov/fedrgstr/EPA-WATER/2000/August/Day-07/w19783.htm>.

*Authority G.S. 159G-5; 159G-15.*

**SECTION .0200 - AVAILABILITY OF LOANS**

**15A NCAC 01N .0201 AVAILABILITY OF LOANS**

(a) Loans shall be available only for projects that appear on the state approved intended use plan submitted to the U.S. Environmental Protection Agency and that comply with the requirements of this Subchapter.

~~(b) An intended use plan may be amended at any time to add projects addressing an emergency situation and submitted to the U.S. Environmental Protection Agency for approval. All Rules in 15A NCAC 01N shall be applicable to such projects. Such projects include those where some type of failure was unanticipated and requires immediate attention to protect public health. Proposed projects may be added to the IUP to address unanticipated emergency situations. The qualifying criteria is that a serious public health hazard or a drought emergency is present or imminent for a public water supply system. Such actions will be reported in the Annual Report.~~

(c) During any fiscal year 15 percent of the annual allocation shall be available solely for providing assistance to public water systems which regularly serve fewer than 10,000 persons to the extent such funds can be obligated for eligible projects.

(d) During any fiscal year a maximum of five percent of the annual allocation may be used for loans for project planning purposes only.

*Authority G.S. 159G-5; 159G-15.*

**15A NCAC 01N .0202 LOANS RESTRICTIONS**

(a) Loans shall not be used for the acquisition of real property or interests therein, unless the acquisition is integral to a project authorized under this Subchapter and the purchase is from a willing seller.

(b) Except as provided in Paragraph (c) of this Rule no assistance shall be provided to a public water system that does not have the technical, managerial, and financial capacity to ensure compliance with the requirements of the Act or to a public water system that is in significant non-compliance with any requirement of the Act or with a variance authorized under the Act as evidenced by administrative penalty, administrative order or court action against the water system. A determination of technical, managerial, and financial capacity shall be based upon a review of finances, compliance with applicable public health, environmental and utility laws, and the experience and certification level of the water system operator as evidenced by the submission of a business water system management plan as required by Section .0400 of this Subchapter.

(c) A public water system in significant non-compliance with the Act may receive assistance if the assistance shall ensure compliance with the Act. A public water system that does not have technical, managerial, and financial capacity may receive assistance if the owner or operator shall agree to undertake feasible and appropriate changes in operation of the water system that will ensure the system will achieve technical, managerial, and financial capacity over the long-term.

(d) Each applicant shall establish a dedicated source of revenue or demonstrate that there is adequate security for repayment of the loan.

(e) Funding shall be limited to the most cost-effective solution for the compliance or public health problem identified in a proposed project.

- (f) Funding shall be limited to the eligible portions of a project containing ineligible segments.
- (g) Funding shall not be available for federally owned public water systems.

Authority G.S. 159G-5; 159G-15.

**SECTION .0300 - ELIGIBILITY REQUIREMENTS**

**15A NCAC 01N .0301 DETERMINATION OF ELIGIBILITY**

- (a) Eligibility of applicants shall be determined in accordance with ~~G.S. 159G-3(2) and G.S. 159G-9, 159G-31.~~
- (b) Applications shall be returned to ineligible applicants.
- (c) An application may not be filed after the award of a construction contract on a project, except when an applicant is subject to an administrative order issued by the Division or a legally enforceable ~~deadline, deadline, or the project qualifies as an emergency situation.~~

Authority G.S. 159G-5; 159G-15.

**15A NCAC 01N .0303 ELIGIBLE PROJECT COSTS**

- (a) Project construction costs eligible for a loan under this Subchapter are limited to:
  - (1) Planning, including system and needs assessment, the preparation of a local water supply plan and the preparation of a business water system management plan;
  - (2) Environmental assessment reports, including all federal cross-cutters;
  - (3) Design;
  - (4) Construction;
  - (5) Legal, fiscal, and administrative costs;
  - (6) Contingency costs; and
  - (7) Land acquisition integral to the ~~project.~~ project and acquired from a willing seller.

- (b) Loans may be up to 100 percent of allowable construction project costs.
- (c) ~~Loans made for project planning purposes only are available for acute, immediate, and chronic health hazards as determined in Rule .0602 of this Subchapter.~~

Authority G.S. 159G-5; 159G-15.

**SECTION .0400 - APPLICATIONS**

**15A NCAC 01N .0401 FILING DEADLINES**

~~Applications~~ Complete applications for loans shall be postmarked or delivered to the Division of Environmental Health on or before September 30 of each year in order to be ~~approved~~ considered for loan funds available during the following ~~fiscal year, year~~ except for a project that qualifies as an emergency situation as defined in Rule .0201(b) of this Section.

Authority G.S. 159G-5; 159G-15.

**15A NCAC 01N .0402 APPLICATION PROCEDURES**

- (a) Applications for loans shall be submitted on forms provided by the Division and shall be accompanied by all documents such as the Preliminary Engineering Report (PER), assurances, and other information required by the instructions for completing and filing the applications. Information concerning any grant or loan funds from any other source for which the applicant has applied shall be disclosed on the application.
- (b) Every application shall be accompanied by an adopted resolution or other documentation as required by ~~G.S. 159G-9(4).~~ the application and instructions. The resolution or documentation shall be certified or attested to as a true and correct copy as adopted.
- (c) An applicant shall furnish additional information upon the request of the Division.
- (d) A project shall not receive a priority rating unless the application contains sufficient information on the day of rating for the receiving agency to review and assign priority ~~points.~~ points in accordance with Section .0600 of this Subchapter.
- (e) An application may be withdrawn from consideration upon request of the applicant but if resubmitted shall be considered as a new application.

Authority G.S. 159G-5; 159G-15.

**15A NCAC 01N .0403 PROJECT SCHEDULE AND RESOLUTION**

~~Every application shall be accompanied by a project schedule specifying dates for milestone events including:~~

- ~~(1) business plan submittal;~~
- ~~(2) plans and specifications submission and approval;~~
- ~~(3) a rate schedule submittal;~~
- ~~(4) bid opening and award;~~
- ~~(5) construction start; and~~
- ~~(6) project completion.~~

Authority G.S. 159G-5; 159G-15.

**SECTION .0500 - REVIEW AND ASSIGNMENT OF PRIORITIES**

**15A NCAC 01N .0502 ASSIGNMENT OF PRIORITIES**

- (a) During each review period the Division shall assign a priority rating to each eligible application for inclusion in the state intended use plan; the priority rating shall be determined in accordance with the rating criteria and points contained in ~~Section .0600 of this Subchapter,~~ the Operating Agreement.
- (b) The Division may exercise discretionary authority to establish a priority rating when two or more applications receive the same number of priority points. The project receiving the most points for ~~public health and compliance~~ affordability shall receive the greater priority. If the ~~public health~~ affordability points awarded the projects are equal, the project with the smaller population shall receive the greater priority. If points are still equal, the project with the greatest financial need as ~~determined in accordance with Rule .0605 of this Subchapter~~ shall receive the higher ranking.
- (c) Only the eligible portions of a project containing ineligible segments shall receive a priority rating.

(d) The Division may assign a different priority rating to each substantially independent part of a proposed project.

(e) Any applications that are not awarded assistance during a review period shall be held over and considered for a second review in accordance with G.S. ~~159G-10(d)~~, 159G-39(c).

*Authority G.S. 159G-5; 159G-15.*

**SECTION .0600 - PRIORITY CRITERIA**

**15A NCAC 01N .0601 GENERAL CRITERIA**

(a) ~~In determining the priority to be assigned each eligible application, the Division shall consider whether the project will:~~

- (1) ~~Address the most serious risk to human health,~~
- (2) ~~Facilitate compliance with the N.C. Drinking Water Act or the federal Safe Drinking Water Act, and~~
- (3) ~~Assist systems most in need on a per household basis.~~

(b) ~~The total priority points received shall be the sum of all points awarded for each categorical element.~~

*Authority G.S. 159G-5; 159G-15.*

**15A NCAC 01N .0602 PUBLIC HEALTH AND COMPLIANCE**

Public health and compliance points may be awarded to a project based on the following criteria. A proposed project shall be necessary to facilitate compliance with the N.C. Drinking Water Act or the federal Safe Drinking Water Act and to alleviate the type of public health concern for which points are awarded. A project shall receive only points in the highest sub-category for which it may qualify:

- (1) ~~Acute/Imminent Health Hazards. A maximum of 150 points shall be awarded to projects that propose to eliminate any one or more of the following acute, ongoing health hazards to the consumer:~~
  - (a) ~~Projects that address documented nitrate, nitrite or fecal coliform MCL violations, or contaminant levels in drinking water which constitute acute health risks as defined in 40 C.F.R. 141.32(a)(1)(iii) which is incorporated by reference at 15A NCAC 18C .1523; or~~
  - (b) ~~Projects that eliminate any contaminant in the public water system that poses an acute risk or imminent hazard to public health as determined by the State Health Director or a health risk assessment from the Division of Epidemiology, Department of Health and Human Services in accordance with G.S. 130A-2(3).~~
- (2) ~~Immediate Health Hazards. A maximum of 100 points shall be awarded to projects that propose to eliminate any one or more of the~~

~~following immediate health hazards to the consumer:~~

- (a) ~~Projects that address surface water treatment technique violations occurring for two or more consecutive months;~~
  - (b) ~~Projects that resolve any microbiological MCL problems for a water system with three or more microbiological MCL violations during the previous 12 months;~~
  - (c) ~~Projects that propose filtration for a surface water source or for a well that is determined to be under the direct influence of surface water by the Department that does not currently have filtration;~~
  - (d) ~~Projects that address the inability of a public water system to inactivate giardia and viruses in accordance with 15A NCAC 18C .2001; or~~
  - (e) ~~Projects that address documented recurrent water outages or low pressure below the requirements of 15A NCAC 18C .0901. Only problems that affect human consumption of drinking water shall be considered for award of points under this criteria.~~
- (3) ~~Chronic Health Hazards. A maximum of 60 points shall be awarded to projects that propose to eliminate any one or more of the following chronic health hazards to the consumer:~~
- (a) ~~Projects that address exceedances of the lead and copper action levels under 15A NCAC 18C .1507;~~
  - (b) ~~Projects that address violations of inorganic or organic chemical or contaminant MCLs under 15A NCAC 18C .1510, .1517, and .1518;~~
  - (c) ~~Projects that address violations of radiological contamination MCLs under 15A NCAC 18C .1520 and .1521; or~~
  - (d) ~~Projects that address a chronic health hazard as determined by the State Health Director or a health risk assessment from the Division of Epidemiology, Department of Health and Human Services.~~
- (4) ~~Potential Health Hazards. A maximum of 40 points shall be awarded to projects that propose to eliminate any one or more of following potential health hazards to the consumer:~~
- (a) ~~Projects that address low chlorine residuals in the distribution system;~~

- (b) ~~Projects that address periodic violations of an MCL;~~
- (c) ~~Projects for line installation or extensions to areas with poor water quality or limited quantity;~~
- (d) ~~Projects to develop new sources of water, to augment existing sources, or to expand treatment capacity to meet current demand when the average daily demand for the previous 12 months equals or exceeds the available water supply as calculated in local water supply plans prepared in accordance with G.S. 143-355(l) or the maximum day demand for the previous 12 months equals or exceeds the approved water treatment plant design capacity; or~~
- (e) ~~Projects to provide disinfection for a system that currently does not have disinfection.~~
- (5) ~~System Improvements. A maximum of 20 points shall be awarded for projects that shall provide any one or more of the following general system improvements when needed for public health purposes:~~
  - (a) ~~Projects that replace water supply production or treatment equipment that is undersized, malfunctioning or has exceeded its useful life;~~
  - (b) ~~Projects that replace undersized or leaking water lines;~~
  - (c) ~~Projects that address other water quality concerns such as iron, manganese, taste, and odor;~~
  - (d) ~~Projects to bring existing facilities to current design standards which affect water quality such as treatment, chemical storage and application, pumping facilities, finished storage, distribution systems;~~
  - (e) ~~Projects that eliminate dead ends and provide looping in a distribution system;~~
  - (f) ~~Projects that increase water storage capacity;~~
  - (g) ~~Projects to develop new sources of water, to augment existing sources, or to expand treatment capacity to meet current demand when the average daily demand for the previous 12 months exceeds 80 percent of the available water supply as calculated in local water supply plans prepared in accordance with G.S. 143-355(l) or the maximum day demand for the previous 12 months exceeds 80 percent of the approved water treatment plant design capacity; or~~

- (h) ~~Projects for installation or upgrade of water treatment plant waste disposal facilities.~~

*Authority G.S. 159G-5; 159G-15.*

**15A NCAC 01N .0603 CONSOLIDATION**

~~A maximum of 10 points shall be awarded in the consolidation categorical element for projects that propose to improve water system reliability by interconnecting with an existing water system, by purchasing systems in whole or in part, or by purchasing water capacity from other systems, as follows:~~

- (1) ~~Projects that propose consolidation to provide water service to an existing community whose water supply cannot meet the rules governing public water systems at 15A NCAC 18C, 10 points;~~
- (2) ~~Projects that propose consolidation of existing water systems shall be awarded 5 points;~~
- (3) ~~Projects where consolidation is not physically feasible, 5 points.~~

*Authority G.S. 159G-5; 159G-15.*

**15A NCAC 01N .0604 RELIABILITY**

~~A maximum of five points shall be awarded in the reliability categorical element to projects that propose to increase the reliability of the water system; points may be awarded for both Items (1) and (2) of this Rule up to the maximum, as follows:~~

- (1) ~~Projects that provide redundancy to critical treatment or delivery functions, such as interconnection, but excluding projects that provide emergency backup electrical power source, 3 points;~~
- (2) ~~Projects that provide emergency backup electrical power source, 3 points.~~

*Authority G.S. 159G-5; 159G-15.*

**15A NCAC 01N .0605 AFFORDIBILITY**

~~Points for affordability shall be determined by comparing the projected monthly residential user cost at the completion of the project with the median household income (MHI). User cost shall be calculated from water rates based on a maximum of 4,500 gallons. The median household income shall be determined in the service area of the water system. If median household income data is not available for the service area, data from the nearest comparable community area shall be used. The Division may use countywide median household income data if data for the service area or nearest comparable community area are not available. Points shall be awarded on the following scale:~~

<del>Rates = 0% to .25% MHI</del>	<del>0 points</del>
<del>Rates = 0.26% to .50% MHI</del>	<del>5 points</del>
<del>Rates = .51% to .75% MHI</del>	<del>20 points</del>
<del>Rates = .76% to 1.0% MHI</del>	<del>40 points</del>
<del>Rates = 1.01% or greater MHI</del>	<del>50 points</del>

*Authority G.S. 159G-5; 159G-15.*

**15A NCAC 01N .0606 SOURCE PROTECTION AND MANGEMENT**

~~The maximum value to be given for source protection and management categorical elements is 150 points. Points shall only be awarded for existing activities or programs that efficiently protect the public health, as follows:~~

- ~~(1) Participation in source water protection activities; points may be awarded in Sub-Items (a) and (b) of this Item up to the maximum, as follows:
 
  - ~~(a) Voluntary water supply watershed protection program approved by the Division, pursuant to the Safe Drinking Water Act, Section 1453 five points, or~~
  - ~~(b) Voluntary wellhead protection program approved by the Division, pursuant to the Safe Drinking Water Act, Section 1428 five points.~~~~
- ~~(2) Efficient water use, as shown by the applicant's establishment and administration of the described programs; points may be awarded in Sub-Items (a), (b), and (c) of this Item up to the maximum, as follows:
 
  - ~~(a) Water loss reduction program which includes water audits, comprehensive metering, and hidden leak detection, three points;~~
  - ~~(b) Cross-connection control program, three points;~~
  - ~~(c) Demand management strategies, such as a water conservation incentive rate structure, incentives for new or replacement installation of low flow faucets, showerheads and toilets, or a water reclamation or reuse system, three points per strategy.~~~~

*Authority G.S. 159G-5; 159G-15.*

**SECTION .0700 - AWARD, COMMITMENT AND DISBURSEMENT OF LOANS**

**15A NCAC 01N .0701 DETERMINATION OF AWARDS AND BYPASS PROCEDURES**

- (a) All funds appropriated for a fiscal year and all other funds accruing from loan principal repayments, interest payments, interest earned on funds, excess funds not awarded in the previous priority review period, and any other source shall be available for loans during the priority review period.
- (b) The funds available in a priority review period shall be awarded in the form of a binding commitment in descending order of priority rating upon EPA approval of that IUP considering ~~Paragraph .0201(b)~~ Rule .0201 of this Subchapter to those eligible projects that are ready to proceed. A project is defined as ready to proceed when the following conditions have been met:

- (1) Project plans and specifications are approved by the Division;
- (2) Any environmental review required is complete;
- (3) One hundred percent funding necessary for the project is committed; and
- (4) Authorization To Construct is issued by the Division.

(c) Except as provided in Paragraph (d) of this Rule, the maximum principal amount of loan commitment from any fiscal year's allocation made to an applicant shall be three million dollars (\$3,000,000), except that the maximum amount of loan commitment from any fiscal year's allocation for a project planning purposes only loan shall be twenty-five thousand dollars (\$25,000).

(d) Any funds remaining after the initial allocation of Paragraphs (b) and (c) of this Rule shall be awarded in descending order of priority rating to those eligible projects in any approved IUP that are ready to proceed subject to the limitation of Paragraph (c) of this Rule for each 'pass' through the remaining available funding.

*Authority G.S. 159G-5; 159G-15.*

**15A NCAC 01N .0704 DISBURSEMENT OF LOANS**

- (a) Disbursement of loan monies shall be made at intervals as work progresses and expenses are incurred. No disbursement shall be made until the receiving agency receives satisfactory documentation of incurred costs. At no time shall disbursement exceed the allowable costs which have been incurred at that time.
- (b) No disbursement shall be made until the receiving agency receives documentation of compliance with ~~the verifiable percentage goal for participation by minority businesses in accordance with G.S. 143-128(e)~~ and any eligible applicable federal and state laws.
- (c) The receiving agency shall authorize the Controller's Office of the Department of Environment and Natural Resources to make loan disbursements.

*Authority G.S. 159G-5; 159G-15.*

**SECTION .0800 - LOAN REPAYMENTS**

**15A NCAC 01N .0801 INTEREST RATES**

The interest rate to be charged on loans under this Subchapter shall be set in each priority review period at the lesser of four percent per annum or one half the prevailing national market rate as derived from the Bond Buyer's 20-Bond Index in accordance with ~~G.S. 159G-4(e)~~ 159G-40.

*Authority G.S. 159G-5; 159G-15.*

**SECTION .0900 - INSPECTION AND AUDIT OF PROJECTS**

**15A NCAC 01N .0902 AUDIT**

All projects to which a loan has been committed shall be audited in accordance with ~~G.S. 159-34 and the United States~~

~~Environmental Protection Office of Water (4606) Drinking Water State Revolving Fund Program Guidelines, EPA 816 R-97-005 February (28) 1997 which is incorporated in Rule .0103 of this Subchapter. the Operating Agreement.~~

Authority G.S. 159G-5; 159G-15.

**TITLE 25 – OFFICE OF STATE PERSONNEL**

*Notice is hereby given in accordance with G.S. 150B-21.2 that the State Personnel Commission intends to amend the rule cited as 25 NCAC 01L .0102.*

**Proposed Effective Date:** December 1, 2007

**Public Hearing:**

**Date:** August 29, 2007

**Time:** 10:00 a.m.

**Location:** Office of State Personnel, Administration Building, 3<sup>rd</sup> floor, 116 West Jones Street, Raleigh, NC

**Reason for Proposed Action:** *We are recommending that the state standardize the use of factors covered in the equal employment opportunity planning process by adding political affiliation and sexual orientation to the rule. Political affiliation is currently included in the EEO Policy but not included in the EEO Program and Plan Policy. This change will standardize the policies and incorporate political affiliation into the EEO planning process. Sexual orientation is currently included in most university EEO plans and some agency EEO plans. By including sexual orientation in the rule, the EEO planning process will be standardized allowing for common factors between all agencies and universities.*

**Procedure by which a person can object to the agency on a proposed rule:** *A person may object to these proposed rules by one of the following methods: 1. A written letter to Peggy Oliver, HR Policy Administrator, Office of State Personnel, 1331 Mail Service Center, Raleigh, NC 27699-1331. 2. An email to peggy.oliver@ncmail.net. 3. A telephone call to Peggy Oliver at (919)807-4832.*

**Comments may be submitted to:** *Peggy Oliver, 1331 Mail Service Center, Raleigh, NC 27699-1331, phone (919)807-4832, fax (919)715-9750, email peggy.oliver@ncmail.net.*

**Comment period ends:** October 1, 2007

**Procedure for Subjecting a Proposed Rule to Legislative Review:** *If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission*

receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-733-2721.

**Fiscal Impact:**

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

**CHAPTER 01 - OFFICE OF STATE PERSONNEL**

**SUBCHAPTER 01L - EQUAL OPPORTUNITY**

**SECTION .0100 - EQUAL EMPLOYMENT OPPORTUNITY PLANS AND PROGRAMS**

**25 NCAC 01L .0102 PURPOSE**

(a) The State is committed to equal employment opportunity and recognizes that effective and efficient government requires the talents, skills and abilities of all available human resources. It is the official policy of the State of North Carolina to provide all current employees and applicants for state employment with equal employment opportunities, without discrimination on the basis of race, color, religion, national origin, sex, age, or ~~handicapping-disabling~~ condition defined by G.S. 168A, ~~or disability as defined by the Americans With Disabilities Act.~~ sexual orientation or political affiliation. All personnel policies, practices and programs shall be administered and implemented in a non-discriminatory manner by all state agencies and universities.

(b) The commitment to equal employment opportunity shall be undertaken by state government through an equal employment opportunity plan in order to:

- (1) assure that all personnel policies and practices relevant to total employment in state government will guarantee and preserve equal employment opportunities for all persons of the state;
- (2) assure diversity at all occupational levels of the state's workforce.

Authority G.S. 126-4(10); 126-16; 126-19.

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

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

**BUILDING CODE COUNCIL**

**Rule-making Agency:** Building Code Council

**Rule Citation:** R302.1 Exception 2, Exterior Wall Projections (070313 Item B-2)

**Effective Date:** July 11, 2007

**Date Approved by the Rules Review Commission:** June 28, 2007

**Reason for Action:** Current methods of townhouse construction that are allowed by the NC Residential Code have demonstrated the potential to allow fire to spread along and through the roof soffit areas and into attic spaces. In the specific instance of vinyl soffits, the soffit material can melt away and allow an open chase for flames to rapidly spread into the attic space. Having noncombustible soffit material will reduce the spread of flames into the attic and adjacent units; thereby making the fire easier to control and manage.

The recent Raleigh townhouse fire brought this issue to the attention of the Council. Numerous new townhouse building permits will be issued prior to adoption and approval of the Permanent Rule.

**R302.1 Exterior walls.** Exterior walls with a fire separation distance less than 3 feet (914mm) shall have not less than a one-hour fire-resistive rating with exposure from both sides. Non-rated projections shall not extend beyond the distance determined by the following two methods, whichever results in the lesser projections:

1. A point one-third the distance to the property line from an assumed vertical plane located where protected openings are required.
2. More than 12 inches (305 mm) into areas where openings are prohibited.

Projections extending beyond the distance described above into the fire separation distance shall have not less than one-hour fire-resistive construction on the underside. The above provisions shall not apply to walls which are perpendicular to the line used to determine the fire separation distance.

**Exceptions:**

1. Tool and storage sheds, playhouses and similar structures exempted from permits by Chapter 1 are not required to provide wall protection based on location on the lot. Projections beyond the exterior wall shall not extend over the lot line.
2. In townhouse construction (3 or more attached dwellings) soffit shall be securely attached to framing members and shall be constructed using one of the following methods:
  - 2.1. Non-Combustible material other than Aluminum.
  - 2.2. Aluminum or vinyl soffit installed over ¾ wood sheathing or 5/8" gypsum board.

Venting requirements shall apply to both soffit and underlayments and shall not exceed the minimum net free air requirements by 150% established in section R806.2.

The Effective Date for the Emergency Rule is April 5, 2007.  
 The Effective Date for this amended Temporary Rule is July 11, 2007.  
 The Statutory authority for Rule-making is G. S. 143-136; 143-138.



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**APPROVED RULES**

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*This Section includes a listing of rules approved by the Rules Review Commission followed by the full text of those rules. The rules that have been approved by the RRC in a form different from that originally noticed in the Register or when no notice was required to be published in the Register are identified by an \* in the listing of approved rules. Statutory Reference: G.S. 150B-21.17.*

Rules approved by the Rules Review Commission at its meeting on June 28, 2007.

**REGISTER CITATION TO THE  
NOTICE OF TEXT**

**ADMINISTRATION, DEPARTMENT OF**

<u>Definitions</u>	01	NCAC	43A	.0102*	21:14 NCR
<u>Transfer of Sale</u>	01	NCAC	43A	.0301*	21:14 NCR
<u>Order of Priority in Disposition</u>	01	NCAC	43A	.0304*	21:14 NCR
<u>Bidding and Purchases Prohibited by Employees and Immedia...</u>	01	NCAC	43A	.0306*	21:14 NCR
<u>Rejection of Bids</u>	01	NCAC	43A	.0309*	21:14 NCR

**SOCIAL SERVICES COMMISSION**

<u>Definitions</u>	10A	NCAC	06W	.0101	21:16 NCR
<u>Methods of Service</u>	10A	NCAC	06W	.0102	21:16 NCR
<u>Service Delivery</u>	10A	NCAC	06W	.0103	21:16 NCR
<u>Nature and Purpose</u>	10A	NCAC	06W	.0104*	21:16 NCR
<u>Definitions</u>	10A	NCAC	06W	.0105*	21:16 NCR
<u>Service Populations</u>	10A	NCAC	06W	.0106*	21:16 NCR
<u>Application for Services</u>	10A	NCAC	06W	.0107	21:16 NCR
<u>Service provider Responsibilities</u>	10A	NCAC	06W	.0108*	21:16 NCR
<u>Prohibited Activities</u>	10A	NCAC	06W	.0109	21:16 NCR
<u>Request for Waiver</u>	10A	NCAC	06W	.0110*	21:16 NCR

**HEALTH AND HUMAN SERVICES, DEPARTMENT OF**

<u>Approved Alcohol Screening Test Devices: Calibration</u>	10A	NCAC	41B	.0503	21:16 NCR
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**SOCIAL SERVICES COMMISSION**

<u>Housing and Home Improvement Service</u>	10A	NCAC	71R	.0909*	21:16 NCR
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**ALARM SYSTEMS LICENSING BOARD**

<u>Prohibited Acts</u>	12	NCAC	11	.0105*	21:04 NCR
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**LABOR, DEPARTMENT OF**

<u>Certificates of Operation</u>	13	NCAC	15	.0306*	21:18 NCR
<u>Elevator Certificate of Operation Reinstatement Fee</u>	13	NCAC	15	.0706*	21:18 NCR

**ENVIRONMENTAL MANAGEMENT COMMISSION**

<u>Sulfur Dioxide Emissions From Combustion Sources</u>	15A	NCAC	02D	.0516	21:16 NCR
<u>Control of Nitrogen Dioxide and Nitrogen Oxides</u>	15A	NCAC	02D	.0519*	21:16 NCR

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**APPROVED RULES**

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<u>Control of Visible Emissions</u>	15A	NCAC	02D	.0521*	21:16	NCR
<u>New Source Performance Standards</u>	15A	NCAC	02D	.0524*	21:16	NCR
<u>Applicability</u>	15A	NCAC	02D	.0902*	21:16	NCR
<u>Compliance Schedules for Sources In Noncompliant Areas</u>	15A	NCAC	02D	.0909*	21:16	NCR
<u>Certification of Leak Tightness</u>	15A	NCAC	02D	.0960*	21:16	NCR
<u>Tailpipe Emission Standards for CO and HC</u>	15A	NCAC	02D	.1004	21:16	NCR
<u>Purpose and Scope</u>	15A	NCAC	02D	.1201*	21:16	NCR
<u>Definitions</u>	15A	NCAC	02D	.1202*	21:16	NCR
<u>Other Incinerators</u>	15A	NCAC	02D	.1208*	21:16	NCR
<u>Applicability</u>	15A	NCAC	02D	.1402*	21:16	NCR
<u>Compliance Schedules</u>	15A	NCAC	02D	.1403*	21:16	NCR
<u>Open Burning Purpose Scope</u>	15A	NCAC	02D	.1901*	21:16	NCR
<u>Definitions</u>	15A	NCAC	02D	.1902*	21:16	NCR
<u>Open Burning Without an Air Quality Permit</u>	15A	NCAC	02D	.1903*	21:16	NCR
<u>Air Curtain Burners</u>	15A	NCAC	02D	.1904*	21:16	NCR
<u>Multiple Violations Arising from a Single Episode</u>	15A	NCAC	02D	.1907	21:16	NCR
<u>Applicability and Eligibility</u>	15A	NCAC	02D	.2303*	21:16	NCR
<u>Activities Exempted from Permit Requirements</u>	15A	NCAC	02Q	.0102*	21:16	NCR
<u>Annual Emissions Reporting</u>	15A	NCAC	02Q	.0207	21:16	NCR
<u>Initial Permit Application Submittal</u>	15A	NCAC	02Q	.0506	21:16	NCR

**LANDSCAPE CONTRACTORS REGISTRATION BOARD**

<u>Reinstatement After Revocation</u>	21	NCAC	28	.0304*	21:12	NCR
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**MEDICAL BOARD**

<u>Examination Fee</u>	21	NCAC	32B	.0209*	21:13	NCR
<u>Graduate Medical Education and Training</u>	21	NCAC	32B	.0213	21:13	NCR
<u>Fee</u>	21	NCAC	32B	.0308	21:13	NCR
<u>Fee</u>	21	NCAC	32B	.0506	21:13	NCR
<u>ECFMG Certification</u>	21	NCAC	32B	.0507*	21:13	NCR
<u>Approved Categories of CME</u>	21	NCAC	32R	.0102	21:13	NCR

**RESPIRATORY CARE BOARD**

<u>Continuing Education Requirements</u>	21	NCAC	61	.0401*	21:12	NCR
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**COMMUNITY COLLEGES, BOARD OF**

<u>Courses and Standards for Curriculum Programs</u>	23	NCAC	02E	.0204*	21:12	NCR
<u>Student Refund</u>	23	NCAC	03A	.0113*	20:18	NCR

These rules are subject to the next Legislative Session. (See G.S. 150B-21.3(b1))

**NURSING, BOARD OF**

<u>Existing Nursing Program</u>	21	NCAC	36	.0303*	21:16	NCR
<u>Faculty</u>	21	NCAC	36	.0318*	21:16	NCR

**TITLE 01 – DEPARTMENT OF ADMINISTRATION**

**01 NCAC 43A .0102 DEFINITIONS**

For the purposes of this Chapter, the following definitions apply:

- (1) "Employee" includes full-time exempt and non-exempt, part-time, temporary, and permanent employees of a state agency as defined in G.S. 143-64.02.
- (2) "Fair Market Price" means the agreed price, that price on which the seller, the State Surplus Property Agency and the buyer agree.
- (3) "Immediate Family" means spouse or children/stepchildren under the age of 18.
- (4) "State-Owned" means in the possession of the State of North Carolina and purchased with State funds.
- (5) "Surplus Property" means property no longer needed by a State agency.
- (6) "Non-Profit Tax Exempt organization" is defined in G.S. 143-64.02. Note that not all Non-Profit Tax Exempt organizations are eligible to use the services of the State Surplus Property Agency.

*History Note: Authority G.S. 143-64.01; 143-64.04;  
Eff. July 1, 2007.*

**01 NCAC 43A .0301 TRANSFER OR SALE**

The State Surplus Property Agency shall determine the method of transfer, sale, or disposal of all State owned property in the best interests of the State.

*History Note: Authority G.S. 143-64.01; 143-64.04;  
Eff. July 1, 2007.*

**01 NCAC 43A .0304 ORDER OF PRIORITY IN DISPOSITION**

(a) In the disposition of state surplus property, the State Surplus Property Agency shall give first priority to other agencies of the state for purchase or transfer. Second priority shall be given to sales to political subdivisions and non-profit tax exempt organizations within the state. Property thus sold must be for the use of the recipient agency, political subdivision or non-profit tax exempt organization with title being in such agency, unit or organization.

(b) In making transfers over one hundred fifty dollars (\$150.00) the price shall be set by the owning agency in consultation with the State Surplus Property Agency. The price shall be based upon previous sales of similar products on the open market. All transfers of property from or to a receipt-supported agency shall include an exchange of funds.

(c) State surplus property sold to any political subdivision or non-profit tax exempt organization must be retained by the unit or organization not less than 12 months before disposal.

*History Note: Authority G.S. 143-64.01; 143-64.04;  
Eff. July 1, 2007.*

**01 NCAC 43A .0306 BIDDING AND PURCHASES PROHIBITED BY EMPLOYEES AND IMMEDIATE FAMILY MEMBERS**

(a) To avoid conflicts of interest, bidding on or purchase of state surplus property is prohibited to State Surplus Property Agency employees and their immediate family members.

(b) All State employees specified as custodian of state property for a state agency, and their immediate family members, are prohibited from bidding on or purchasing the surplus property of the employing state agency.

*History Note: Authority G.S. 143-64.01; 143-64.04;  
Eff. July 1, 2007.*

**01 NCAC 43A .0309 REJECTION OF BIDS**

(a) Any and all bids may be rejected. Bids may be rejected in whole or in part if:

- (1) The bidder has failed to pay for or pick up surplus property awarded;
- (2) The bid is submitted by an ineligible bidder pursuant to Rule .0315 of this Section;
- (3) The bid does not fully comply with the terms and conditions of the request/solicitation for bid;
- (4) The bid is not legible or lacks completeness;
- (5) The bid does not comply with the bid policies of State Surplus Property Agency; or
- (6) Bid rejection is recommended by the State Capitol Police, State Bureau of Investigation, Federal Bureau of Investigation, or other Homeland Security entity. In such cases, the security entity must provide a written statement requesting rejection and that the recommendation is based on homeland security concerns. In the event of receipt of a security based bid rejection recommendation, the State Surplus Property Agency shall reject the bid without further supporting documentation.

(b) If a bid is rejected in whole or part, the subject property may be re-advertised, sold at the highest bidder's amount, the next higher bid accepted, or sale negotiated, in the best interests of the State, without recourse to further bidding.

*History Note: Authority G.S. 143-64.01; 143-64.04;  
Eff. July 1, 2007.*

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**TITLE 10A – DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**10A NCAC 06W .0101 DEFINITIONS**

**10A NCAC 06W .0102 METHODS OF SERVICE PROVISION**

*History Note: Authority G.S. 143B-153;  
Eff. July 1, 1977;*

*Readopted Eff. October 31, 1977;*  
*Amended Eff. December 1, 1992; July 1, 1990; July 1, 1984;*  
*December 31, 1980;*  
*Repealed Eff. July 1, 2007.*

**10A NCAC 06W .0103 SERVICE DELIVERY**

*History Note: Authority G.S. 143B-153;*  
*Eff. December 1, 1992;*  
*Repealed Eff. July 1, 2007.*

**10A NCAC 06W .0104 NATURE AND PURPOSE**

(a) Housing and Home Improvement is a supportive service which can make a difference in the lives of individuals and families who wish to live independently in safe affordable homes within their communities of choice. This service can enable them to obtain, retain, or return to independent housing, and resolve health and safety issues affecting their home or areas adjacent to their home. For the purpose of this Subchapter, the service has three elements:

- (1) Housing services that support independent living by providing information on:
  - (A) fair housing;
  - (B) foreclosures;
  - (C) grants or loans for home repair;
  - (D) home buying;
  - (E) homelessness prevention;
  - (F) independent housing options and locations;
  - (G) landlord tenant relations;
  - (H) mortgage delinquency and default resolution counseling;
  - (I) predatory lending;
  - (J) reasonable accommodations;
  - (K) reverse mortgage counseling; and
  - (L) tenant's rights and responsibilities;
- (2) Home improvement services that identify health and safety issues affecting the home or areas adjacent to the home in which the individual or family lives, and provide needed improvements to resolve those issues through:
  - (A) installation of security features;
  - (B) minor home repairs and improvements; and
  - (C) modifications to the home to promote mobility; and
- (3) Provision of, or replacement of, basic furnishings or household appliances that promote independent living.

*History Note: Authority G.S. 143B-153; 42 U.S.C. 5301;*  
*Eff. July 1, 2007.*

**10A NCAC 06W .0105 DEFINITIONS**

As used in this Subchapter, the following terms shall have the meanings specified:

- (1) "Activities of Daily Living (ADL)" means personal care activities including bathing or

showering, dressing, eating, getting in or out of bed or chair, and toileting.

- (2) "Instrumental Activities of Daily Living (IADL)" means independent living activities including doing household chores, managing personal money, preparing meals, shopping for groceries and personal items, and using the telephone or transportation.
- (3) "Home" means a housing unit for individuals or families. The home may be owned, rented, or accessed through a lifetime right. It may stand alone and be stick built, manufactured or modular, or may be an apartment or condominium within a larger structure that is secured by lock and key.
- (4) "Independent housing" means a home which provides a private living arrangement and is not part of a licensed facility.
- (5) "Service provider" means a county department of social services or any public or private agency or individual from whom a county department of social services purchases services to provide housing and home improvement services.
- (6) "Waiting for service" means that an individual has requested housing and home improvement service that exists in the county but is not receiving it and is potentially eligible for the service, and could be served if the service were expanded.

*History Note: Authority G.S. 143B-153;*  
*Eff. July 1, 2007.*

**10A NCAC 06W .0106 SERVICE POPULATIONS**

For the purposes of this Subchapter:

- (1) Eligible population. Individuals and families are eligible for housing and home improvement services if they:
  - (a) have no one able and willing to perform the service for them; and
  - (b) reside within a county where housing and home improvement services are funded.
- (2) Target population. Services shall be provided to individuals and families based on need for one or more elements of the housing and home improvement services:
  - (a) to obtain independent housing, to receive housing services in order to retain their home, or to return to their home from other settings;
  - (b) to secure security features, to secure minor home repairs and improvements, and to secure modifications to the home to enhance mobility; and

- (c) provision of, or replacement of, basic furnishings or household appliances that promote independent living.
- (3) Priority population. When more than one eligible individual or family is waiting for housing and home improvement service, priority shall be given in the following order:
  - (a) Adults and children for whom the need for protective services has been substantiated and the service is needed as part of a protective services plan as referred to in 10A NCAC 71R .0915 and .0916, or intervention plan as referred to in 10A NCAC 70A .0107, including all subsequent amendments.
  - (b) Adults who are at risk of abuse, neglect or exploitation, and children who are at risk of abuse, neglect, or dependency as defined in 10A NCAC 22O .0123, including all subsequent amendments.
  - (c) Adults with ADL or IADL impairments who are at risk of placement in a health care facility as defined in G.S. 108A-60.
  - (d) Children who need the service as part of a plan of preventive services designed to strengthen the family and preserve the home for the child, or as part of permanency planning to enable a child to return home from substitute care.
  - (e) Adults with three or more ADL or IADL impairments.
  - (f) Adults with one or two ADL or IADL impairments.

*History Note: Authority G.S. 143B-153; Eff. July 1, 2007.*

**10A NCAC 06W .0107 APPLICATION FOR SERVICES**

For services pursuant to this Subchapter, an application shall be signed and dated for housing and home improvement services and shall be made by:

- (1) an adult on his or her own behalf;
- (2) an adult on behalf of his or her minor child; or
- (3) an adult acting on behalf of a disabled adult as defined in G.S. 108A-101(d).

*History Note: Authority G.S. 143B-153; Eff. July 1, 2007.*

**10A NCAC 06W .0108 SERVICE PROVIDER RESPONSIBILITIES**

For purposes of this Subchapter, the housing and home improvement service provider shall:

- (1) provide orientation, training, or supervision for volunteers assisting with housing and home improvement services;
- (2) refer individuals to federal, state, and local agencies for additional housing and home improvement services;
- (3) maintain records documenting financial and service activities for each individual or family receiving services;
- (4) request reimbursement from Division of Aging and Adult Services for actual project costs: administrative, labor, and materials, not to exceed one-thousand five-hundred dollars (\$1,500) per home per program year;
- (5) provide opportunities for service recipients to voluntarily contribute towards the cost of services received;
- (6) maintain confidentiality of all records; and
- (7) maintain a listing of individuals or families waiting for housing and home improvement services.

*History Note: Authority G.S. 143B-153; Eff. July 1, 2007.*

**10A NCAC 06W .0109 PROHIBITED ACTIVITIES**

For purposes of this Subchapter, housing and home improvement service funding shall not be used for:

- (1) rent;
- (2) utility bills;
- (3) food;
- (4) medicine;
- (5) security and utility deposits;
- (6) taxes;
- (7) home improvements negatively affecting the structural integrity of the housing unit;
- (8) home improvements which are an obligation of the landlord;
- (9) work done to the property of a landlord without written approval; and
- (10) duplication of any home improvement service to the same housing unit for three consecutive years following receipt of initial service.

*History Note: Authority G.S. 143B-153; Eff. July 1, 2007.*

**10A NCAC 06W .0110 REQUEST FOR WAIVER**

The Division of Aging and Adult Services (DAAS) may waive any rule in this Subchapter that is not statutorily required if a county department of social services makes a written request to the regional area agency on aging. The area agency on aging will forward the request to DAAS. Factors DAAS shall use in determining whether to grant the waiver are:

- (1) additional cost requirements;
- (2) need for the waiver;
- (3) degree of benefit to the service recipient;

- (4) whether the agency had control over the circumstances that required the requested waiver; and
- (5) previous requests for waivers submitted from the agency.

*History Note: Authority G.S. 143B-153; Eff. July 1, 2007.*

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

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

- (1) ALCO-SENSOR (with two-digit display), made by Intoximeters, Inc.
- (2) ALCO-SENSOR III (with three-digit display), made by Intoximeters, Inc.
- (3) ALCO-SENSOR IV, manufactured by Intoximeters, Inc.
- (4) ALCO-SENSOR FST, manufactured by Intoximeters, Inc.
- (5) S-D2, manufactured by CMI, Inc.
- (6) S-D5, manufactured by CMI, Inc.

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

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

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

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

*History Note: Authority G.S. 20-16.3; Eff. February 1, 1976; Readopted Eff. December 5, 1977; Amended Eff. July 1, 2007; November 1, 2005; April 1, 2001; January 1, 1995; January 4, 1994; April 1, 1993; January 4, 1993.*

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**10A NCAC 71R .0909 HOUSING AND HOME IMPROVEMENT SERVICE**

(a) Housing and home improvement is a supportive service which may make a difference in the lives of individuals and families who wish to live independently in safe affordable homes within their communities of choice. This service can enable individuals and families to obtain, retain or return to

independent housing, and resolve health and safety issues affecting their home or areas adjacent to their home. For the purpose of this Subchapter, the service has three elements:

- (1) Housing services that support independent living by providing information to individuals and families to enable them to obtain housing, retain the housing they have or return to independent housing.
- (2) Home improvement services that identify health and safety issues affecting the home or areas adjacent to the home and provide needed improvements to resolve those issues including modifications to the home to promote mobility.
- (3) Provision of, or replacement of, basic furnishings or household appliances which promote independent living.

(b) Target Population. Individuals or families who reside within a county where housing and home improvement services are funded and need one or more elements of the service are considered the target population. Within the target population eligible individuals or families must be served in the following order of priority when there are others waiting for service:

- (1) adults and children for whom the need for protective services has been substantiated and the service is needed as part of a protective services plan as defined in 10A NCAC 71R .0915 and .0916, or intervention plan as referred to in 10A NCAC 70A .0107, including all subsequent amendments;
- (2) adults who are at risk of abuse, neglect or exploitation and children who are at risk of abuse, neglect, or dependency as defined in 10A NCAC 220 .0123, including all subsequent amendments;
- (3) adults with extensive ADL or IADL impairments who are at risk of placement in a health care facility as defined in G.S. 108A-60;
- (4) children who need the service as part of a plan of preventive services designed to strengthen the family and preserve the home for the child, or as part of permanency planning to enable a child to return home from substitute care;
- (5) adults with three or more ADL or IADL impairments; and
- (6) adults with one or two ADL or IADL impairments.

(c) The terms ADL and IADL as used in this Section are defined in 10A NCAC 06W .0105, including all subsequent amendments.

*History Note: Authority G.S. 143B-153; Eff. February 8, 1977; Amended Eff. July 1, 1982; October 1, 1980; October 1, 1979; October 1, 1977; Transferred from T10.43D .0215 Eff. July 1, 1983; Amended Eff. July 1, 2007; December 1, 1992; July 1, 1984.*

**TITLE 12 – DEPARTMENT OF JUSTICE**

**12 NCAC 11 .0105 PROHIBITED ACTS**

In addition to the prohibited acts set forth elsewhere in these Regulations and in Chapter 74D of the General Statutes, any applicant, licensee, or registrant who does any of the following may have his application denied, or his license or registration revoked or suspended:

- (1) Displays or causes or permits to be displayed, or has in his possession any cancelled, revoked, suspended, fictitious, fraudulently altered license or registration identification card, or any document simulating a license or registration identification card or purporting to be or to have been issued as a license or registration identification card;
- (2) Lends his license or registration identification card to any person or allows the use thereof by another;
- (3) Displays or represents any license or registration identification card not issued to him as being his license or registration identification card;
- (4) Includes in any advertisement a statement which implies official state authorized certification or approval other than this statement: "Licensed by the Alarm Systems Licensing Board of the State of North Carolina." Licensees may include their license number.
- (5) Includes in the company name the word "police" or other law enforcement designation that implies that the alarm company is affiliated with a local, state, or federal law enforcement agency.

*History Note: Authority G.S. 74D-5; 74D-10; Temporary Rule Eff. January 9, 1984, for a Period of 120 Days to Expire on May 7, 1984; Eff. May 1, 1984; Amended Eff. August 1, 2007.*

**TITLE 13 – DEPARTMENT OF LABOR**

**13 NCAC 15 .0306 CERTIFICATES OF OPERATION**

(a) Issuing of Final Certificates of Operation. A certificate of operation shall be issued by the Director where the inspections and tests, required by Rule .0305 of this Section, show beyond a reasonable doubt that the equipment has been designed and installed in accordance with the requirements of these Rules.

(b) Framing of Certificates. The certificate furnished by the Director shall be maintained in a suitable frame under transparent cover.

(c) Numbering of Certificates. The final certificate of operation shall show the registration number of the equipment for which it is issued, as required in Rule .0304 of this Section.

(d) Posting of Certificates of Operation. The required certificates shall be posted conspicuously as follows:

- (1) inside elevator cars, or
- (2) inside dumbwaiter cars, or
- (3) inside escalator and moving walk machine rooms, or
- (4) in locations designated by the Division.

(e) Limited Certificate of Operation.

(1) Issuance for Elevator. The Director may allow the temporary use of any elevator for passenger or freight service during its installation or alteration under the authority of a limited certificate, issued for each class of service. Such limited certificate shall not be issued for elevators until the elevator has been tested with rated load, and the car safety, hoistway door interlocks, car door switch, and terminal stopping devices have been tested to determine the safety of the equipment for construction purposes.

(2) Issuance for Personnel Hoist. The Director may allow the temporary use of any personnel hoist under the authority of a limited certificate. Such limited certificate shall not be issued until the personnel hoist has been tested with rated load, and the car safety, hoistway door interlocks, car door switch, and terminal stopping devices have been tested to determine the safety of the equipment.

(3) Life of Limited Certificates of Operation. Limited certificates of operation may in the case of an elevator be issued for a period not to exceed 90 days. Limited certificates of operation for a personnel hoist may be used for a period not exceeding the length of the applicable construction project. Such certificates may be renewed upon receiving a written request showing cause for renewal. Such request must be received 15 days prior to the expiration of said limited certificate.

(4) Posting of Limited Certificates of Operation. Limited certificates of operation shall be posted conspicuously on each elevator or personnel hoist. Such limited certificates for elevators shall bear a notice stating that the equipment has not been finally approved.

(f) Revocation of Certificate of Operation.

- (1) The Director may revoke a certificate of operation for any of the following reasons:
  - (A) Operation of an unsafe device or equipment which is likely to result in personal injury or property damage.
  - (B) Failure to comply with the provisions of Article 14A of Chapter 95 of the North Carolina General Statutes or the rules in this Chapter.

(C) Non-payment of the inspection fees established in 13 NCAC 15 .0702 if payment is not received within 30 days of the date of invoice.

(2) If the Director revokes a certificate of operation pursuant to 13 NCAC 15 .0306(f)(1), the affected party shall be given notice of the availability of an administrative hearing and of judicial review in accordance with Article 3 of Chapter 150B of the N.C. General Statutes.

(g) Reissuance of Revoked Certificate of Operation.

(1) If the Director revokes a certificate of operation pursuant to 13 NCAC 15 .0306(f)(1)(a), the owner or operator shall notify the Director in writing when the hazard has been abated and shall request a reinspection of the device or equipment. Once the Director or his assignee has conducted the requested reinspection and has determined that the hazard has been abated and the device may be operated safely, the certificate of operation shall be reissued upon payment of the inspection fee pursuant to 13 NCAC 15 .0702 and the reissuance fee pursuant to 13 NCAC 15 .0706. Payment of the applicable fees shall be made in accordance with 13 NCAC 15 .0306(g)(4).

(2) If the Director revokes a certificate of operation pursuant to 13 NCAC 15 .0306(f)(1)(b), the owner or operator shall notify the Director in writing when the provisions of Article 14A of Chapter 95 of the North Carolina General Statutes and the rules in this Chapter have been satisfied. Once the Director or his assignee has conducted the requested reinspection and determined that the provisions of Article 14A of Chapter 95 of the North Carolina General Statutes and rules of this Chapter have been satisfied, the certificate of operation shall be reissued upon payment of the inspection fee pursuant to 13 NCAC 15 .0702 and the reissuance fee pursuant to 13 NCAC 15 .0706. Payment of the applicable fees shall be made in accordance with 13 NCAC 15 .0306(g)(4).

(3) If the Director revokes a certificate of operation pursuant to 13 NCAC 15 .0306(f)(1)(c), upon payment of the original inspection fee pursuant to 13 NCAC 15 .0702 and the reissuance fee pursuant to 13 NCAC 15 .0706, the certificate of operation shall be reissued. Payment of the applicable fees shall be made in accordance with 13 NCAC 15 .0306(g)(4).

(4) Payment of the fees referenced in this rule shall be made by credit card, certified check, bank check or money order payable to the North Carolina Department of Labor. The

owner shall notify the Division in writing when payment has been made.

*History Note:* Authority G.S. 95-110.5; 95-110.6;  
Eff. August 1, 1987;  
Amended Eff. July 1, 2007.

**13 NCAC 15 .0706 ELEVATOR CERTIFICATE OF OPERATION REISSUANCE FEE**

If a certificate of operation is revoked pursuant to 13 NCAC 15 .0306, a reissuance fee of two hundred dollars (\$200.00) shall be paid, in addition to all overdue inspection fees, prior to reissuance of the certificate of operation.

*History Note:* Authority G.S. 95-107; 95-110.5; 95-110.6;  
Eff. July 1, 2007.

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

**15A NCAC 02D .0516 SULFUR DIOXIDE EMISSIONS FROM COMBUSTION SOURCES**

(a) Emission of sulfur dioxide from any source of combustion that is discharged from any vent, stack, or chimney shall not exceed 2.3 pounds of sulfur dioxide per million BTU input. Sulfur dioxide formed by the combustion of sulfur in fuels, wastes, ores, and other substances shall be included when determining compliance with this standard. Sulfur dioxide formed or reduced as a result of treating flue gases with sulfur trioxide or other materials shall also be accounted for when determining compliance with this standard.

(b) A source subject to an emission standard for sulfur dioxide in Rules .0524, .0527, .1110, .1111, .1205, .1206, .1210, or .1211 of this Subchapter shall meet the standard in that particular rule instead of the standard in Paragraph (a) of this Rule.

*History Note:* Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);  
Eff. February 1, 1976;  
Amended Eff. July 1, 2007; April 1, 2003; July 1, 1996;  
February 1, 1995; October 1, 1989; January 1, 1985; April 1, 1977.

**15A NCAC 02D .0519 CONTROL OF NITROGEN DIOXIDE AND NITROGEN OXIDES EMISSIONS**

(a) The emissions of nitrogen dioxide shall not exceed 5.8 pounds per ton of acid produced from any sulfuric acid manufacturing plant.

(b) The emissions of nitrogen oxides shall not exceed:

(1) 0.8 pounds per million BTU of heat input from any oil or gas-fired boiler with a capacity of 250 million BTU per hour or more;

(2) 1.8 pounds per million BTU of heat input from any coal-fired boiler with a capacity of 250 million BTU per hour or more.



(c) The emission limit for a boiler that burns both coal and oil or gas in combination shall be calculated by the equation  $E = [(Ec)(Qc) + (Eo)(Qo)] / Qt$ .

- (1) E = the emission limit for combination in pounds per million BTU.
- (2) Ec = emission limit for coal only as determined by Paragraph (b) of this Rule in pounds per million BTU.
- (3) Eo = emission limit for oil or gas as determined by Paragraph (b) of this Rule in pounds per million BTU.
- (4) Qc = the actual coal heat input to the combination in BTU per hour.
- (5) Qo = the actual oil and gas heat input to the combination in BTU per hour.
- (6) Qt = Qc + Qo and is the actual total heat input to the combination in BTU per hour.

(d) A boiler subject to an emission standard for nitrogen oxides under Rule .0524 (New Source Performance Standards) or .1418 (New Generating Units, Large Boilers, and Large I/C Engines) of this Subchapter shall meet the standard in that particular rule instead of the standard in Paragraph (a) of this Rule.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. February 1, 1976; Amended Eff. July 1, 2007; January 1, 2005; July 1, 1996; October 1, 1989; January 1, 1985.*

**15A NCAC 02D .0521 CONTROL OF VISIBLE EMISSIONS**

(a) Purpose. The intent of this Rule is to prevent, abate and control emissions generated from fuel burning operations and industrial processes where an emission can reasonably be expected to occur, except during startup, shutdowns, and malfunctions approved according to procedures set out in Rule .0535 of this Section.

(b) Scope. This Rule shall apply to all fuel burning sources and to other processes that may have a visible emission. However, sources subject to a visible emission standard in Rules .0506, .0508, .0524, .0543, .0544, .1110, .1111, .1205, .1206, .1210, or .1211 of this Subchapter shall meet that standard instead of the standard contained in this Rule. This Rule does not apply to engine maintenance, rebuild, and testing activities where controls are infeasible, except it does apply to the testing of peak shaving and emergency generators. (In deciding if controls are infeasible, the Director shall consider emissions, capital cost of compliance, annual incremental compliance cost, and environmental and health impacts.)

(c) For sources manufactured as of July 1, 1971, visible emissions shall not be more than 40 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 40 percent opacity if:

- (1) No six-minute period exceeds 90 percent opacity;
- (2) No more than one six-minute period exceeds 40 percent opacity in any hour; and

- (3) No more than four six-minute periods exceed 40 percent opacity in any 24-hour period.

(d) For sources manufactured after July 1, 1971, visible emissions shall not be more than 20 percent opacity when averaged over a six-minute period. However, except for sources required to comply with Paragraph (g) of this Rule, six-minute averaging periods may exceed 20 percent opacity if:

- (1) No six-minute period exceeds 87 percent opacity;
- (2) No more than one six-minute period exceeds 20 percent opacity in any hour; and
- (3) No more than four six-minute periods exceed 20 percent opacity in any 24-hour period.

(e) Where the presence of uncombined water is the only reason for failure of an emission to meet the limitations of Paragraph (c) or (d) of this Rule, those requirements shall not apply.

(f) Exception from Opacity Standard in Paragraph (d) of this Rule. Sources subject to Paragraph (d) of this Rule shall be allowed to comply with Paragraph (c) of this Rule if:

- (1) The owner or operator of the source demonstrates compliance with applicable particulate mass emissions standards; and
- (2) The owner or operator of the source submits data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not violate any national ambient air quality standard.

The burden of proving these conditions shall be on the owner or operator of the source and shall be approached in the following manner. The owner or operator of a source seeking an exception shall apply to the Director requesting this modification in its permit. The applicant shall submit the results of a source test within 90 days of application. Source testing shall be by the appropriate procedure as designated by rules in this Subchapter. During this 90-day period the applicant shall submit data necessary to show that emissions up to those allowed by Paragraph (c) of this Rule will not contravene ambient air quality standards. This evidence shall include an inventory of past and projected emissions from the facility. In its review of ambient air quality, the Division may require additional information that it considers necessary to assess the resulting ambient air quality. If the applicant can thus show that it will be in compliance both with particulate mass emissions standards and ambient air quality standards, the Director shall modify the permit to allow emissions up to those allowed by Paragraph (c) of this Rule.

(g) For sources required to install, operate, and maintain continuous opacity monitoring systems (COMS), compliance with the numerical opacity limits in this Rule shall be determined as follows excluding startups, shutdowns, maintenance periods when fuel is not being combusted, and malfunctions approved as such according to procedures approved under Rule .0535 of this Section:

- (1) No more than four six-minute periods shall exceed the opacity standard in any one day; and
- (2) The percent of excess emissions (defined as the percentage of monitored operating time in a calendar quarter above the opacity limit)

shall not exceed 0.8 percent of the total operating hours. If a source operates less than 500 hours during a calendar quarter, the percent of excess emissions shall be calculated by including hours operated immediately previous to this quarter until 500 operational hours are obtained.

In no instance shall excess emissions exempted under this Paragraph cause or contribute to a violation of any emission standard in this Subchapter or 40 CFR Part 60, 61, or 63 or any ambient air quality standard in Section 15A NCAC 02D .0400 or 40 CFR Part 50.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. February 1, 1976; Amended Eff. July 1, 2007; January 1, 2005; June 1, 2004; April 1, 2003; April 1, 2001; July 1, 1998; July 1, 1996; December 1, 1992; August 1, 1987; January 1, 1985; May 30, 1978.*

**15A NCAC 02D .0524 NEW SOURCE PERFORMANCE STANDARDS**

(a) With the exception of Paragraph (b) and (c) of this Rule, sources subject to new source performance standards promulgated in 40 CFR Part 60 shall comply with emission standards, monitoring and reporting requirements, maintenance requirements, notification and record keeping requirements, performance test requirements, test method and procedural provisions, and any other provisions, as required therein, rather than with any otherwise-applicable rule in this Section which would be in conflict therewith.

(b) The following is not included under this Rule:

- (1) 40 CFR Part 60, Subpart AAA (new residential wood heaters);
- (2) 40 CFR Part 60, Subpart B (adoption and submittal of state plans for designated facilities);
- (3) 40 CFR Part 60, Subpart C (emission guidelines and compliance times);
- (4) 40 CFR Part 60, Subpart Cb (guidelines for municipal waste combustors constructed on or before September 20, 1994);
- (5) 40 CFR Part 60, Subpart Cc (guidelines for municipal solid waste landfills);
- (6) 40 CFR Part 60, Subpart Cd (guidelines for sulfuric acid production units);
- (7) 40 CFR Part 60, Subpart Ce (guidelines for hospital, medical, infectious waste incinerators);
- (8) 40 CFR Part 60, Subpart BBBB (guidelines for small municipal waste combustion units constructed on or before August 30, 1999);
- (9) 40 CFR Part 60, Subpart DDDD (guidelines for commercial and industrial solid waste incinerators constructed on or before November 30, 1999);
- (10) 40 CFR Part 60, Subpart FFFF (guidelines for other solid waste incinerators constructed on or before December 9, 2004); or

(11) 40 CFR Part 60, Subpart HHHH (guidelines for coal-fired electric steam generating units.

(c) Along with the notice appearing in the North Carolina Register for a public hearing to amend this Rule to exclude a standard from this Rule, the Director shall state whether or not the new source performance standards promulgated under 40 CFR Part 60, or part thereof, shall be enforced. If the Commission does not adopt the amendment to this Rule to exclude or amend the standard within 12 months after the close of the comment period on the proposed amendment, the Director shall begin enforcing that standard when 12 months has elapsed after the end of the comment period on the proposed amendment.

(d) New sources of volatile organic compounds that are located in an area designated in 40 CFR 81.334 as nonattainment for ozone or an area identified in accordance with 15A NCAC 02D .0902 as being in violation of the ambient air quality standard for ozone shall comply with the requirements of 40 CFR Part 60 that are not excluded by this Rule, as well as with any applicable requirements in Section .0900 of this Subchapter.

(e) All requests, reports, applications, submittals, and other communications to the administrator required under Paragraph (a) of this Rule shall be submitted to the Director of the Division of Air Quality rather than to the Environmental Protection Agency.

(f) In the application of this Rule, definitions contained in 40 CFR Part 60 shall apply rather than those of Section .0100 of this Subchapter.

(g) With the exceptions allowed under 15A NCAC 02Q .0102, Activities Exempted from Permit Requirements, the owner or operator of the source shall apply for and receive a permit as required in 15A NCAC 02Q .0300 or .0500.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); 150B-21.6; Eff. June 18, 1976; Temporary Amendment Eff. January 3, 1988, for a period of 180 days to expire on June 30, 1988; Amended Eff. December 1, 1992; July 1, 1992; Temporary Amendment Eff. March 8, 1994, for a period of 180 days or until the permanent rule is effective, whichever is sooner; Amended Eff. July 1, 2007; January 1, 2007; July 1, 2000; April 1, 1997; July 1, 1996; July 1, 1994.*

**15A NCAC 02D .0902 APPLICABILITY**

(a) The rules in this Section do not apply except as specifically set out in this Rule.

(b) Regardless of any other statement of applicability of this Section, this Section does not apply to:

- (1) sources whose emissions of volatile organic compounds are not more than 15 pounds per day, except that this Section does apply to the manufacture and use of cutback asphalt and to gasoline service stations or gasoline dispensing facilities regardless of levels of emissions of volatile organic compounds;

- (2) sources whose emissions do not exceed 800 pounds of volatile organic compounds per calendar month and that are:
    - (A) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
    - (B) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
    - (C) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
    - (D) research and development laboratory activities provided the activity produces no commercial product or feedstock material; or
  - (3) emissions of volatile organic compounds during startup or shutdown operations from sources which use incineration or other types of combustion to control emissions of volatile organic compounds whenever the off-gas contains an explosive mixture during the startup or shutdown operation if the exemption is approved by the Director as meeting the requirements of this Subparagraph.
- (c) The following rules of this Section apply statewide:
- (1) .0925, Petroleum Liquid Storage in Fixed Roof Tanks, for fixed roof tanks at gasoline bulk plants and gasoline bulk terminals;
  - (2) .0926, Bulk Gasoline Plants;
  - (3) .0927, Bulk Gasoline Terminals;
  - (4) .0928, Gasoline Service Stations Stage I;
  - (5) .0932, Gasoline Truck Tanks and Vapor Collection Systems;
  - (6) .0933, Petroleum Liquid Storage in External Floating Roof Tanks, for external floating roof tanks at bulk gasoline plants and bulk gasoline terminals;
  - (7) .0948, VOC Emissions from Transfer Operations;
  - (8) .0949, Storage of Miscellaneous Volatile Organic Compounds; and
  - (9) .0958, Work Practices for Sources of Volatile Organic Compounds.
- (d) Rule .0953, Vapor Return Piping for Stage II Vapor Recovery, of this Section applies in Davidson, Durham, Forsyth, Guilford, Wake, Dutchville Township in Granville County, and that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek

- and back to Yadkin River in accordance with provisions set out in that Rule.
- (e) All sources located in Mecklenburg County that were required to comply with any of the Rules in Subparagraphs (e)(1) or (2) of this Rule before July 5, 1995 shall continue to comply with these Rules:
- (1) .0917 through .0937 of this Section, or
  - (2) .0943 through .0945 of this Section.
- (f) The Rules in this Section apply to facilities with the potential to emit 100 tons or more volatile organic compounds per year in the following areas:
- (1) Cabarrus County
  - (2) Gaston County
  - (3) Lincoln County
  - (4) Mecklenburg County
  - (5) Rowan County
  - (6) Union County
  - (7) Davidson Township and Coddle Creek Township in Iredell County
- (g) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be in accordance with Rule .0909 of this Section.
- (h) If a violation of the ambient air quality standard for ozone is measured in accordance with 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to

maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as being necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in accordance with Rule .0909 of this Section.

(i) If EPA reclassifies the Charlotte-Gastonia-Rock Hill ozone nonattainment area as serious for ozone under Section 182 of the federal Clean Air Act, the rules in this Section shall apply to facilities in Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties and Davidson and Coddle Creek townships in Iredell County with the potential to emit at least 50 tons but less than 100 tons of volatile organic compounds per year. Within 60 days of the reclassification, the Director shall notice the applicability of these Rules to these facilities in the North Carolina Register and shall send written notification to all permitted facilities within the counties in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be according to Rule .0909 of this Section.

(j) Sources whose emissions of volatile organic compounds are not subject to limitation under this Section may still be subject to emission limits on volatile organic compounds in Rules .0524, .1110, or .1111 of this Subchapter.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1979; Amended Eff. July 1, 2007; March 1, 2007; August 1, 2004; July 1, 2000; April 1, 1997; July 1, 1996; July 1, 1995; May 1, 1995; July 1, 1994.*

**15A NCAC 02D .0909 COMPLIANCE SCHEDULES FOR SOURCES IN NONATTAINMENT AREAS**

(a) Applicability. With the exceptions in Paragraph (b) of this Rule, this Rule applies to all sources covered by Paragraph (f), (g), (h), or (i) of Rule .0902 of this Section.

(b) Exceptions. This Rule does not apply to:

- (1) sources in Mecklenburg County required to comply with the requirements of this Section under Rule .0902(e) of this Section;
- (2) sources covered under Rule .0953 or .0954 of this Section; or

- (3) sources required to comply with the requirements of this Section under Rule .0902(c) of this Section.

(c) Maintenance area and Charlotte ozone nonattainment area contingency plan. The owner or operator of any source subject to this Rule because of the application of Paragraph (g), (h), or (i) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:

- (1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:
  - (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;
  - (B) The compliance schedule shall contain the following increments of progress:
    - (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
    - (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
    - (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed;
  - (C) Final compliance shall be achieved within three years after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
- (2) if compliance is to be achieved by using low solvent content coating technology:
  - (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone;
  - (B) The compliance schedule shall contain the following increments:
    - (i) a date by which research and development of low solvent

- content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
- (ii) a date by which evaluation of product quality and commercial acceptance shall be completed;
- (iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
- (iv) a date by which process modifications shall be initiated; and
- (v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin;
- (C) Final compliance shall be achieved within three years after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
- (3) The owner or operator shall certify to the Director within five days after each increment deadline of progress in this Paragraph, whether the required increment of progress has been met.
- (d) Nonattainment areas. The owner or operator of any source subject to this Rule because of the application of Paragraphs (f) of Rule .0902 of this Section shall adhere to the following increments of progress and schedules:
- (1) if compliance is to be achieved by installing emission control equipment, replacing process equipment, or modifying existing process equipment:
- (A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007;
- (B) The compliance schedule shall contain the following increments of progress:
- (i) a date by which contracts for the emission control system and process equipment shall be awarded or orders shall be issued for purchase of component parts;
- (ii) a date by which on-site construction or installation of the emission control and process equipment shall begin; and
- (iii) a date by which on-site construction or installation of the emission control and process equipment shall be completed.
- (C) Final compliance shall be achieved no later than April 1, 2009.
- (2) if compliance is to be achieved by using low solvent content coating technology:
- (A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007.
- (B) The compliance schedule shall contain the following increments:
- (i) a date by which research and development of low solvent content coating shall be completed if the Director determines that low solvent content coating technology has not been sufficiently researched and developed;
- (ii) a date by which evaluation of product quality and commercial acceptance shall be completed;
- (iii) a date by which purchase orders shall be issued for low solvent content coatings and process modifications;
- (iv) a date by which process modifications shall be initiated; and
- (v) a date by which process modifications shall be completed and use of low solvent content coatings shall begin.
- (C) Final compliance shall be achieved no later than April 1, 2009.
- (3) The owner or operator shall certify to the Director within five days after the deadline, for each increment of progress in this Paragraph, whether the required increment of progress has been met.
- (e) If the Director requires a test to demonstrate that compliance has been achieved, the owner or operator of sources subject to this Rule shall conduct a test and submit a final test report within six months after the stated date of final compliance.
- (f) Sources already in compliance.
- (1) Maintenance area and Charlotte ozone nonattainment area contingency plan. Paragraph (c) of this Rule shall not apply to sources that are in compliance with applicable rules of this Section when the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone and that have determined and certified compliance

to the satisfaction of the Director within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.

- (2) Nonattainment areas. Paragraphs (d) of this Rule shall not apply to sources in an area named in Paragraph (f) of Rule .0902 of this Section that are in compliance with applicable rules of this Section on March 1, 2007.

(g) New sources.

- (1) Maintenance area and Charlotte ozone nonattainment area contingency plan. The owner or operator of any new source of volatile organic compounds not in existence or under construction before the date that the Director notices in the North Carolina Register in accordance with Paragraph (g), (h), or (i) of Rule .0902 of this Section the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone, shall comply with all applicable rules in this Section upon start-up of the source.
- (2) Nonattainment areas. The owner or operator of any new source of volatile organic compounds not in existence or under construction before March 1, 2007 in an area identified in Paragraph (f) of Rule .0902 shall comply with all applicable rules in this Section upon start-up of the source.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1979; Amended Eff. July 1, 2007; March 1, 2007; July 1, 2000; April 1, 1997; July 1, 1995; July 1, 1994; July 1, 1988; January 1, 1985.*

**15A NCAC 02D .0960 CERTIFICATION OF LEAK TIGHTNESS TESTER**

- (a) Purpose. The purpose of this Rule is to establish procedures for certifying facilities to perform leak tightness tests on truck tanks as defined under Rule .0932 of this Section.
- (b) Certification request. To request certification to perform leak tightness testing on truck tanks for the purposes of complying with Rule .0932 of this Section, a facility shall submit to the Director the following information:
- (1) the name and address of the facility requesting certification, including the primary contact and telephone number; and
- (2) the federal (tank cargo) number.
- (c) Approval. The Director shall certify a facility requesting certification to perform leak tightness testing if he finds that:
- (1) All the information required under Paragraph (b) of this Rule has been submitted;
- (2) The Division has observed the facility conducting one or more leak tightness tests and finds that:

- (A) The facility has the equipment necessary to perform Method 27 of 40 CFR Part 60, Subpart A; and
- (B) The facility has the skills necessary to perform Method 27 of 40 CFR Part 60, Subpart A correctly;

(d) Expiration. A certification to perform leak tightness testing under this Rule shall expire one year from the date of its issuance.

(e) Renewal. To have a certification renewed, the certified facility shall submit to the Director a request to have the certification renewed. Within 30 days after receipt of the request, the Division shall observe the certified facility conducting one or more leak tightness tests. If the Director finds that:

- (1) The certified facility has the equipment necessary to perform Method 27 of 40 CFR Part 60, Subpart A; and
- (2) The certified facility has the skills necessary to perform Method 27 of 40 CFR Part 60, Subpart A correctly,

he shall renew the certification. If the certified facility submits a request for renewal after the expiration of the last certification, the Director shall reject the renewal request, and the facility shall request a new certification under Paragraph (b) of this Rule.

(f) Interim certification. If the Division is unable to observe the performance of leak tightness testing required under Paragraphs (c) or (e) of this Rule, the Director shall issue an interim certification for up to 90 days to allow the certified facility to perform leak tightness tests. An interim certification shall not be renewed.

(g) Revocation of Certification. If the Director finds that a certified facility is not performing Method 27 of 40 CFR Part 60, Subpart A correctly or that the certified facility is certifying tanks as leak tight that have not passed the leak tightness test, the Director shall revoke the facility's certification or interim certification.

(h) Stickers. The Division shall provide serialized stickers at no cost, or the facility may choose to provide the stickers. If the facility provides the stickers, the stickers shall contain the same information that is on the stickers provided by the Division and shall have the same dimensions and a sample sticker shall accompany the application for certification. Once a facility is certified under this Rule to perform leak tightness tests, stickers are to be:

- (1) affixed to tanks that have passed the test under Rule .0932 of this Section; and
- (2) placed near the Department of Transportation Certification (DOT, 49 CFR 178.340-10b).

The certified facility performing the test shall maintain a log matching sticker serial numbers and tank identification numbers. The certified facility shall send this log to the Director monthly.

(i) Certification report. The certified facility performing the test shall give a copy of the certification report to the truck tank owner and shall retain a copy of the certification report. The certification report shall contain the following information:

- (1) name, address, and telephone number of certified facility performing the test;
- (2) name and signature of the individual actually performing the test;

- (3) name and address of the owner of the tank;
- (4) serial number of the sticker and identification number of the tank;
- (5) the date that the sticker is issued and the date that the sticker expires, which shall be one year after the issuance date;
- (6) the pressure drops measured and vacuum drops measured; and
- (7) list or description of problems with tank (if none are found, the report shall state that none were found).

(j) Record retention. The certified facility performing the test and the owner of the truck tank shall keep the certification report for at least two years. Certification reports shall be made available to the Division upon request.

(k) Verification of leak tightness. The Division may use Method 21 to verify the leak tightness of a tank.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (13); Eff. April 1, 2003; Amended Eff. July 1, 2007.*

**15A NCAC 02D .1004 TAILPIPE EMISSION STANDARDS FOR CO AND HC**

*History Note: Authority G.S. 20-128.2(a); 20-183.5; 143-215.3(a)(1); 143-215.107(a)(3); 143-215.107(a)(6); 143-215.107(a)(7); Eff. December 1, 1982; Amended Eff. August 1, 2002; July 1, 1993; April 1, 1991; November 1, 1986; July 1, 1984; Repealed Eff. July 1, 2007.*

**15A NCAC 02D .1201 PURPOSE AND SCOPE**

- (a) This Section sets forth rules for the control of the emissions of air pollutants from incinerators.
- (b) The rules in this Section apply to all types of incinerators as defined by 15A NCAC 02D .0101(21), including incinerators with heat recovery and industrial incinerators.
- (c) The rules in this Section do not apply to:
  - (1) afterburners, flares, fume incinerators, and other similar devices used to reduce the emissions of air pollutants from processes, whose emissions shall be regulated as process emissions;
  - (2) any boilers or industrial furnaces that burn waste as a fuel, except hazardous waste as defined in 40 CFR 260.10;
  - (3) air curtain burners, which shall comply with Section .1900 of this Subchapter; or
  - (4) incinerators used to dispose of dead animals or poultry, that meet the following requirements:
    - (A) the incinerator is located on a farm and is operated by the farm owner or by the farm operator;
    - (B) the incinerator is used solely to dispose of animals or poultry

- originating on the farm where the incinerator is located;
- (C) the incinerator is not charged at a rate that exceeds its design capacity; and
- (D) the incinerator complies with Rule .0521 (visible emissions) and .1806 (odorous emissions) of this Subchapter.

(d) If an incinerator is more than one type of incinerator, then the following order shall be used to determine the standards and requirements to apply:

- (1) hazardous waste incinerators;
- (2) sewage sludge incinerators;
- (3) sludge incinerators;
- (4) municipal waste combustors;
- (5) commercial and industrial solid waste incinerators;
- (6) hospital, medical, or infectious waste incinerators (HMIWIs);
- (7) other solid waste incinerators;
- (8) conical incinerators;
- (9) crematory incinerators; and
- (10) other incinerators.

(e) In addition to any permit that may be required under 15A NCAC 02Q, Air Quality Permits Procedures, a permit may be required by the Division of Waste Management as determined by the permitting rules enforced by the Division of Waste Management.

(f) Referenced document SW-846 "Test Methods for Evaluating Solid Waste," Third Edition, cited by rules in this Section is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document is available for inspection at the North Carolina Department of Environment and Natural Resources Library located at 512 North Salisbury Street, Raleigh, NC 27603. Copies of this document may be obtained through the US Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or by calling (202) 783-3238. The cost of this document is three hundred nineteen dollars (\$319.00).

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(1), (3), (4), (5); Eff. October 1, 1991; Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; April 1, 1995; December 1, 1993; Temporary Amendment Eff. March 1, 2002; Amended Eff. July 1, 2007; December 1, 2005; August 1, 2002.*

**15A NCAC 02D .1202 DEFINITIONS**

(a) For the purposes of this Section, the definitions at G.S. 143-212 and 143-213 and 15A NCAC 02D .0101 shall apply, and in addition, the following definitions shall apply. If a term in this Rule is also defined at 15A NCAC 02D .0101, then the definition in this Rule controls.

- (1) "Class I municipal waste combustor" means a small municipal waste combustor located at a municipal waste combustion plant with an aggregate plant combustion capacity greater

- than 250 tons per day of municipal solid waste.
- (2) "Commercial and industrial solid waste incinerator" (CISWI) or "commercial and industrial solid waste incineration unit" means any combustion device, except air pollution control devices, that combusts commercial and industrial waste.
  - (3) "Commercial and industrial waste" means solid waste combusted in an enclosed device using controlled flame combustion without energy recovery that is a distinct operating unit of any commercial or industrial facility (including field-erected, modular, and custom built incineration units operating with starved or excess air).
  - (4) "Co-fired combustor (as defined in 40 CFR Part 60, Subpart Ec)" means a unit combusting hospital, medical, or infectious waste with other fuels or wastes (e.g., coal, municipal solid waste) and subject to an enforceable requirement limiting the unit to combusting a fuel feed stream, 10 percent or less of the weight of which is comprised, in aggregate, of hospital, medical, or infectious waste as measured on a calendar quarter basis. For the purposes of this definition, pathological waste, chemotherapeutic waste, and low-level radioactive waste are considered "other" wastes when calculating the percentage of hospital, medical, or infectious waste combusted.
  - (5) "Crematory incinerator" means any incinerator located at a crematory regulated under 21 NCAC 34C that is used solely for the cremation of human remains.
  - (6) "Construction and demolition waste" means wood, paper, and other combustible waste, except for hazardous waste and asphaltic material, resulting from construction and demolition projects.
  - (7) "Dioxin and Furan" means tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans.
  - (8) "Hazardous waste incinerator" means an incinerator regulated under 15A NCAC 13A .0101 through .0119, 40 CFR 264.340 to 264.351, Subpart O, or 265.340 to 265.352, Subpart O.
  - (9) "Hospital, medical and infectious waste incinerator (HMIWI)" means any device that combusts any amount of hospital, medical and infectious waste.
  - (10) "Large HMIWI" means:
    - (A) a HMIWI whose maximum design waste burning capacity is more than 500 pounds per hour;
    - (B) a continuous or intermittent HMIWI whose maximum charge rate is more than 500 pounds per hour; or
    - (C) a batch HMIWI whose maximum charge rate is more than 4,000 pounds per day.
  - (11) "Hospital waste" means discards generated at a hospital, except unused items returned to the manufacturer. The definition of hospital waste does not include human corpses, remains, and anatomical parts that are intended for interment or cremation.
  - (12) "Institutional facility" means a land-based facility owned or operated by an organization having a governmental, educational, civic, or religious purpose, such as a school, hospital, prison, military installation, church, or other similar establishment or facility.
  - (13) "Institutional waste" means solid waste that is combusted at any institutional facility using controlled flame combustion in an enclosed, distinct operating unit:
    - (A) whose design does not provide for energy recovery and
    - (B) which is operated without energy recovery or operated with only waste heat recovery.

Institutional waste also means solid waste combusted on site in an air curtain incinerator that is a distinct operating unit of any institutional facility.
  - (14) "Institutional waste incineration unit" means any combustion unit that combusts institutional waste and is a distinct operating unit of the institutional facility that generated the waste.
  - (15) "Large municipal waste combustor" means each municipal waste combustor unit with a combustion capacity greater than 250 tons per day of municipal solid waste.
  - (16) "Medical and Infectious Waste" means any waste generated in the diagnosis, treatment, or immunization of human beings or animals, in research pertaining thereto, or in the production or testing of biologicals that is listed in Part (A)(i) through (A)(vii) of this Subparagraph.
    - (A) The definition of medical and infectious waste includes:
      - (i) cultures and stocks of infectious agents and associated biologicals, including:
        - (I) cultures from medical and pathological laboratories;
        - (II) cultures and stocks of infectious agents





- (A) a HMIWI whose maximum design waste burning capacity is more than 200 pounds per hour but less than or equal to 500 pounds per hour;
  - (B) a continuous or intermittent HMIWI whose maximum charge rate is more than 200 pounds per hour but less than or equal to 500 pounds per hour; or
  - (C) a batch HMIWI whose maximum charge rate is more than 1,600 pounds per day but less than or equal to 4,000 pounds per day.
- (18) "Municipal waste combustor (MWC) or municipal waste combustor unit" means a municipal waste combustor as defined in 40 CFR 60.51b.
- (19) "Municipal waste combustor plant" means one or more designated units at the same location.
- (20) "Municipal waste combustor unit capacity" means the maximum charging rate of a municipal waste combustor unit expressed in tons per day of municipal solid waste combusted, calculated according to the procedures under 40 CFR 60.58b(j). Section 60.58b(j) includes procedures for determining municipal waste combustor unit capacity for continuous and batch feed municipal waste combustors.
- (21) "Municipal-type solid waste (MSW) or Municipal Solid Waste" means municipal-type solid waste defined in 40 CFR 60.51b.
- (22) "POTW" means a publicly owned treatment works as defined in 40 CFR 501.2.
- (23) "Other solid waste incineration unit" or "OSWI unit" means either a very small municipal waste combustion unit or an institutional waste incineration unit, as defined in this Paragraph.
- (24) "Same Location" means the same or contiguous property that is under common ownership or control including properties that are separated only by a street, road, highway, or other public right-of-way. Common ownership or control includes properties that are owned, leased, or operated by the same entity, parent entity, subsidiary, subdivision, or any combination thereof including any municipality or other governmental unit, or any quasi-governmental authority (e.g., a public utility district or regional waste disposal authority).
- (25) "Sewage sludge incinerator" means any incinerator regulated under 40 CFR Part 503, Subpart E.
- (26) "Sludge incinerator" means any incinerator regulated under Rule .1110 of this Subchapter but not under 40 CFR Part 503, Subpart E.
- (27) "Small HMIWI" means:
- (A) a HMIWI whose maximum design waste burning capacity is less than or equal to 200 pounds per hour;
  - (B) a continuous or intermittent HMIWI whose maximum charge rate is less than or equal to 200 pounds per hour; or
  - (C) a batch HMIWI whose maximum charge rate is less than or equal to 1,600 pounds per day.
- (28) "Small municipal waste combustor" means each municipal waste combustor unit with a combustion capacity that is greater than 11 tons per day but not more than 250 tons per day of municipal solid waste.
- (29) "Small remote HMIWI" means any small HMIWI which is located more than 50 miles from the boundary of the nearest Standard Metropolitan Statistical Area (SMSA) and which burns less than 2,000 pounds per week of hospital, medical and infectious waste. The 2,000 pound per week limitation does not apply during performance tests.
- (30) "Standard Metropolitan Statistical Area (SMSA)" means any area listed in Office of Management and Budget (OMB) Bulletin No. 93-17, entitled "Revised Statistical Definitions for Metropolitan Areas" dated July 30, 1993. The referenced document cited by this Item is hereby incorporated by reference and does not include subsequent amendments or editions. A copy of this document may be obtained from the Division of Air Quality, P.O. Box 29580, Raleigh, North Carolina 27626-0580 at a cost of 10 cents (\$0.10) per page or may be obtained through the internet at <http://www.census.gov/population/estimates/metro-city/93mfips.txt>.
- (31) "Very small municipal waste combustion unit" means any municipal waste combustion unit that has the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel, as determined by the calculations in 40 CFR 60.3076.
- (b) Whenever reference is made to the Code of Federal Regulations in this Section, the definition in the Code of Federal Regulations shall apply unless specifically stated otherwise in a particular rule.
- History Note: Authority G.S. 143-213; 143-215.3(a)(1); Eff. October 1, 1991; Amended Eff. July 1, 2000; July 1, 1999; July 1, 1998; July 1, 1996; April 1, 1995; December 1, 1993; Temporary Amendment Eff. March 1, 2002; Amended Eff. July 1, 2007; August 1, 2002.*

**15A NCAC 02D .1208 OTHER INCINERATORS**

- (a) Applicability.

- (1) This Rule applies to any incinerator not covered under Rules .1203 through .1207, .1210, or .1211 of this Section.
  - (2) If any incinerator subject to this Rule:
    - (A) is used solely to cremate pets; or
    - (B) if the emissions of all toxic air pollutants from an incinerator subject to this Rule and associated waste handling and storage are less than the levels listed in 15A NCAC 02Q .0711;
 

the incinerator shall be exempt from Subparagraphs (b)(6) through (b)(9) and Paragraph (c) of this Rule.
- (b) Emission Standards.
- (1) The emission standards in this Rule apply to any incinerator subject to this Rule except where Rules .0524, 1110, or .1111 of this Subchapter apply. However, when Subparagraphs (8) or (9) of this Paragraph and Rules .0524, .1110, or .1111 of this Subchapter regulate the same pollutant, the more restrictive provision for each pollutant apply, notwithstanding provisions of Rules .0524, .1110, or .1111 of this Subchapter to the contrary.
  - (2) Particulate Matter. Any incinerator subject to this Rule shall comply with one of the following emission standards for particulate matter:
    - (A) For refuse charge rates between 100 and 2000 pounds per hour, the allowable emissions rate for particulate matter from any stack or chimney of any incinerator subject to this Rule shall not exceed the level calculated with the equation  $E=0.002P$  calculated to two significant figures, where "E" equals the allowable emission rate for particulate matter in pounds per hour and "P" equals the refuse charge rate in pounds per hour. For refuse charge rates of 0 to 100 pounds per hour the allowable emission rate in 0.2 pounds per hour. For refuse charge rates of 2000 pounds per hour or greater the allowable emission rate shall be 4.0 pounds per hour. Compliance with this Part shall be determined by averaging emissions over a three-hour block period.
    - (B) Instead of meeting the standards in Part (A) of this Subparagraph, the owner or operator of any incinerator subject to this Rule may choose to limit particulate emissions from the incinerator to 0.08 grains per dry standard cubic foot corrected to 12 percent carbon dioxide. In order to choose this option, the owner or operator of the incinerator shall demonstrate that the particulate ambient air quality standards will not be violated. To correct to 12 percent carbon dioxide, the measured concentration of particulate matter is multiplied by 12 and divided by the measured percent carbon dioxide. Compliance with this Part shall be determined by averaging emissions over a three-hour block period.
  - (3) Visible Emissions. Any incinerator subject to this Rule shall comply with Rule .0521 of this Subchapter for the control of visible emissions.
  - (4) Sulfur Dioxide. Any incinerator subject to this Rule shall comply with Rule .0516 of this Subchapter for the control of sulfur dioxide emissions.
  - (5) Odorous Emissions. Any incinerator subject to this Rule shall comply with Rule .1806 of this Subchapter for the control of odorous emissions.
  - (6) Hydrogen Chloride. Any incinerator subject to this Rule shall control emissions of hydrogen chloride such that they do not exceed four pounds per hour unless they are reduced by at least 90 percent by weight or to no more than 50 parts per million by volume corrected to seven percent oxygen (dry basis). Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
  - (7) Mercury Emissions. Emissions of mercury and mercury compounds from the stack or chimney of any incinerator subject to this Rule shall not exceed 0.032 pounds per hour. Compliance with this Subparagraph shall be determined by averaging emissions over a one-hour period.
  - (8) Toxic Emissions. The owner or operator of any incinerator subject to this Rule shall demonstrate compliance with Section .1100 of this Subchapter according to 15A NCAC 02Q .0700.
  - (9) Ambient Standards.
    - (A) In addition to the ambient air quality standards in Section .0400 of this Subchapter, the following ambient air quality standards, which are an annual average, in milligrams per cubic meter at 77 degrees F (25 degrees C) and 29.92 inches (760 mm) of mercury pressure, and which are increments above background concentrations, shall apply

aggregately to all incinerators at a facility subject to this Rule:

- (i) arsenic and its compounds  
2.3x10<sup>-7</sup>
- (ii) beryllium and its compounds  
4.1x10<sup>-6</sup>
- (iii) cadmium and its compounds  
5.5x10<sup>-6</sup>
- (iv) chromium (VI) and its compounds  
8.3x10<sup>-8</sup>

(B) The owner or operator of a facility with incinerators subject to this Rule shall demonstrate compliance with the ambient standards in Subparts (i) through (iv) of Part (A) of this Subparagraph by following the procedures set out in Rule .1106 of this Subchapter. Modeling demonstrations shall comply with the requirements of Rule .0533 of this Subchapter.

(C) The emission rates computed or used under Part (B) of this Subparagraph that demonstrate compliance with the ambient standards under Part (A) of this Subparagraph shall be specified as a permit condition for the facility with incinerators subject to this Rule as their allowable emission limits unless Rule .0524, .1110 or .1111 of this Subchapter requires more restrictive rates.

(c) Operational Standards.

- (1) The operational standards in this Rule do not apply to any incinerator subject to this Rule when applicable operational standards in Rule .0524, .1110, or .1111 of this Subchapter apply.
- (2) Crematory Incinerators. Gases generated by the combustion shall be subjected to a minimum temperature of 1600 degrees F for a period of not less than one second.
- (3) Other Incinerators. All incinerators not subject to any other rule in this Section shall meet the following requirement: Gases generated by the combustion shall be subjected to a minimum temperature of 1800 degrees F for a period of not less than one second. The temperature of 1800 degrees F shall be maintained at least 55 minutes out of each 60-minute period, but at no time shall the temperature go below 1600 degrees F.
- (4) Except during start-up where the procedure has been approved according to Rule .0535(g) of this Subchapter, waste material shall not be loaded into any incinerator subject to this Rule when the temperature is below the minimum required temperature. Start-up procedures may be determined on a case-by-case basis

according to Rule .0535(g) of this Subchapter. Any incinerator subject to this Rule shall have automatic auxiliary burners that are capable of maintaining the required minimum temperature in the secondary chamber excluding the heat content of the wastes.

(d) Test Methods and Procedures.

- (1) The test methods and procedures described in Rule .0501 of this Subchapter and in 40 CFR Part 60 Appendix A and 40 CFR Part 61 Appendix B shall be used to determine compliance with emission rates. Method 29 of 40 CFR Part 60 shall be used to determine emission rates for metals. However, Method 29 shall be used to sample for chromium (VI), and SW 846 Method 0060 shall be used for the analysis.
- (2) The Director shall require the owner or operator to test his incinerator to demonstrate compliance with the emission standards listed in Paragraph (b) of this Rule if necessary to determine compliance with the emission standards of Paragraph (b) of this Rule.

(e) Monitoring, Recordkeeping, and Reporting.

- (1) The owner or operator of an incinerator subject to the requirements of this Rule shall comply with the monitoring, recordkeeping, and reporting requirements in Section .0600 of this Subchapter.
- (2) The owner or operator of an incinerator, except an incinerator meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section, shall maintain and operate a continuous temperature monitoring and recording device for the primary chamber and, where there is a secondary chamber, for the secondary chamber. The Director shall require a temperature monitoring device for incinerators meeting the requirements of Parts .1201(c)(4)(A) through (D) of this Section if the incinerator is in violation of the requirements of Part .1201(c)(4)(D) of this Section. The owner or operator of an incinerator that has installed air pollution abatement equipment to reduce emissions of hydrogen chloride shall install, operate, and maintain continuous monitoring equipment to measure pH for wet scrubber systems and rate of alkaline injection for dry scrubber systems. The Director shall require owner or operator of an incinerator with a permitted charge rate of 750 pounds per hour or more to install, operate, and maintain continuous monitors for oxygen or for carbon monoxide or both as necessary to determine proper operation of the incinerator. The Director shall require the owner or operator of an incinerator with a permitted charge rate of less than 750 pounds per hour to install, operate, and maintain

monitors for oxygen or for carbon monoxide or both if necessary to determine proper operation of the incinerator.

(f) Excess Emissions and Start-up and Shut-down. Any incinerator subject to this Rule shall comply with Rule .0535, Excess Emissions Reporting and Malfunctions, of this Subchapter.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); Eff. July 1, 1998; Amended Eff. July 1, 2007; January 1, 2005; August 1, 2002; July 1, 2000; July 1, 1999.*

**15A NCAC 02D .1402 APPLICABILITY**

(a) The rules in this Section do not apply except as specifically set out in this Rule.

(b) The requirements of this Section shall apply to all sources May 1 through September 30 of each year.

(c) Rules .1409(b) and .1416 through .1423 of this Section apply statewide.

(d) The Rules .1407 through .1409 and .1413 of this Section apply to facilities with the potential to emit 100 ton or more nitrogen oxides per year in the following areas:

- (1) Cabarrus County
- (2) Gaston County
- (3) Lincoln County
- (4) Mecklenburg County
- (5) Rowan County
- (6) Union County
- (7) Davidson Township and Coddle Creek Township in Iredell County

(e) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Davidson, Forsyth, or Guilford County or that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to Yadkin River or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Forsyth

County, "Director" means for the purpose of notifying permitted facilities in Forsyth County, the Director of the Forsyth County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

(f) If a violation of the ambient air quality standard for ozone is measured according to 40 CFR 50.9 in Durham or Wake County or Dutchville Township in Granville County, the Director shall initiate analysis to determine the control measures needed to attain and maintain the ambient air quality standard for ozone. By the following May 1, the Director shall implement the specific stationary source control measures contained in this Section that are required as part of the control strategy necessary to bring the area into compliance and to maintain compliance with the ambient air quality standard for ozone. The Director shall implement the rules in this Section identified as necessary by the analysis by notice in the North Carolina Register. The notice shall identify the rules that are to be implemented and shall identify whether the rules implemented are to apply in Durham or Wake County or Dutchville Township in Granville County or any combination thereof. At least one week before the scheduled publication date of the North Carolina Register containing the Director's notice implementing rules in this Section, the Director shall send written notification to all permitted facilities within the county in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. Compliance shall be in according to Rule .1403 of this Section.

(g) If EPA notifies the State that its nonattainment plan for ozone has failed to attain the ambient air quality standard for ozone in the Charlotte-Gastonia-Rock Hill ozone nonattainment area, the rules in this Section shall apply to sources in Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, and Union Counties and Davidson and Coddle Creek townships in Iredell County with the potential to emit at least 50 tons but less than 100 tons of nitrogen oxides per year. Within 60 days of receipt of the notification from EPA, the Director shall notice the applicability of these Rules to these facilities in the North Carolina Register and shall send written notification to all permitted facilities within the counties in which the rules are being implemented that are or may be subject to the requirements of this Section informing them that they are or may be subject to the requirements of this Section. (For Mecklenburg County, "Director" means for the purpose of notifying permitted facilities in Mecklenburg County, the Director of the Mecklenburg County local air pollution control program.) Compliance shall be according to Rule .1403 of this Section.

(h) Regardless of any other statement of applicability of this Section, this Section does not apply to any:

- (1) source not required to obtain an air permit under 15A NCAC 02Q .0102 or is an insignificant activity as defined at 15A NCAC 02Q .0103(19);
- (2) incinerator or thermal or catalytic oxidizer used primarily for the control of air pollution;
- (3) emergency generator;
- (4) emergency use internal combustion engine;
- (5) source that is not covered under Rules .1416, .1417, or .1418, and that is at a facility with a

federally enforceable potential to emit nitrogen oxides of:

- (A) less than 100 tons per year; and
  - (B) less than 560 pounds per calendar day beginning May 1 through September 30 of any year.
- (6) stationary internal combustion engine less than 2400 brake horsepower that operates no more than the following hours between May 1 and September 30:
- (A) for diesel engines:  
 $t = 833,333 / ES$
  - (B) for natural gas-fired engines:  
 $t = 700,280 / ES$

where  $t$  equals time in hours and ES equals engine size in horsepower.

This exemption shall not apply to any of the sources listed in Rules .1417(a)(1) or (2) or .1417(b) of this Section except that it shall apply to:

- (7) stationary combustion turbine constructed before January 1, 1979, that has a federally enforceable permit that restricts:
  - (A) its potential emissions of nitrogen oxides to no more than 25 tons between May 1 and September 30;
  - (B) it to burning only natural gas or oil; and
  - (C) its hours of operation as described in 40 CFR 96.4 (b) (1)(ii) and (iii).

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1997; July 1, 1995; April 1, 1995; Temporary Amendment Eff. November 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 1, 2007; March 1, 2007; July 18, 2002.*

**15A NCAC 02D .1403 COMPLIANCE SCHEDULES**

(a) Applicability. This Rule applies to sources covered by Paragraph (d), (e), (f), or (g) of Rule .1402 of this Section.

(b) Maintenance area and Charlotte ozone nonattainment area contingency plan. The owner or operator of a source subject to this Rule because of the applicability of Paragraph (e), (f), or (g) of Rule .1402 of this Section, shall adhere to the following increments of progress and schedules:

- (1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:
  - (A) The owner or operator shall notify the Director in writing within six months after the Director's notice in the North Carolina Register that the source is in compliance with the applicable limitation or standard;
  - (B) The owner or operator shall perform any required testing, according to Rule .1415 of this Section, within 12

months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation; and

- (C) The owner or operator shall implement any required recordkeeping and reporting requirements, according to Rule .1404 of this Section, within 12 months after the Director's notice in the North Carolina Register to demonstrate compliance with the applicable limitation.
- (2) If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:
  - (A) The owner or operator shall submit a permit application and a compliance schedule within six months after the Director's notice in the North Carolina Register.
  - (B) The compliance schedule shall contain the following increments of progress:
    - (i) a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts;
    - (ii) a date by which installation of the modification shall begin;
    - (iii) a date by which installation of the modification shall be completed; and
    - (iv) if the source is subject to a limitation, a date by which compliance testing shall be completed.
  - (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register unless the owner or operator of the source petitions the Director for an alternative limitation according to Rule .1412 of this Section. If such a petition is made, final compliance shall be achieved within four years after the Director's notice in the North Carolina Register.
- (3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:
  - (A) The owner or operator shall abide by the applicable requirements of Subparagraphs (b)(1) or (b)(2) of this

- Rule for certification or modification of each source to be included under the averaging plan;
    - (B) The owner or operator shall submit a plan to implement an emissions averaging plan according to Rule .1410 of this Section within six months after the Director's notice in the North Carolina Register.
    - (C) Final compliance shall be achieved within one year after the Director's notice in the North Carolina Register unless implementation of the emissions averaging plan requires the modification of one or more of the averaging sources. If modification of one or more of the averaging sources is required, final compliance shall be achieved within three years.
  - (4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program as provided for in Rule .1411 of this Section:
    - (A) The owner or operator shall make all necessary modifications according to Subparagraph (b)(2) of this Rule.
    - (B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.
    - (C) Final compliance shall be achieved within three years after the Director's notice in the North Carolina Register.
  - (5) Increments of progress certification. The owner or operator shall certify to the Director, within five days after each increment deadline of progress in this Paragraph, whether the required increment of progress has been met.
- (c) Nonattainment areas. The owner or operator of a source subject to this Rule because of the applicability of Paragraph (d) of Rule .1402 of this Section, shall adhere to the following:
  - (1) If compliance with this Section is to be achieved through a demonstration to certify compliance without source modification:
    - (A) The owner or operator shall notify the Director in writing by August 1, 2007;
    - (B) The owner or operator shall perform any required testing, according to Rule .1415 of this Section, by January 1, 2008 and
    - (C) The owner or operator shall implement any required recordkeeping and reporting requirements, according to Rule .1404 of this Section, by January 1, 2008.
  - (2) If compliance with this Section is to be achieved through the installation of combustion modification technology or other source modification:
    - (A) The owner or operator shall submit a permit application and a compliance schedule by August 1, 2007.
    - (B) The compliance schedule shall contain a date by which contracts for installation of the modification shall be awarded or orders shall be issued for purchase of component parts.
    - (C) The compliance schedule shall contain a date by which installation of the modification shall begin.
    - (D) The compliance schedule shall contain a date by which installation of the modification shall be completed.
    - (E) If the source is subject to a limitation, the compliance schedule shall contain, a date by which compliance testing shall be completed.
    - (F) Final compliance shall be achieved no later than April 1, 2009.
  - (3) If compliance with this Section is to be achieved through the implementation of an emissions averaging plan as provided for in Rule .1410 of this Section:
    - (A) The owner or operator shall abide by the applicable requirements of Subparagraph (c)(1) or (c)(2) of this Rule for certification or modification of each source to be included under the averaging plan;
    - (B) The owner or operator shall submit a plan to implement an emissions averaging plan according to Rule .1410 of this Section by August 1, 2007.
    - (C) Final compliance shall be achieved within one year no later than January 1, 2008.
  - (4) If compliance with this Section is to be achieved through the implementation of a seasonal fuel switching program as provided for in Rule .1411 of this Section:
    - (A) The owner or operator shall make all necessary modifications according to Subparagraph (c)(2) of this Rule.
    - (B) The owner or operator shall include a plan for complying with the requirements of Rule .1411 of this Section with the permit application required under Part (A) of this Subparagraph.
    - (C) Final compliance shall be achieved no later than April 1, 2009.
  - (5) Increments of progress certification. The owner or operator shall certify to the Director,

within five days after the deadline for each increment of progress in this Paragraph, whether the required increment of progress has been met.

(d) Sources already in compliance.

- (1) Maintenance area and Charlotte ozone nonattainment area contingency plan. Paragraph (b) of this Rule shall not apply to sources that are in compliance with applicable rules of this Section when the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone and that have determined and certified compliance to the satisfaction of the Director within six months after the Director notices the implementation of rules in the North Carolina Register that resolves a violation of the ambient air quality standard for ozone.
- (2) Nonattainment areas. Paragraph (c) of this Rule shall not apply to sources in an area named in Paragraph (d) of Rule .1402 of this Section that are in compliance with applicable rules of this Section on March 1, 2007.

(e) New sources.

- (1) Maintenance area and Charlotte ozone nonattainment area contingency plan. The owner or operator of any new source of nitrogen oxides not permitted before the date the Director notices in the North Carolina Register according to Paragraph (e), (f), or (g) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source. The owner or operator of any new source covered under Rules .1407, .1408, .1409, .1413, or .1418 of this Section shall comply with all applicable rules in this Section upon start-up of the source.
- (2) Nonattainment areas. The owner or operator of any new source of nitrogen oxides not permitted before March 1, 2007 in an area identified in Paragraph (d) of Rule .1402 of this Section, shall comply with all applicable rules in this Section upon start-up of the source.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.65; 143-215.107(a)(5), (7), (10); Eff. April 1, 1995; Amended Eff. April 1, 1997; Temporary Amendment Eff. November 1, 2000; Amended Eff. April 1, 2001; Temporary Amendment Eff. August 1, 2001; Amended Eff. July 1, 2007; March 1, 2007; July 18, 2002.*

**15A NCAC 02D .1901 OPEN BURNING: PURPOSE: SCOPE**

(a) Open Burning Prohibited. A person shall not cause, allow, or permit open burning of combustible material except as allowed by Rule .1903 and Rule .1904 of this Section.

(b) Purpose. The purpose of this Section is to control air pollution resulting from the open burning of combustible materials and to protect the air quality in the immediate area of the open burning.

(c) Scope. This Section applies to all operations involving open burning. This Section does not authorize any open burning which is a crime under G.S. 14-136 through G.S. 14-140.1, or affect the authority of the Division of Forest Resources to issue or deny permits for open burning in or adjacent to woodlands as provided in G.S. 113-60.21 through G.S. 113-60.31. This Section does not affect the authority of any local government to regulate open burning through its fire codes or other ordinances. The issuance of any open burning permit by the Division of Forest Resources or any local government does not relieve any person from the necessity of complying with this Section or any other air quality rule.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1996; Amended Eff. July 1, 2007; June 1, 2004.*

**15A NCAC 02D .1902 DEFINITIONS**

For the purpose of this Section, the following definitions apply:

- (1) "Air Curtain Burner" means a stationary or portable combustion device that directs a plane of high velocity forced draft air through a manifold head into a pit or container with vertical walls in such a manner as to maintain a curtain of air over the surface of the pit and a recirculating motion of air under the curtain.
- (2) "Air Quality Action Day Code 'Orange' or above" means an air quality index greater than 100 as defined in 40 CFR Part 58, Appendix G.
- (3) "Air quality forecast area" means for
  - (a) Asheville air quality forecast area: Buncombe, Haywood, Henderson, Jackson, Madison, Swain, Transylvania, and Yancey Counties;
  - (b) Charlotte air quality forecast area: Cabarrus, Gaston, Iredell South of Interstate 40, Lincoln, Mecklenburg, Rowan, and Union Counties;
  - (c) Hickory air quality forecast area: Alexander, Burke, Caldwell, and Catawba Counties;
  - (d) Fayetteville air quality forecast area: Cumberland and Harnett Counties;
  - (e) Rocky Mount air quality forecast area: Edgecombe and Nash Counties;
  - (f) Triad air quality forecast area: Alamance, Caswell, Davidson, Davie, Forsyth, Guilford, Randolph, Rockingham, and Stokes Counties; and



- (g) Triangle air quality forecast area: Chatham, Durham, Franklin, Granville, Johnston, Person, Orange, Vance, and Wake Counties.
- (4) "Smoke management plan" means the plan developed following the North Carolina Division of Forest Resources' smoke management program and approved by the North Carolina Division of Forest Resources. The purpose of the smoke management plan is to manage smoke from prescribed burns of public and private forests to minimize the impact of smoke on air quality and visibility.
- (5) "Dangerous materials" means explosives or containers used in the holding or transporting of explosives.
- (6) "HHCB" means the Health Hazards Control Branch of the Division of Epidemiology.
- (7) "Initiated" means start or ignite a fire or reignite or rekindle a fire.
- (8) "Land clearing" means the uprooting or clearing of vegetation in connection with construction for buildings; right-of-way maintenance; agricultural, residential, commercial, institutional, or industrial development; mining activities; or the initial clearing of vegetation to enhance property value; but does not include routine maintenance or property clean-up activities.
- (9) "Log" means any limb or trunk whose diameter exceeds six inches.
- (10) "Nonattainment area" means an area identified in 40 CFR 81.334 as nonattainment.
- (11) "Nuisance" means causing physical irritation exacerbating a documented medical condition, visibility impairment, or evidence of soot or ash on property or structure other than the property on which the burning is done.
- (12) "Occupied structure" means a building in which people may live or work or one intended for housing farm or other domestic animals.
- (13) "Off-site" means any area not on the premises of the land-clearing activities.
- (14) "Open burning" means the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the atmosphere without passing through a stack, chimney, or a permitted air pollution control device.
- (15) "Operator" as used in .1904(b)(6) and .1904(b)(2)(D) of this Section, means the person in operational control over the open burning.
- (16) "Person" as used in 02D .1901(c), means:
- (a) the person in operational control over the open burning; or
  - (b) the landowner or person in possession or control of the land when he has directly or indirectly allowed the open burning or has benefited from it.
- (17) "Pile" means a quantity of combustible material assembled together in a mass.
- (18) "Public pick-up" means the removal of refuse, yard trimmings, limbs, or other plant material from a residence by a governmental agency, private company contracted by a governmental agency or municipal service.
- (19) "Public road" means any road that is part of the State highway system; or any road, street, or right-of-way dedicated or maintained for public use.
- (20) "RACM" means regulated asbestos containing material as defined in 40 CFR 61.142.
- (21) "Refuse" means any garbage, rubbish, or trade waste.
- (22) "Regional Office Supervisor" means the supervisor of personnel of the Division of Air Quality in a regional office of the Department of Environment and Natural Resources.
- (23) "Salvageable items" means any product or material that was first discarded or damaged and then all, or part, was saved for future use, and include insulated wire, electric motors, and electric transformers.
- (24) "Synthetic material" means man-made material, including tires, asphalt materials such as shingles or asphaltic roofing materials, construction materials, packaging for construction materials, wire, electrical insulation, and treated or coated wood.
- (25) "Permanent site" means for an air curtain burner, a place where an air curtain burner is operated for more than nine months.

*History Note: Authority G.S. 143-212; 143-213; 143-215.3(a)(1); Eff. July 1, 1996; Amended Eff. July 1, 2007; December 1, 2005; June 1, 2004; July 1, 1998.*

**15A NCAC 02D .1903 OPEN BURNING WITHOUT AN AIR QUALITY PERMIT**

(a) All open burning is prohibited except open burning allowed under Paragraph (b) of this Rule or Rule .1904 of this Section. Except as allowed under Paragraphs (b)(3) through (b)(9) of this Rule, open burning shall not be initiated in an air quality forecast area that the Department, or the Forsyth County Environmental Affairs Department for the Triad air quality forecast area, has forecasted to be in an Air Quality Action Day Code "Orange" or above during the time period covered by that forecast.

(b) The following types of open burning are permissible without an air quality permit:

- (1) open burning of leaves, tree branches or yard trimmings, excluding logs and stumps, if the following conditions are met:

- (A) The material burned originates on the premises of private residences and is burned on those premises;
  - (B) There are no public pickup services available;
  - (C) Non-vegetative materials, such as household garbage, lumber, or any other synthetic materials are not burned;
  - (D) The burning is initiated no earlier than 8:00 a.m. and no additional combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
  - (E) The burning does not create a nuisance; and
  - (F) Material is not burned when the Division of Forest Resources has banned burning for that area.
- (2) open burning for land clearing or right-of-way maintenance if the following conditions are met:
- (A) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service at the time that the burning is initiated are away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
  - (B) The location of the burning is at least 1,000 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback requirements if:
    - (i) a signed, written statement waiving objections to the open burning associated with the land clearing operation is obtained and submitted to, and the exception granted by, the regional office supervisor before the burning begins from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 1,000 feet of the open burning site. In the case of a lease or rental agreement, the lessee or renter shall be the person from whom permission shall be gained prior to any burning; or
    - (ii) an air curtain burner that complies with Rule .1904 of this Section, is utilized at the open burning site.
- Factors that the regional supervisor shall consider in deciding to grant the exception include all the persons who need to sign the statement waiving the objection have signed it, the location of the burn, and the type, amount, and nature of the combustible substances. The regional supervisor shall not grant a waiver if a college, school, licensed day care, hospital, licensed rest home, or other similar institution is less than 1000 feet from the proposed burn site when such institution is occupied.
- (C) Only land cleared plant growth is burned. Heavy oils, asphaltic materials such as shingles and other roofing materials, items containing natural or synthetic rubber, or any materials other than plant growth shall not be burned; however, kerosene, distillate oil, or diesel fuel may be used to start the fire;
  - (D) Initial burning begins only between the hours of 8:00 a.m. and 6:00 p.m., and no combustible material is added to the fire between 6:00 p.m. on one day and 8:00 a.m. on the following day;
  - (E) No fires are initiated or vegetation added to existing fires when the Division of Forest Resources has banned burning for that area; and
  - (F) Materials are not carried off-site or transported over public roads for open burning unless the materials are carried off-site or transported over public roads to facilities permitted according to Rule .1904 of this Section for the operation of an air curtain burner at a permanent site;
- (3) camp fires and fires used solely for outdoor cooking and other recreational purposes, or for ceremonial occasions, or for human warmth and comfort and which do not create a nuisance and do not use synthetic materials or refuse or salvageable materials for fuel;
  - (4) fires purposely set to public or private forest land for forest management practices for which burning is acceptable to the Division of Forest Resources and which follows the smoke

- management plan as outlined in the Division of Forest Resources' smoke management program;
- (5) fires purposely set to agricultural lands for disease and pest control and fires set for other agricultural or apicultural practices for which burning is currently acceptable to the Department of Agriculture;
  - (6) fires purposely set for wildlife management practices for which burning is currently acceptable to the Wildlife Resource Commission;
  - (7) fires for the disposal of dangerous materials when it is the safest and most practical method of disposal;
  - (8) fires purposely set by manufacturers of fire extinguishing materials or equipment, testing laboratories, or other persons, for the purpose of testing or developing these materials or equipment in accordance with a standard qualification program;
  - (9) fires purposely set for the instruction and training of fire-fighting personnel at permanent fire-fighting training facilities;
  - (10) fires purposely set for the instruction and training of fire-fighting personnel when conducted under the supervision of or with the cooperation of one or more of the following agencies:
    - (A) the Division of Forest Resources;
    - (B) the North Carolina Insurance Department;
    - (C) North Carolina technical institutes; or
    - (D) North Carolina community colleges, including:
      - (i) the North Carolina Fire College; or
      - (ii) the North Carolina Rescue College;
  - (11) fires not described in Subparagraphs (9) or (10) of this Paragraph, purposely set for the instruction and training of fire-fighting personnel, provided that:
    - (A) The regional office supervisor of the appropriate regional office and the HHCb have been notified according to the procedures and deadlines contained in the appropriate regional notification form. This form may be obtained by writing the appropriate regional office at the address in Rule .1905 of this Section and requesting it, and
    - (B) The regional office supervisor has granted permission for the burning. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning of salvageable items, such as insulated wire and electric motors or if the primary purpose of the fire is to dispose of synthetic materials or refuse. The regional office supervisor of the appropriate regional office shall not consider previously demolished structures as having training value. However, the regional office supervisor of the appropriate regional office may allow an exercise involving the burning of motor vehicles burned over a period of time by a training unit or by several related training units. Any deviations from the dates and times of exercises, including additions, postponements, and deletions, submitted in the schedule in the approved plan shall be communicated verbally to the regional office supervisor of the appropriate regional office at least one hour before the burn is scheduled; and
  - (12) fires for the disposal of material generated as a result of a natural disaster, such as tornado, hurricane, or flood, if the regional office supervisor grants permission for the burning. The person desiring to do the burning shall document and provide written notification to the regional office supervisor of the appropriate regional office that there is no other practical method of disposal of the waste. Factors that the regional office supervisor shall consider in granting permission for the burning include type, amount, location of the burning, and nature of combustible substances. The regional office supervisor shall not grant permission for the burning if the primary purpose of the fire is to dispose of synthetic materials or refuse or recovery of salvageable materials. Fires authorized under this Subparagraph shall comply with the conditions of Subparagraph (b)(2) of this Rule.
    - (c) The authority to conduct open burning under this Section does not exempt or excuse any person from the consequences, damages or injuries that may result from this conduct. It does not excuse or exempt any person from complying with all applicable laws, ordinances, rules or orders of any other governmental entity having jurisdiction even though the open burning is conducted in compliance with this Section.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5); Eff. July 1, 1996;*

*Amended Eff. July 1, 2007; December 1, 2005; June 1, 2004; July 1, 1998.*

**15A NCAC 02D .1904 AIR CURTAIN BURNERS**

(a) Air quality permits are required for air curtain burners subject to 40 CFR 60.2245 through 60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062 through 60.3069 or located at permanent sites or where materials are transported in from another site. Air quality permits are not required for air curtain burners located at temporary land clearing or right-of-way maintenance sites for less than nine months unless they are subject to 40 CFR 60.2245 through 60.2265, 60.2810 through 60.2870, 60.2970 through 60.2975, or 60.3062 through 60.3069. The operation of air curtain burners in particulate and ozone nonattainment areas shall cease in any area that has been forecasted by the Department, or the Forsyth County Environmental Affairs Department for the Triad air quality forecast area, to be in an Air Quality Action Day Code "Orange" or above during the time period covered by that forecast.

(b) Air curtain burners shall comply with the following conditions and stipulations:

- (1) The wind direction at the time that the burning is initiated and the wind direction as forecasted by the National Weather Service during the time of the burning shall be away from any area, including public roads within 250 feet of the burning as measured from the edge of the pavement or other roadway surface, which may be affected by smoke, ash, or other air pollutants from the burning;
- (2) Only collected land clearing and yard waste materials may be burned. Heavy oils, asphaltic materials, items containing natural or synthetic rubber, tires, grass clippings, collected leaves, paper products, plastics, general trash, garbage, or any materials containing painted or treated wood materials shall not be burned. Leaves still on trees or brush may be burned;
- (3) No fires shall be started or material added to existing fires when the Division of Forest Resources has banned burning for that area;
- (4) Burning shall be conducted only between the hours of 8:00 a.m. and 6:00 p.m.;
- (5) The air curtain burner shall not be operated more than the maximum source operating hours-per-day and days-per-week. The maximum source operating hours-per-day and days-per-week shall be set to protect the ambient air quality standard and prevention of significant deterioration (PSD) increment for particulate. The maximum source operating hours-per-day and days-per-week shall be determined using the modeling procedures in Rule .1106(b), (c), and (f) of this Subchapter. This Subparagraph shall not apply to temporary air curtain burners;
- (6) An air curtain burner with an air quality permit shall have onsite at all times during operation of the burner a visible emissions reader

certified according to 40 CFR Part 60, Method 9 to read visible emissions, and the facility shall test for visible emissions within five days after initial operation and within 90 days before permit expiration;

- (7) Air curtain burners shall meet manufacturer's specifications for operation and upkeep to ensure complete burning of material charged into the pit. Manufacturer's specifications shall be kept on site and be available for inspection by Division staff;
- (8) Except during start-up, visible emissions shall not exceed ten percent opacity when averaged over a six-minute period except that one six-minute period with an average opacity of more than ten percent but no more than 35 percent shall be allowed for any one-hour period. During start-up, the visible emissions shall not exceed 35 percent opacity when averaged over a six-minute period. Start-up shall not last for more than 45 minutes, and there shall be no more than one start-up per day. Instead of complying with the opacity standards in this Subparagraph, air curtain burners subject to:
  - (A) 40 CFR 60.2245 through 60.2265 shall comply with the opacity standards in 40 CFR 60.2250;
  - (B) 40 CFR 60.2810 through 60.2870 shall comply with the opacity standards in 40 CFR 60.2860;
  - (C) 40 CFR 60.2970 through 60.2975 shall comply with the opacity standards in 40 CFR 60.2971; or
  - (D) 40 CFR 60.3062 through 60.3069 shall comply with the opacity standards in 40 CFR 60.3066;
- (9) The owner or operator of an air curtain burner shall not allow ash to build up in the pit to a depth higher than one-third of the depth of the pit or to the point where the ash begins to impede combustion, whichever occurs first. The owner or operator of an air curtain burner shall allow the ashes to cool and water the ash prior to its removal to prevent the ash from becoming airborne;
- (10) The owner or operator of an air curtain burner shall not load material into the air curtain burner such that it will protrude above the air curtain;
- (11) Only distillate oil, kerosene, diesel fuel, natural gas, or liquefied petroleum gas may be used to start the fire; and
- (12) The location of the burning shall be at least 500 feet from any dwelling, group of dwellings, or commercial or institutional establishment, or other occupied structure not located on the property on which the burning is conducted. The regional office supervisor may grant exceptions to the setback

requirements if a signed, written statement waiving objections to the air curtain burning is obtained from a resident or an owner of each dwelling, commercial or institutional establishment, or other occupied structure within 500 feet of the burning site. In case of a lease or rental agreement, the lessee or renter, and the property owner shall sign the statement waiving objections to the burning. The statement shall be submitted to and approved by the regional office supervisor before initiation of the burn. Factors that the regional supervisor shall consider in deciding to grant the exception include: all the persons who need to sign the statement waiving the objection have signed it; the location of the burn; and the type, amount, and nature of the combustible substances.

Compliance with this Rule does not relieve any owner or operator of an air curtain burner from the necessity of complying with other rules in this Section or any other air quality rules.

(c) Recordkeeping Requirements. The owner or operator of an air curtain burner at a permanent site shall keep a daily log of specific materials burned and amounts of material burned in pounds per hour and tons per year. The logs at a permanent air curtain burner site shall be maintained on site for a minimum of two years and shall be available at all times for inspection by the Division of Air Quality. The owner or operator of an air curtain burner at a temporary site shall keep a log of total number of tons burned per temporary site. Additionally, the owner or operator of air curtain burner subject to:

- (1) 40 CFR 60.2245 through 60.2265 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2245 through 60.2265;
- (2) 40 CFR 60.2810 through 60.2870 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2810 through 60.2870;
- (3) 40 CFR 60.2970 through 60.2975 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.2970 through 60.2975; or
- (4) 40 CFR 60.3062 through 60.3069 shall comply with the monitoring, recordkeeping, and reporting requirements in 40 CFR 60.3062 through 60.3069.

(d) Title V Considerations. Burners that have the potential to burn 8,100 tons of material or more per year may be subject to Section 15A NCAC 2Q .0500, Title V Procedures.

(e) Prevention of Significant Deterioration Consideration. Burners that burn 16,200 tons per year or more may be subject to 15A NCAC 02D .0530, Prevention of Significant Deterioration.

(f) A person may use a burner using a different technology or method of operation than an air curtain burner as defined under Rule .1902 of this Section if he demonstrates to the Director that the burner is at least as effective as an air curtain burner in reducing emissions and if the Director approves the use of the burner. The Director shall approve the burner if he finds that it

is at least as effective as an air curtain burner. This burner shall comply with all the requirements of this Rule.

(g) In addition to complying with the requirements of this Rule, an air curtain burner subject to:

- (1) 40 CFR Part 60, Subpart CCCC that commenced construction after November 30, 1999, or that commenced reconstruction or modification on or after June 1, 2001, shall also comply with 40 CFR 60.2245 through 60.2265, or
- (2) 40 CFR Part 60, Subpart EEEE that commenced construction after December 9, 2004, or that commenced reconstruction or modification on or after June 16, 2006, shall also comply with 40 CFR 60.2970 through 60.2975.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5), (10); 143-215.66; 143-215.108; 40 CFR 60.2865;*

*Eff. July 1, 1996;*

*Amended Eff. July 1, 2007; December 1, 2005; August 1, 2004.*

**15A NCAC 02D .1907 MULTIPLE VIOLATIONS ARISING FROM A SINGLE EPISODE**

(a) Multiple violations arising from a single episode of open burning may result in multiple civil penalties. Factors the Director shall consider in determining the number of violations per episode of open burning include:

- (1) the type of material burned,
- (2) the amount of material burned,
- (3) the location of the burn, and
- (4) any other factor relevant to air pollution control or air quality.

(b) Each pile of land clearing or road maintenance debris that does not comply with the specifications of 15A NCAC 02D .1903(b)(2) shall constitute a separate violation.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(5);*

*Eff. July 1, 2007.*

**15A NCAC 02D .2303 APPLICABILITY AND ELIGIBILITY**

(a) Applicability. Any facility that has the potential to emit nitrogen oxides, volatile organic compounds, sulfur dioxide, ammonia, or fine particulate (PM2.5) in amounts greater than 25 tons per year and that is in a federally designated ozone or fine particulate (PM2.5) nonattainment area in North Carolina is eligible to create and bank nitrogen oxides, volatile organic compounds, sulfur dioxide, ammonia, or fine particulate (PM2.5) emission reduction credits.

(b) Eligibility of emission reductions.

- (1) To be approved by the Director as an emission reduction credit, a reduction in emissions shall be real, permanent, quantifiable, enforceable, and surplus and shall have occurred:
  - (A) for ozone after December 31, 2002 for the Charlotte-Gastonia-Rock Hill,

NC-SC nonattainment area, the Raleigh-Durham-Chapel Hill nonattainment area, the Rocky Mount nonattainment area, and the Haywood and Swain Counties (Great Smoky Mountains National Park) nonattainment area, and after December 31, 2000 for all other nonattainment areas.

- (B) for fine particulate (PM<sub>2.5</sub>) after December 31, 2002 for the Greensboro-Winston-Salem-High Point, NC and Hickory-Morganton-Lenoir, NC nonattainment areas.
- (2) To be eligible for consideration as emission reduction credits, emission reductions may be created by any of the following methods:
  - (A) installation of control equipment beyond what is necessary to comply with existing rules;
  - (B) a change in process inputs, formulations, products or product mix, fuels, or raw materials;
  - (C) a reduction in actual emission rate;
  - (D) a reduction in operating hours;
  - (E) production curtailment or reduction in throughput;
  - (F) shutdown of emitting sources or facilities; or
  - (G) any other enforceable method that the Director finds resulting in real, permanent, quantifiable, enforceable, and surplus reduction of emissions.

(c) Ineligible for emission reduction credit. Emission reductions from the following are not eligible to be banked as emission reduction credits:

- (1) sources covered under a special order or variance until compliance with the emission standards that are the subject of the special order or variance is achieved;
- (2) sources that have operated less than 24 months;
- (3) emission allocations and allowances used in the budget trading program under 15A NCAC 02D .1419 or .2408;
- (4) emission reductions outside North Carolina; or
- (5) mobile sources.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(12); Eff. December 1, 2005; Amended Eff. July 1, 2007.*

**15A NCAC 02Q .0102 ACTIVITIES EXEMPTED FROM PERMIT REQUIREMENTS**

(a) This Rule does not apply to facilities required to have a permit under Section .0500 of this Subchapter. This Rule applies only to permits issued under Section .0300 of this Subchapter.

(b) If a source is subject to any of the following rules, then the source is not exempted from permit requirements, and the exemptions in Paragraph (c) of this Rule do not apply:

- (1) new source performance standards under 15A NCAC 02D .0524 or 40 CFR Part 60, except when the following activities are eligible for exemption under Paragraph (c) of this Rule:
  - (A) 40 CFR Part 60, Subpart Dc, industrial, commercial, and institutional steam generating units;
  - (B) 40 CFR Part 60, Subparts K, Ka, or Kb, volatile organic liquid storage vessels;
  - (C) 40 CFR Part 60, Subpart AAA, new residential wood heaters; or
  - (D) 40 CFR Part 60, Subpart JJJ, petroleum dry cleaners; or
  - (E) 40 CFR Part 60, Subpart WWW, municipal solid waste landfills;
- (2) national emission standards for hazardous air pollutants under 15A NCAC 02D .1110 or 40 CFR Part 61, except asbestos demolition and renovation activities, which are eligible for exemption under Paragraph (c) of this Rule;
- (3) prevention of significant deterioration under 15A NCAC 02D .0530;
- (4) new source review under 15A NCAC 02D .0531 or .0532;
- (5) sources of volatile organic compounds subject to the requirements of 15A NCAC 02D .0900 that are located in Mecklenburg County according to 15A NCAC 02D .0902(e);
- (6) sources required to apply maximum achievable control technology (MACT) for hazardous air pollutants under 15A NCAC 02D .1109, .1111, .1112, or 40 CFR Part 63 that are required to have a permit under Section .0500 of this Subchapter;
- (7) sources at facilities subject to 15A NCAC 02D .1100. (If a source does not emit a toxic air pollutant for which the facility at which it is located has been modeled, it shall be exempted from needing a permit if it qualifies for one of the exemptions in Paragraph (c) of this Rule).

(c) The following activities do not need a permit or permit modification under Section .0300 of this Subchapter; however, the Director may require the owner or operator of these activities to register them under 15A NCAC 02D .0200:

- (1) activities exempted because of category:
  - (A) maintenance, upkeep, and replacement:
    - (i) maintenance, structural changes, or repairs which do not change the capacity of such process, fuel-burning, refuse-burning, or control equipment, and do not involve any change in quality or nature or increase

- in quantity of emission of regulated air pollutants;
    - (ii) housekeeping activities or building maintenance procedures, including painting buildings, resurfacing floors, roof repair, washing, portable vacuum cleaners, sweeping, use and associated storage of janitorial products, or insulation removal;
    - (iii) use of office supplies, supplies to maintain copying equipment, or blueprint machines;
    - (iv) use of fire fighting equipment;
    - (v) paving parking lots; or
    - (vi) replacement of existing equipment with equipment of the same size, type, and function that does not result in an increase to the actual or potential emission of regulated air pollutants and that does not affect the compliance status, and with replacement equipment that fits the description of the existing equipment in the permit, including the application, such that the replacement equipment can be operated under that permit without any changes in the permit;
  - (B) air conditioning or ventilation: comfort air conditioning or comfort ventilating systems that do not transport, remove, or exhaust regulated air pollutants to the atmosphere;
  - (C) laboratory activities:
    - (i) bench-scale, on-site equipment used exclusively for chemical or physical analysis for quality control purposes, staff instruction, water or wastewater analyses, or non-production environmental compliance assessments;
    - (ii) bench-scale experimentation, chemical or physical analyses, training or instruction from not-for-profit, non-production educational laboratories;
- (iii) bench-scale experimentation, chemical or physical analyses, training or instruction from hospitals or health laboratories pursuant to the determination or diagnoses of illness; or
- (iv) research and development laboratory activities provided the activity produces no commercial product or feedstock material;
- (D) storage tanks:
  - (i) storage tanks used solely to store fuel oils, kerosene, diesel, crude oil, used motor oil, lubricants, cooling oils, natural gas or liquefied petroleum gas;
  - (ii) storage tanks used to store gasoline or ethanol-based fuels for which there are no applicable requirements except Stage I controls under 15A NCAC 02D .0928;
  - (iii) storage tanks used solely to store inorganic liquids; or
  - (iv) storage tanks or vessels used for the temporary containment of materials resulting from an emergency response to an unanticipated release of hazardous materials;
- (E) combustion and heat transfer equipment:
  - (i) space heaters burning distillate oil, kerosene, natural gas, or liquefied petroleum gas operating by direct heat transfer and used solely for comfort heat;
  - (ii) residential wood stoves, heaters, or fireplaces;
  - (iii) hot water heaters which are used for domestic purposes only and are not used to heat process water;
- (F) wastewater treatment processes: industrial wastewater treatment processes or municipal wastewater treatment processes for which there are no applicable requirements;
- (G) gasoline distribution: gasoline service stations or gasoline dispensing facilities;

- |     |  |   |
|-----|--|---|
| (H) | dispensing equipment: equipment used solely to dispense diesel fuel, kerosene, lubricants or cooling oils;   |   |
| (I) | solvent recycling: portable solvent distillation systems used for on-site solvent recycling if:  | (iii) another exemption under this Paragraph.);   |
|     | (i) The portable solvent distillation system is not:   | (iv) portable generators regulated by rules adopted under Title II of the Federal Clean Air Act;  |
|     | (I) owned by the facility, and   | (v) equipment used for the preparation of food for direct on-site human consumption;  |
|     | (II) operated at the facility for more than seven consecutive days; and  | (vi) a source whose emissions are regulated only under Section 112(r) or Title VI of the Federal Clean Air Act;   |
|     | (ii) The material recycled is recycled at the site of origin;  | (vii) exit gases from in-line process analyzers;  |
| (J) | processes:   | (viii) stacks or vents to prevent escape of sewer gases from domestic waste through plumbing traps;   |
|     | (i) electric motor burn-out ovens with secondary combustion chambers or afterburners;  | (ix) refrigeration equipment that is consistent with Section 601 through 618 of Title VI (Stratospheric Ozone Protection) of the Federal Clean Air Act, 40 CFR Part 82, and any other regulations promulgated by EPA under Title VI for stratospheric ozone protection, except those units used as or in conjunction with air pollution control equipment (A unit used as or in conjunction with air pollution control equipment is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph.); |
|     | (ii) electric motor bake-on ovens;   | (x) equipment not vented to the outdoor atmosphere with the exception of equipment that emits volatile organic compounds (Equipment that emits volatile organic compounds is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);   |
|     | (iii) burn-off ovens for paint-line hangers with afterburners;   | (xi) equipment that does not emit any regulated air pollutants;   |
|     | (iv) hosiery knitting machines and associated lint screens, hosiery dryers and associated lint screens, and hosiery dyeing processes where bleach or solvent dyes are not used;  | (xii) facilities subject only to a requirement under 40 CFR Part 63 (This Subpart does not apply when a control device is used to meet a MACT or GACT emission  |
|     | (v) blade wood planers planing only green wood;  |   |
| (K) | solid waste landfills: municipal solid waste landfills (This Part does not apply to flares and other sources of combustion at solid waste landfills; these flares and other combustion sources are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph.); |   |
| (L) | miscellaneous:   |   |
|     | (i) motor vehicles, aircraft, marine vessels, locomotives, tractors or other self-propelled vehicles with internal combustion engines;   |   |
|     | (ii) non-self-propelled non-road engines, except generators, regulated by rules adopted under Title II of the Federal Clean Air Act (Generators are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for  |   |



- standard; a control device used to meet a MACT or GACT emission standard is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption under this Paragraph);
- (xii) sources for which there are no applicable requirements;
  - (xiii) animal operations not required to have control technology under 15A NCAC 02D .1800 (If an animal operation is required to have control technology, it shall be required to have a permit under this Subchapter).
- (2) activities exempted because of size or production rate:
- (A) storage tanks:
    - (i) above-ground storage tanks with a storage capacity of no more than 1100 gallons storing organic liquids with a true vapor pressure of no more than 10.8 pounds per square inch absolute at 70° F; or
    - (ii) underground storage tanks with a storage capacity of no more than 2500 gallons storing organic liquids with a true vapor pressure of no more than 10.8 psi absolute at 70° F;
  - (B) combustion and heat transfer equipment:
    - (i) fuel combustion equipment, except for internal combustion engines, firing exclusively kerosene, No. 1 fuel oil, No. 2 fuel oil, equivalent unadulterated fuels, or a mixture of these fuels or one or more of these fuels mixed with natural gas or liquefied petroleum gas with a heat input of less than:
      - (I) 10 million Btu per hour for which construction, modification, or reconstruction commenced after June 9, 1989; or
      - (II) 30 million Btu per hour for which construction, modification, or reconstruction commenced before June 10, 1989;
- (Internal combustion engines are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);
- (ii) fuel combustion equipment, except for internal combustion engines, firing exclusively natural gas or liquefied petroleum gas or a mixture of these fuels with a heat input rating less than 65 million Btu per hour (Internal combustion engines are required to be permitted under 15A NCAC 02Q .0300 unless they qualify for another exemption under this Paragraph);
  - (iii) space heaters burning waste oil if:
    - (I) The heater burns only oil that the owner or operator generates or used oil from do-it-yourself oil changers who generate used oil as household wastes;
    - (II) The heater is designed to have a maximum capacity of not more than 500,000 Btu per hour; and
    - (III) The combustion gases from the heater are vented to the ambient air;
- (iv) fuel combustion equipment with a heat input rating less than 10 million Btu per hour that is used solely for space heating except:
- (I) space heaters burning waste oil, or
  - (II) internal combustion engines;
- (v) emergency use generators and other internal combustion engines not regulated by rules adopted under Title II of the Federal

Clean Air Act, except self-propelled vehicles, that have a rated capacity of no more than:

- (I) 680 kilowatts (electric) or 1000 horsepower for natural gas-fired engines;
- (II) 1800 kilowatts (electric) or 2510 horsepower for liquefied petroleum gas-fired engines;
- (III) 590 kilowatts (electric) or 900 horsepower for diesel-fired or kerosene-fired engines; or
- (IV) 21 kilowatts (electric) or 31 horsepower for gasoline-fired engines;

(Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph.)

- (vi) portable generators and other portable equipment with internal combustion engines not regulated by rules adopted under Title II of the Federal Clean Air Act, except self-propelled vehicles, that operate at the facility no more than a combined 350 hours for any 365-day period provided the generators or engines have a rated capacity of no more than 750 kilowatt (electric) or 1100 horsepower each and provided records are maintained to verify the hours of operation (Self-propelled vehicles with internal combustion engines are exempted under Subpart (1)(c)(L)(i) of this Paragraph.);
- (vii) peak shaving generators that produce no more than 325,000 kilowatt-hours of electrical energy for any 12-month period provided records are maintained to

verify the energy production on a monthly basis and on a 12-month basis;

- (C) gasoline distribution: bulk gasoline plants with an average daily throughput of less than 4000 gallons;
- (D) processes:
  - (i) graphic arts operations, paint spray booths or other painting or coating operations without air pollution control devices (water wash and filters that are an integral part of the paint spray booth are not considered air pollution control devices), and solvent cleaning operations located at a facility whose facility-wide actual emissions of volatile organic compounds are less than five tons per year (Graphic arts operations, coating operations, and solvent cleaning operations are defined in 15A NCAC 02Q .0803);
  - (ii) sawmills that saw no more than 2,000,000 board feet per year provided only green wood is sawed;
  - (iii) perchloroethylene dry cleaners that emit less than 13,000 pounds of perchloroethylene per year;
  - (iv) electrostatic dry powder coating operations with filters or powder recovery systems including electrostatic dry powder coating operations equipped with curing ovens with a heat input of less than 10,000,000 Btu per hour;
- (E) miscellaneous:
  - (i) any source whose emissions would not violate any applicable emissions standard and whose potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., potential uncontrolled emissions, are each no more than five tons per year and

whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff except:

- (I) storage tanks,
- (II) fuel combustion equipment,
- (III) space heaters burning waste oil,
- (IV) generators, excluding emergency generators, or other non-self-propelled internal combustion engines,
- (V) bulk gasoline plants,
- (VI) printing, paint spray booths, or other painting or coating operations,
- (VII) sawmills,
- (VIII) perchloroethylene dry cleaners, or
- (IX) electrostatic dry powder coating operations, provided that the total potential emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide from the facility are each less than 40 tons per year and the total potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rates or provided that the facility has an air quality permit. (A source identified in Sub-subpart (I) through (IX) of this Part is required to be permitted under 15A NCAC 02Q .0300 unless it qualifies for another exemption

- under this Paragraph);
- (ii) any facility whose actual emissions of particulate, sulfur dioxide, nitrogen oxides, volatile organic compounds, and carbon monoxide before air pollution control devices, i.e., uncontrolled emissions, are each less than five tons per year, whose potential emissions of all hazardous air pollutants are below their lesser quantity cutoff emission rate, and none of whose sources would violate an applicable emissions standard;
- (iii) any source that only emits hazardous air pollutants that are not also a particulate or a volatile organic compound and whose potential emissions of hazardous air pollutants are below their lesser quantity cutoff emission rates; or
- (iv) any incinerator covered under Subparagraph (c)(4) of 15A NCAC 02D .1201;
- (F) case-by-case exemption: activities that the applicant demonstrates to the satisfaction of the Director:
  - (i) to be negligible in their air quality impacts;
  - (ii) not to have any air pollution control device; and
  - (iii) not to violate any applicable emission control standard when operating at maximum design capacity or maximum operating rate, whichever is greater.

(d) Because an activity is exempted from being required to have a permit does not mean that the activity is exempted from any applicable requirement or that the owner or operator of the source is exempted from demonstrating compliance with any applicable requirement.

(e) Emissions from stationary source activities identified in Paragraph (c) of this Rule shall be included in determining compliance with the toxic air pollutant requirements under 15A NCAC 02D .1100 or 02Q .0700 according to 15A NCAC 02Q .0702 (exemptions from air toxic permitting).

(f) The owner or operator of a facility or source claiming an exemption under Paragraph (c) of this Rule shall provide the Director documentation upon request that the facility or source is qualified for that exemption.

(g) If the Director finds that an activity exempted under Paragraph (c) of this Rule is in violation of or has violated a rule in 15A NCAC 02D, he shall revoke the permit exemption for that activity and require that activity to be permitted under this Subchapter if necessary to obtain or maintain compliance.

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(4); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Amended Eff. April 1, 1999; July 1, 1998; July 1, 1997; November 1, 1996; Temporary Amendment Eff. December 1, 1999; Amended Eff. July 1, 2007; June 29, 2006; July 18, 2002; July 1, 2000.*

**15A NCAC 02Q .0207 ANNUAL EMISSIONS REPORTING**

(a) The owner or operator of a Title V facility shall report by June 30th of each year the actual emissions during the previous calendar year of:

- (1) volatile organic compounds,
- (2) nitrogen oxides,
- (3) total suspended particulates,
- (4) sulfur dioxide,
- (5) fluorine,
- (6) hydrogen chloride,
- (7) hydrogen fluoride,
- (8) hydrogen sulfide,
- (9) methyl chloroform,
- (10) methylene chloride,
- (11) ozone,
- (12) chlorine,
- (13) hydrazine,
- (14) phosphine,
- (15) particulate matter (PM10),
- (16) carbon monoxide,
- (17) lead, and
- (18) perchloroethylene.

(b) The accuracy of the report required by Paragraph (a) of this Rule shall be certified by a responsible official of the facility as defined under 40 CFR 70.2.

(c) The owner or operator of a facility not included in Paragraph (a) of this Rule, other than a transportation facility, that has actual emissions of 25 tons per year or more of nitrogen oxides or volatile organic compounds shall report by June 30th of each year the actual emissions of nitrogen oxides and volatile organic compounds during the previous calendar year, if the facility is in:

- (1) Cabarrus County,
- (2) Davidson County,
- (3) Durham County,
- (4) Forsyth County,
- (5) Gaston County,
- (6) Guilford County,
- (7) Lincoln County,
- (8) Mecklenburg County,

- (9) Rowan County,
- (10) Union County,
- (11) Wake County,
- (12) Davidson Township and Coddle Creek Township in Iredell County,
- (13) Dutchville Township in Granville County, or
- (14) that part of Davie County bounded by the Yadkin River, Dutchmans Creek, North Carolina Highway 801, Fulton Creek and back to the Yadkin River.

(d) The annual reporting requirement under Paragraph (c) of this Rule shall begin with calendar year 2007 emissions for facilities in Cabarrus, Lincoln, Rowan, and Union counties and Davidson Township and Coddle Creek Township in Iredell County.

(e) The report shall be in or on such form as may be established by the Director. The Director may require reporting for sources within a facility, for other facilities, or for other pollutants, parameters, or information, by permit condition or pursuant to 15A NCAC 02D .0202 (Registration of Air Pollution Sources).

*History Note: Filed as a Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule is effective, whichever is sooner; Authority G.S. 143-215.3(a)(1),(1a),(1b),(1d); 143-215.65; 143-215.107; 143B-282; 150B-21.6; Eff. July 1, 1994; Amended Eff. July 1, 2007; July 1, 1998; July 1, 1996.*

**15A NCAC 02Q .0506 INITIAL PERMIT APPLICATION SUBMITTAL**

*History Note: Authority G.S. 143-215.3(a)(1); 143-215.107(a)(10); 143-215.108; Temporary Adoption Eff. March 8, 1994 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner; Eff. July 1, 1994; Repealed Eff. July 1, 2007.*

**TITLE 21 – OCCUPATIONAL LICENSING BOARDS AND COMMISSIONS**

**CHAPTER 28 - REGISTRATION BOARD OF LANDSCAPE CONTRACTORS**

**21 NCAC 28 .0304 REINSTATEMENT**

(a) Any person whose license is revoked may be relicensed by majority vote of the Board on written application made to the Board and successful completion of the examination. Relicensing is subject to the completion or fulfillment of conditions imposed upon the person by the Board at time of revocation and upon payment of annual fees and late fees as set forth below.

(b) If a registration has lapsed for a period of five years or more, the individual must complete and submit a new application.

Once the application is approved, the applicant must pass the Registration Board exam requirements.

(c) Any person whose license has lapsed for a period less than five years, without incident, may have their license renewed upon written application to reinstate a license and payment of annual fees and late fees since license lapsed.

(d) Any person whose license lapsed for a period less than five years but has outstanding complaints filed against them or been convicted of a crime shall be required to submit an application for license and pass the Board examination before reinstatement.

History Note: Authority G.S. 89D-4(c); 89D-7; Eff. February 1, 1976; Readopted Eff. September 30, 1977; Amended Eff. July 1, 2007

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CHAPTER 32 – BOARD OF MEDICAL EXAMINERS

21 NCAC 32B .0209 FEE

- (a) A fee of three hundred and fifty dollars (\$350.00) is due at the time of application.
(b) In the event the applicant does not appear for the exam, licensure is denied, or the application is withdrawn no portion of the fee shall be refunded.

History Note: Authority G.S. 90-15; Eff. February 1, 1976; Amended Eff. December 1, 1984; Temporary Amendment Eff. January 31, 1985 for a period of 120 days to expire on May 30, 1985; Amended Eff. March 1, 1989; December 1, 1985; May 1, 1985; Recodified From 21 NCAC 32B .0109 Eff. April 5, 1989; Amended Eff. July 1, 2007; July 1, 2004; April 1, 1994; July 1, 1993; May 1, 1989;

21 NCAC 32B .0213 GRADUATE MEDICAL EDUCATION AND TRAINING FOR LICENSURE

Before licensure, physicians who pass the written examination shall furnish the following current credentials:

- (1) Board application questionnaire;
(2) Proof of graduate medical education and training taken after graduation from medical school, (except for a dentist as permitted in G.S. 90-9(2)), as follows:
(a) A graduate of a medical school approved by LCME or AOA must have satisfactorily completed one year of graduate medical education and training approved by ACGME or AOA;
(b) A graduate of a medical school not approved by LCME or AOA must have satisfactorily completed three years of graduate medical education and training approved by ACGME or AOA;

(c) A graduate of a medical school not approved by LCME or AOA may satisfy the three-year postgraduate training requirement with at least one year of ACGME or AOA approved training in combination with certification by a specialty board recognized by the ABMS or AOA.

- (3) Letters from all training program directors since passing the written examination regarding standing and length of training;
(4) Reports from all relative state agencies in which the applicant has ever held a professional license to include medical, dental, nursing and law, indicating the status of the applicant's license and whether or not the license has been revoked, suspended, surrendered, or placed on probation (must be mailed directly from other state agencies to the Board);
(5) AMA Physician Profile (requested by applicant of AMA);
(6) FSMB Data Bank Inquiry (requested by applicant of FSMB); and
(7) AOIA Physician Profile (requested by applicant of AOIA) if applicant is an osteopathic physician).

History Note: Authority G.S. 90-9; Eff. November 8, 1977; Amended Eff. November 1, 1985; Recodified from 21 NCAC 32B .0113 Eff. April 5, 1989; Amended Eff. July 1, 2007; July 1, 2004; July 1, 1993; May 1, 1989.

21 NCAC 32B .0308 FEE

A fee of three hundred and fifty dollars (\$350.00) is due at the time of application. In the event the applicant does not appear for a scheduled personal interview, no portion of the fee may be refunded. In the event licensure is denied or the application is withdrawn, no portion of the fee may be refunded.

History Note: Authority G.S. 90-15; Eff. February 1, 1976; Amended Eff. November 1, 1985; December 1, 1984; Recodified from 21 NCAC 32B .0208 Eff. April 5, 1989; Amended Eff. July 1, 2007; May 1, 1989.

21 NCAC 32B .0506 FEE

A fee of one hundred dollars (\$100.00) is due at the time of application. No portion of the application fee is refundable.

History Note: Authority G.S. 90-15; Eff. February 1, 1976; Amended Eff. November 1, 1985; December 1, 1984; Recodified from 21 NCAC 32B .0406 Eff. April 5, 1989; Amended Eff. July 1, 2007; May 1, 1989.

21 NCAC 32B .0507 ECFMG CERTIFICATION

To be eligible for a resident's training license, applicants who are graduates of medical schools other than those approved by LCME or AOA must furnish an original ECFMG Certification Status Report, of a currently valid standard certificate of the ECFMG. Upon passing the ECFMG examination and successfully completing an approved Fifth Pathway Program, ECFMG certification may be waived by the Board.

History Note: Authority G.S. 90-15; Eff. February 1, 1976; Amended Eff. November 1, 1985; October 29, 1979; Recodified form 21 NCAC 32B .0407 Eff. April 5, 1989; Amended Eff. July 1, 2007; May 1, 1989.

21 NCAC 32R .0102 APPROVED CATEGORIES OF CME

The following are the approved categories of CME:

- (1) Educational Provider-Initiated CME: All education offered by institutions or organizations accredited by the Accreditation Council on Continuing Medical Education (ACCME) and reciprocating organizations or American Osteopathic Association (AOA) including: (a) Formal courses (b) Scientific/clinical presentations, or publications (c) Enduring Material (printed or electronic materials) (d) Skill development (e) Performance improvement activities (2) Physician-Initiated CME: (a) Practice based self study (b) Colleague Consultations (c) Study initiated by patient inquiries (d) Study of community health problems (e) Successful Specialty Board Exam for certification or recertification (f) Teaching (professional, patient/public health) (g) Mentoring (h) Morbidity and Mortality (M&M) conference (i) Journal clubs (j) Creation of generic patient care pathways and guidelines (k) Competency Assessment

History Note: Authority G.S. 90-14(a)(15); Eff. January 1, 2000; Amended Eff. July 1, 2007; January 1, 2001.

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CHAPTER 36 - BOARD OF NURSING

21 NCAC 36 .0303 EXISTING NURSING PROGRAM

(a) All nursing programs under the authority of the Board shall obtain national program accreditation by a nursing accreditation

body as defined in 21 NCAC 36 .0120(29) by December 31, 2015. Thereafter, the program must maintain national accreditation to remain Board approved.

(b) Full Approval

- (1) The Board shall review approved programs at least every eight years as specified in G.S. 90-171.40. Reviews of individual programs shall be conducted at shorter intervals upon request from the individual institution or as considered necessary by the Board. (2) The Board shall send a written report of the review no more than 20 business days following the completion of the review process. Responses from a nursing education program regarding a review report or Board Warning Status as referenced in Paragraph (b) of this Rule shall be received in the Board office by the deadline date specified in the letter accompanying the report or notification of Warning Status. If no materials or documents are received by the specified deadline date, the Board shall act upon the findings in the review report and testimony of the Board staff. (3) If the Board determines that a program has complied with the rules in this Section, the program shall be continued on Full Approval status. (4) If the Board determines a pattern of noncompliance with one or more rules in this Section, a review shall be conducted. The program shall submit to the Board a plan of compliance to correct the identified pattern. Failure to comply with the correction plan shall result in withdrawal of approval, constituting closure, consistent with 21 NCAC 36 .0309.

(c) Warning Status

- (1) If the Board determines that a program is not complying with the rules in this Section, the Board shall assign the program Warning Status, and shall give written notice by certified mail to the program specifying: (A) the areas in which there is noncompliance; (B) the date of notice by which the program must comply. The maximum timeframe for compliance is two years; and (C) the opportunity to schedule a hearing. (2) On or before the required date of compliance identified in this Paragraph, if the Board determines that the program is complying with the rules in this Section, the Board shall assign the program Full Approval Status. (3) If the Board finds the program is not in compliance with the rules in this Section by the date specified in Part (c)(1)(B) of this Rule, the Board shall withdraw approval

constituting closure consistent with 21 NCAC 36 .0309.

- (4) Upon written request from the program, submitted within 10 business days of the Board's written notice of Warning Status, the Board shall schedule a hearing within 30 business days from the date on which the request was received.
- (5) When a hearing is held at the request of the program and the Board determines that:
  - (A) the program is in compliance with the rules in this Section, the Board shall assign the program Full Approval status; or
  - (B) the program is not in compliance with the rules in this Section, the program shall remain on Warning Status. A review by the Board shall be conducted during that time.

*History Note: Authority G.S. 90-171.23(b); 90-171.38; 90-171.39; 90-171.40; Eff. February 1, 1976; Amended Eff. March 1, 2006; January 1, 2004; June 1, 1992; January 1, 1989; Amended Eff. Pending Legislative Review.*

**21 NCAC 36 .0318 FACULTY**

- (a) Full-time and part-time faculty members shall be considered nursing program faculty. When part-time faculty are utilized, they shall participate in curriculum implementation and evaluation.
- (b) Policies for nursing program faculty members shall be consistent with those for other faculty of the institution. Variations in these policies may be necessary due to the nature of the nursing curriculum.
- (c) Nurse faculty members shall be sufficient in number to accomplish program outcomes.
- (d) Each nurse faculty member shall hold a current unrestricted license to practice as a registered nurse in North Carolina. The program director shall document current licensure to practice as a registered nurse in North Carolina.
- (e) Nursing faculty who teach in a program leading to initial licensure as a nurse shall:
  - (1) hold either a baccalaureate in nursing or a master's degree in nursing from an accredited institution;
  - (2) if initially employed after December 31, 2014, have a master's degree or a nursing doctorate degree from an accredited institution;
  - (3) if employed after December 31, 1983, have two calendar years or the equivalent of full time clinical experience as a registered nurse;
  - (4) prior to or within the first three years of employment, have preparation in teaching and learning principles for adult education, including curriculum development, implementation, and evaluation, appropriate to

assignment. This preparation may be demonstrated by one of the following:

- (A) completion of 45 contact hours of continuing education courses;
  - (B) completion of a certificate program in nursing education;
  - (C) nine semester hours of education course work;
  - (D) national certification in nursing education; or
  - (E) documentation of successful completion of structured, individualized development activities of at least 45 contact hours approved by the Board. Criteria for approval include content in the faculty role within the curriculum implementation, objectives to be met and evaluated, review of strategies for identified student population and expectations of student and faculty performance;
- (5) by December 31, 2010, all current faculty shall meet the requirements in Subparagraph (e)(4) of this Rule;
  - (6) maintain competence in the areas of assigned responsibility; and
  - (7) have current knowledge of nursing practice for the registered nurse and the licensed practical nurse.
- (f) Upon request by a program, the Board shall waive Subparagraph (e)(2) of this Rule for a period not to exceed a total of five years for an instructor who possesses an earned baccalaureate degree in nursing. The program administrator shall request and complete a waiver on forms supplied by the Board. The waiver must be requested by the program and granted by the Board before the faculty appointment is approved by the program and shall be limited to one time for any individual.
  - (g) Interdisciplinary faculty who teach in nursing program courses shall have academic preparation in the content area they are teaching.
  - (h) Clinical preceptors shall have competencies, assessed by the nursing program, related to the area of assigned clinical teaching responsibilities and serve as role models to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received basic instruction for that specific learning experience. Clinical preceptors shall hold a current, unrestricted license to practice as a registered nurse in North Carolina. Clinical preceptors are not faculty and do not need to meet the faculty qualifications.
  - (i) Nurse faculty members shall have the authority and responsibility for:
    - (1) student admission, progression, and graduation requirements; and
    - (2) the development, implementation, and evaluation of the curriculum.
  - (j) Nurse faculty members shall be sufficient in number to implement the curriculum as demanded by the course objectives,

the levels of the students, and the nature of the learning environment, and shall be sufficient to provide for teaching, supervision and evaluation. The faculty-student clinical ratio shall be 1:10 or less.

(k) There shall be written evaluation of each nurse faculty member by the program director or a designee and a written evaluation of the program director according to the institutional policy.

History Note: Authority G.S. 90-171.23(b)(8); 90-171.38; 90-171.83; Eff. February 1, 1976; Amended Eff. July 1, 2006; July 1, 2000; January 1, 1996; June 1, 1992; January 1, 1989; January 1, 1984; Amended Eff. Pending Legislative Review.

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CHAPTER 61 - NORTH CAROLINA RESPIRATORY CARE BOARD

21 NCAC 61 .0401 CONTINUING EDUCATION REQUIREMENTS

(a) Upon application for license renewal, a licensee shall attest to having completed one or more 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) Completion of a minimum of 12 hours of Category I Continuing Education (CE) activities directly related to the licensee's practice of respiratory care and currently approved by the Board, the American Association for Respiratory Care (AARC) or the Accreditation Council for Continuing Medical Education (ACCME). "Category I" Continuing Education is defined as participation in an educational activity directly related to respiratory care, which includes any one of the following: (A) Lecture - a discourse given for instruction before an audience or through teleconference. (B) Panel - a presentation of a number of views by several professionals on a given subject with none of the views considered a final solution. (C) Workshop - a series of meetings for intensive, hands-on study, or discussion in a specific area of interest. (D) Seminar - a directed advanced study or discussion in a specific field of interest. (E) Symposium - a conference of more than a single session organized for the purpose of discussing a specific subject from various viewpoints and by various presenters.

(F) Distance Education - includes such enduring materials as text, Internet or CD, provided the proponent has included an independently scored test as part of the learning package.

- (2) Retake the Certified Respiratory Therapist Examination (CRT), administered by the National Board for Respiratory Care (NBRC), and achieve a passing score as determined by the NBRC or take any of the following examinations and achieve a passing score as determined by the sponsor of the examination: the Registry Examination for Advanced Respiratory Therapists (RRT), administered by the NBRC; the Neonatal/Pediatric Respiratory Care Specialty Examination (NPS), administered by the NBRC; the Certification Examination for Entry Level Pulmonary Function Technologists (CPFT), administered by the NBRC; the Registry Examination for Advanced Pulmonary Function Technologist (RPFT), administered by the NBRC; the Registry Examination for Polysomnographic Technologist (RPSGT), administered by the Board of Registered Polysomnographic Technologists (BRPT); or the Asthma Educators Certification Examination (AE-C), administered by the National Asthma Educator Certification Board (NAECB).
- (3) Completion of a Respiratory Care refresher course offered through a Respiratory Care Education program accredited by the Commission for the Accreditation of Allied Health Educational Programs.
- (4) Completion of a minimum of three semester hours of post-licensure respiratory care academic education leading to a baccalaureate or masters degree in Respiratory Care.
- (5) Presentation of a Respiratory Care Research study at a continuing education conference.
- (6) Authoring a published Respiratory Care book or Respiratory Care article published in a medical peer review journal.
- (b) The completion of certification or recertification in any of the following: Advanced Cardiac Life Support (ACLS) by the American Heart Association, Pediatric Advanced Life Support (PALS) by the American Heart Association, and Neonatal Resuscitation Program (NRP) by the American Academy of Pediatrics, shall count for a total of five hours of continuing education for each renewal period; but no more than five hours of total credit will be recognized for each renewal period for the completion of any such certification or recertification.
- (c) A licensee shall retain supporting documentation to provide proof of completion of the option chosen in Paragraph (a) of this Rule for a period of no less than three years.
- (d) A licensee shall maintain a file at his or her practice facility that contains a copy of the RCP license, a copy of a current Basic Cardiac Life Support (BCLS) certification, a copy of



advanced life support certifications and a copy of all credentials issued by the National Board for Respiratory Care.

(e) A licensee is subject to random audit for proof of compliance with the Board's requirements for continuing education.

(f) The Board shall inform licensees of their selection for audit upon notice of license renewal or request for reinstatement. Evidence of completion of the requirements of Paragraph (a) of this Rule shall be submitted to the Board no later than 30 days of receipt of the audit notice.

(g) Failure of a licensee to meet the requirements of this Rule shall result in disciplinary action pursuant to G.S. 90-666.

(h) The Board shall charge the following fees for providers of continuing education that apply for approval of continuing education programs:

- (1) Programs approved for one to two hours of CE: Non Profit Organizations and Government Agencies, ten dollars (\$10.00); For Profit Organizations, twenty dollars (\$20.00).
- (2) Programs approved for three to five hours of CE: Non Profit Organizations and Government Agencies, twenty dollars (\$20.00); For Profit Organizations, forty dollars (\$40.00).
- (3) Programs approved for six to ten hours of CE: Non Profit Organizations and Government Agencies, forty dollars (\$40.00); For Profit Organizations, eighty dollars (\$80.00).
- (4) Programs approved for 11 or more hours of CE: Non Profit Organizations and Government Agencies, eighty dollars (\$80.00); For Profit Organizations, one hundred fifty dollars (\$150.00).

(i) The Board shall grant requests for extensions of the continuing education requirements due to personal circumstances as follows. The Board shall require documentation of the circumstances surrounding the licensee's request for extension.

- (1) Having served in the regular armed services of the United States at least six months of the 12 months immediately preceding the license renewal date; or
- (2) Having suffered a serious or disabling illness or physical disability that prevented completion of the required number of continuing education hours during the 12 months immediately preceding the licensee renewal date.

*History Note: Authority G.S. 90-652(2)(13); 90-658;90-660(b)(9);  
Temporary Adoption Eff. October 15, 2001;  
Eff. August 1, 2002;  
Amended Eff. July 1, 2007; April 1, 2004.*

**23 NCAC 02E .0204 COURSES AND STANDARDS FOR CURRICULUM PROGRAMS**

The Combined Course Library and curriculum standards for associate degree, diploma, and certificate programs shall be as follows:

- (1) Combined Course Library Curriculum Courses.
  - (a) The Combined Course Library shall contain the following elements for all curriculum program credit courses approved for the North Carolina Community College System.
    - (i) Course prefix;
    - (ii) Course number;
    - (iii) Course title;
    - (iv) Classroom hours and laboratory, clinical, and work experience contact hours, if applicable;
    - (v) Credit hours;
    - (vi) Prerequisites and corequisites, if applicable; and,
    - (vii) Course description consisting of three sentences.
  - (b) The numbering system for curriculum courses within the Combined Course Library is as follows:
    - (i) The numbers 050-099 shall be assigned to developmental courses.
    - (ii) The numbers 100-109 and 200-209 shall be assigned to certificate and diploma level curriculum courses. These courses shall not be included in associate degree programs.
    - (iii) The numbers 110-189 and 210-289 shall be assigned to associate degree level courses. These courses may also be included in certificate and diploma programs.
    - (iv) The numbers 190-199 and 290-299 shall be assigned to seminar or selected topic courses which may be offered for a single term and which courses offer content not found in existing courses. In order to offer the course content after the initial term, a new course must be approved for inclusion in the Combined Course Library.

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- (c) A college shall use the course information (prefix; number; title; classroom, laboratory, clinical, and work experience contact hours; credit hours; prerequisites and corequisites; and course description) as listed in the Combined Course Library.
  - (i) A college may add a fourth sentence to the course description to clarify instructional content or instructional methodology.
  - (ii) A college may divide courses into incremental units for greater flexibility in providing instruction to part-time students or to provide shorter units of study for abbreviated calendars. Each of the following criteria shall apply to courses divided into incremental units:
    - (A) A course may be divided into two or three units, which are designated with an additional suffix following the course prefix and number;
    - (B) The units shall equal the entire course of instruction, without omitting any competencies;
    - (C) The combined contact and credit hours for the units shall equal the contact and credit hours for the course;
    - (D) If the course is a prerequisite to another course, the student shall complete all component parts before enrolling in the next course;
    - (E) If the course is a co-requisite to another course it must be taken before or in conjunction with that course; and
- (F) The components of a split course shall not be used to supplant training for occupational extension.
  - (d) The Community College System Office shall revise and maintain courses in the Combined Course Library.
  - (e) When a student receives credit for a Combined Course Library course, this credit shall be transferable to any college in the North Carolina Community College System.
- (2) Revision of Curriculum Standards. A revision of curriculum standard requires that two thirds of colleges approved to offer that curriculum program concur in writing with the revision. Upon their concurrence changes in curriculum standards shall become effective after approval by the State Board of Community Colleges.
- (3) Criteria for Programs. Each curriculum program shall be based on the following criteria established by the State Board of Community Colleges for the awarding of degrees, diplomas, and certificates.
  - (a) Associate in Applied Science. The associate in applied science program of study must consist of a minimum of 64 and a maximum of 76 semester hours of credit from curriculum courses at the 110-199 and 210-299 levels. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and basic use of computers. The requirements for the Associate in Applied Science Degree are as follows:
    - (i) The associate in applied science curriculum program shall include a minimum of 15 semester hours of credit from general education curriculum courses selected from the Combined Course Library, including six hours in communications, three hours in humanities/fine arts, three hours in social/behavioral sciences, and three hours in either natural sciences or mathematics.
    - (ii) The associate in applied science curriculum program

shall include a minimum of 49 semester hours of credit from major curriculum courses selected from the curriculum courses in the Combined Course Library assigned numbers from 110-199 and 210-299. Major curriculum courses are those which offer specific job knowledge or skills. Criteria for the major hours category are as follows:

- (A) Major Core Hours. The major hours category shall be comprised of identified curriculum core courses or subject areas or both which are required for each program. Subject areas or curriculum core courses shall be based on curriculum competencies and shall teach essential skills and knowledge necessary for employment. The number of credit hours required for the core shall not be less than 12 semester hours of credit;
- (B) Major Concentration Hours. The major hours category may also include hours required for a concentration of study. A concentration of study is a group of curriculum courses required beyond the core for a specific related employment field. A concentration shall include a minimum of 12 semester hours, and the

- (C) Other Major Hours. Other major hours shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration, or unique prefixes as noted on the standard; and
- (D) Work Experience Hours. The major hours category may include up to a maximum of eight semester hours credit for work experience, including cooperative education, practicums, and internships. Under a standard specifically designed for select associate degree programs, work experience shall be included in a curriculum up to a maximum of 16 semester hours of credit. The select associate degree programs shall be based on a program of studies registered under the North Carolina Department of Labor Apprenticeship programs. Only eight semester

- hours of credit of  
work experience  
shall earn budget  
FTE.
- (iii) Other Required Hours. A college may require graduation or local employer requirements in order to complete an associate in applied science program. These requirements may be met through a maximum of seven semester hours of credit from curriculum courses. These curriculum courses shall be selected from the Combined Course Library and must be approved by the System Office based on the Curriculum Procedures Reference Manual prior to implementation of the program. Restricted, unique or free elective courses may not be included as other required courses.
- (iv) Selected topics or seminar curriculum courses may be included in an associate in applied science degree program up to a maximum of three semester hours of credit. Selected topics or seminar courses shall not substitute for required general education or major core courses. Such curriculum courses shall be listed on a program of study as other major hours. Selected topics and seminar curriculum courses shall not be used more than once in a program.
- (b) Associate in Arts Degree. The associate in arts program of study must consist of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and basic use of computers. Certificates are not allowed under this degree program. The requirements for the Associate in Arts Degree are as follows:
- (i) The associate in arts curriculum program shall include a minimum of 44 semester hours of general education curriculum core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:
- (A) Six semester hours of English composition;
  - (B) 12 semester hours of humanities/fine arts;
  - (C) 12 semester hours of social/behavioral sciences;
  - (D) Six semester hours of mathematics; and
  - (E) Eight semester hours of natural sciences.
- (ii) The associate in arts program shall include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from curriculum courses in the Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A non-college transfer curriculum course of one semester hour of credit may be included in a 65 semester hour credit associate in arts program. This course may receive transfer evaluation by the receiving institution.
- (iii) A college may award a diploma under an approved associate in arts degree program for a series of curriculum courses taken from the approved associate in arts degree program of study. This diploma shall include a minimum of 44 and a maximum of 47

semester hours of general education curriculum core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The diploma shall include a minimum of:

- (A) Six semester hours of English composition;
- (B) 12 semester hours of humanities/fine arts;
- (C) 12 semester hours of social/behavioral sciences;
- (D) Six semester hours of mathematics; and
- (E) Eight semester hours of natural sciences.

A non-college transfer course of one semester hour of credit may be included in a 47 semester hour credit diploma program. This curriculum course may receive transfer evaluation by the receiving institution.

- (c) Associate in Science Degree. The associate in science program of study must consist of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer courses at the 110-199 and 210-299 levels. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and basic use of computers. Certificates are not allowed under this degree program. The requirements for Associate in Science Degree are as follows:

- (i) The associate in science curriculum program shall include a minimum of 44 semester hours of general education curriculum core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent

institutions. The general education core shall include:

- (A) Six semester hours of English composition;
- (B) Nine semester hours of humanities/fine arts;
- (C) Nine semester hours of social/behavioral sciences; and
- (D) 20 semester hours of mathematics and natural sciences that shall include a minimum of six semester hours in mathematics and a minimum of eight semester hours in natural sciences.

- (ii) The associate in science curriculum program may include a minimum of 20 and a maximum of 21 additional semester hours of credit selected from curriculum courses in the Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A non-college transfer curriculum course of one semester hour of credit may be included in a 65 semester hour credit associate in science program. This curriculum course shall receive transfer evaluation by the receiving institution.

- (iii) A college may award a diploma under an approved associate in science degree program for a series of curriculum courses taken from the approved associate in science degree program of study. This diploma shall include a minimum of 44 and a maximum of 47 semester hours of general education curriculum core courses selected from the Combined Course Library and approved for transfer to

the University of North Carolina constituent institutions. The diploma shall include a minimum of:

- (A) Six semester hours of English composition;
- (B) Nine semester hours of humanities/fine arts;
- (C) Nine semester hours of social/behavioral sciences; and
- (D) 20 semester hours of natural sciences and mathematics that shall include a minimum of six hours in mathematics and a minimum of eight hours in natural sciences.

A non-college transfer curriculum course of one semester hour of credit may be included in a 47 semester hour credit program. This curriculum course may receive transfer evaluation by the receiving institution.

- (d) Associate in Fine Arts Degree. The associate in fine arts program of study must consist of a minimum of 64 and a maximum of 65 semester hours of credit from approved college transfer curriculum courses at the 110-199 and 210-299 levels. Within the degree program, the college shall include opportunities for achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and basic use of computers. Diplomas and certificates are not allowed under this degree program. The requirements for the Associate in Fine Arts Degree are as follows:

- (i) The associate in fine arts curriculum program shall include a minimum of 28 semester hours of general education curriculum core courses selected from the Combined Course Library and approved for transfer to the University of North Carolina constituent institutions. The general education core shall include:

- (A) Six semester hours of English composition;
- (B) Six semester hours of humanities/fine arts;
- (C) Nine semester hours of social/behavioral sciences;
- (D) Three semester hours of mathematics; and
- (E) Four semester hours from the natural sciences.

- (ii) The associate in fine arts curriculum program shall include a minimum of 36 and a maximum of 37 additional semester hours of credit from curriculum courses in the Combined Course Library which have been approved for transfer to the University of North Carolina constituent institutions. A non-college transfer course of one semester hour of credit may be included in a 65 semester hour credit associate in fine arts program. This curriculum course may receive transfer evaluation by the receiving institution.

- (e) Associate in General Education. The associate in general education program of study must consist of a minimum of 64 and a maximum of 65 semester hours of credit from curriculum courses at the 110-199 and 210-299 levels. Within the degree program, the college shall include opportunities for the achievement of competence in reading, writing, oral communication, fundamental mathematical skills, and the basic use of computers. Diplomas and certificates are not allowed under this degree program. The requirements for the Associate in General Education Degree are as follows:

- (i) The associate in general education curriculum program shall include a minimum of 15 semester hours of credit from general

- education curriculum courses selected from the Combined Course Library, including six hours in communications, three hours in humanities/fine arts, three hours in social/behavioral sciences, and three hours in natural sciences or mathematics.
- (ii) The remaining hours in the associate in general education curriculum program shall consist of additional general education curriculum courses selected from the Combined Course Library. A maximum of seven semester hours of credit in health, physical education, and college orientation or study skills courses may be included.
- (iii) Selected topics or seminar curriculum courses may be included in an associate in general education program up to a maximum of three semester hours of credit. Selected topics and seminar courses shall not substitute for required general education or major core courses. Such curriculum courses shall be listed on a program of study as "Other Major Hours." Selected topics and seminar curriculum courses shall not be used more than once in a program. (See Sub-Item (3)(a)(iv)) of this Rule.
- (f) Diploma. A Diploma program of study must consist of a minimum of 36 and a maximum of 48 semester hours of credit from courses at the 100-299 level. The requirements for the diploma curricula are as follows:
- (i) Diploma curricula shall include a minimum of six semester hours of general education curriculum courses selected from the Combined Course Library. A minimum of three semester hours of credit shall be in communications, and a minimum of three semester hours of credit shall be selected from curriculum courses in humanities/fine arts, social/behavioral sciences, or natural sciences and mathematics.
- (ii) Diploma curricula shall include a minimum of 30 semester hours of major courses selected from curriculum courses in the Combined Course Library.
- (iii) A diploma curriculum program shall include designated core curriculum courses or core subject areas within the major hours category.
- (iv) Curriculum courses for other major hours in diploma curriculum program shall be selected from prefixes identified on the curriculum standard. A maximum of nine semester hours of credit may be selected from any prefix listed, with the exception of prefixes listed in the core or concentration or unique prefixes as noted on the curriculum standard.
- (v) Work experience, including cooperative education, practicums, and internships, may be included in a diploma curriculum program up to a maximum of four semester hours of credit.
- (vi) Other Required Hours. A college may require graduation or local employer requirements in order to complete a diploma program. These requirements may be met through a maximum of four semester hours of credit from curriculum courses. These curriculum courses shall be selected from the Combined Course Library and must be approved by the System Office based on the Curriculum Procedures Manual prior to implementation of the program. Restricted, unique or free elective courses may

- not be included as other required courses.
- (vii) A college may award a diploma under an approved associate in applied science degree curriculum program for a series of curriculum courses taken from the approved associate degree curriculum program of study unless prohibited by the standard.
- (A) A diploma curriculum program offered under an approved associate degree program shall meet the standard general education and major curriculum course requirements for the diploma credential.
- (B) A college may substitute general education curriculum courses at the 100-299 level for the associate-degree level general education curriculum courses in a diploma program offered under an approved degree program.
- (C) A diploma curriculum program offered under an approved associate degree curriculum program shall require a minimum of 12 semester hours of credit from curriculum courses extracted from the required curriculum core courses or core subject areas of the respective associate in applied science degree curriculum program.
- (D) A diploma program offered under an approved associate degree curriculum program shall require the utilization of all curriculum core courses and a minimum of 12 semester hours of credit from concentration courses.
- (viii) Selected topics or seminar curriculum courses may be included in a diploma program up to a maximum of three semester hours of credit. Selected topics and seminar curriculum courses shall not substitute for required general education or major curriculum core courses. Courses must be on a program of study as other major hours.
- (g) Certificate Programs. A certificate program of study must consist of a minimum of 12 and a maximum of 18 semester hours of credit from curriculum courses at the 100-299 level. The requirements for the Certificate Programs are as follows:
- (i) General education is optional in certificate curricula.
- (ii) Certificate curricula shall include a minimum of 12 semester hours of major curriculum courses selected from curriculum courses in the Combined Course Library.
- (A) A certificate program which is a stand-alone curriculum program title or which is the highest credential level awarded under an approved associate in applied science degree or diploma program shall include a minimum of 12 semester hours of credit from core courses or the required curriculum core subject areas



- within the major hours category.
- (B) Curriculum courses for other major hours in a stand-alone certificate curriculum program shall be selected from prefixes identified on the curriculum standard.
- (C) Work experience, including cooperative education, practicums, and internships, may be included in a certificate program up to a maximum of two semester hours of credit.
- (iii) Other Required Hours. A college may require graduation or local employer requirements in order to complete a certificate program. These requirements may be met through a maximum of one semester hour of credit from curriculum courses. This curriculum course shall be selected from the Combined Course Library and must be approved by the System Office board on the Curriculum Procedures Manual prior to implementation of the program. Restricted unique or free elective courses may not be included as other required courses.
- (iv) An institution may award a certificate under an approved degree or diploma curriculum program for a series of courses totaling a minimum of 12 semester hours of credit and a maximum of 18 semester hours of credit taken from the approved associate degree or diploma curriculum program of study.
- (v) Selected topics or seminar courses may be included in a certificate program up to a maximum of three semester hours of credit.
- (4) Curriculum Standards Compliance. Each college shall select curriculum courses from the Combined Course Library in order to comply with the standards for each curriculum program title the college is approved to offer. The selected courses shall comprise the college's program of study for that curriculum program. The initial and revised program shall be filed with and approved by the System Office prior to implementation.

*History Note: Authority G.S. 115D-5; S.L. 1995, c. 625; Temporary Adoption Eff. June 1, 1997 Eff. July 1, 1998; Amended Eff. July 1, 2007; October 1, 2006; December 1, 2004; August 15, 2004; August 1, 2004.*

**23 NCAC 03A .0113 STUDENT REFUND**

- (a) Any proprietary school that is licensed by the State Board of Community Colleges is subject to the following refund policies. A refund shall not be made except under the following circumstances: A 100 percent refund shall be made if the student officially withdraws prior to the first day of class(es) as noted in the school calendar. Also, a student is eligible for a 100 percent refund if the class(es) in which the student is officially registered is cancelled due to insufficient enrollment.
- (b) To comply with applicable federal regulations regarding refunds; federal regulations regarding refunds will supercede state refund regulations in this Rule.
- (c) Proprietary schools are not required to deposit funds collected for tuition with the State Treasurer's Office.

*History Note: Authority G.S. 115D-89; 115D-90. Eff. April 1, 1997; Amended Eff. July 1, 2007; December 1, 2004.*

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**CONTESTED CASE DECISIONS**

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*This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698. Also, the Contested Case Decisions are available on the Internet at <http://www.ncoah.com/hearings>.*

**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.  
Selina Brooks  
Melissa Owens Lassiter  
Don Overby

Beecher R. Gray  
A. B. Elkins II  
Joe Webster

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<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
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A list of Child Support Decisions may be obtained by accessing the OAH Website: <a href="http://www.ncoah.com/decisions">www.ncoah.com/decisions</a> .				
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Connie R. Austin v. Dept. of Public Instruction	06 EDC 2270	Elkins	04/02/07	
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International Paper-Company Riegelwood Mill v. DENR, Division of Air Quality	04 EHR 0360	Lassiter	07/06/07	
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Wildcat Investments LLC, James Cook v. Cherokee County Health Depart.	06 EHR 0631	Gray	04/23/07	
Randy Dockery v. Cherokee County Health Department	06 EHR 0728	Gray	04/23/07	
Alan Raper v. Cherokee Health Department	06 EHR 0873	Gray	04/23/07	
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Robert Don Foster v. DENR, Div. of Coastal Management	06 EHR 1833	Morrison	05/11/07	22:01 NCR 95
Andrew Price v. DENR, Div. of Coastal Management and William F. Canady	06 EHR 1834	Morrison	05/11/07	22:01 NCR 95
Conrad McLean v. DENR/Division of Air Quality	06 EHR 2243	Gray	05/03/07	
Terry Collins v. DENR, Division of Waste Management	06 EHR 2414	Gray	05/01/07	
Paul A. Stennett v. DENR, Public Water Supply Section	07 EHR 0170	Overby	05/04/07	

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**CONTESTED CASE DECISIONS**

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Daniel R. Wroblewski v. DENR and Coastal Management 07 EHR 0217 Overby 05/08/07

**DEPARTMENT OF INSURANCE**

Toni W. Goodwin v. Teachers and State Employees Comprehensive 06 INS 1016 Overby 05/07/07

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Larry Miller v. Teachers' and State Employees' Comprehensive Major 06 INS 1236 Overby 04/11/07

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Willie G. Shaw v. Division of Forest Resources 05 OSP 0414 Overby 04/13/07

Deona R. Hooper v. NCCU 06 OSP 1071 Lassiter 04/25/07

Patrice Bernard v. NC A&T State University 06 OSP 1550 Elkins 06/05/07

Angelia Davis v. UNC-Charlotte 06 OSP 1908 Gray 03/08/07

Keith Dial v. Dept. of Juvenile Justice and Delinquency Prevention 06 OSP 2346 Gray 04/20/07

Larry L. Deyton v. Mitchell County Commission Board 06 OSP 2415 Gray 04/19/07

Rose M. Baltezare v. City of Brevard 07 OSP 0009 Gray 04/03/07

Dorothy H. Williams v. John Umstead Hospital 07 OSP 0265 Lassiter 04/24/07

Pei Wang v. UNC-Chapel Hill 07 OSP 0273 Lassiter 04/19/07

Candace R. Berguson v. Caswell County DSS and Mr. Jeff Earp, County 07 OSP 0294 Lassiter 04/20/07

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Shannon Harris Tadlock v. Wilson County, Department of Public Health 07 OSP 0491 Lassiter 05/07/07

Patricia G. Flanigan v. Fayetteville State University 07 OSP 0503 Overby 05/10/07

Vicky Smith Powell v. DOT, Driver License Section, Daniel H. DeVane 07 OSP 0546 Gray 06/26/07

Tobias M. Guilluame v. FSU Police & Public Safety 07 OSP 0565 Overby 05/10/07

Crystal B. Totten v. DHHS 07 OSP 0923 Gray 07/06/07

**SECRETARY OF STATE**

Mary C. Brandon v. Department of the Secretary of State 06 SOS 1839 Elkins 04/02/07

Samuel Abraham , pro-se v. SOS, General Counsel Ann Wall 07 SOS 0224 Overby 04/27/07

Mr. Tim Rhodes, President, Event Marketing Services, Inc. v. SOS 07 SOS 0374 Overby 06/14/07

**UNC HOSPITALS**

Kenneth Trivette v. UNC Hospitals 06 UNC 2014 Elkins 04/02/07

Mark A. Parrish v. UNC Hospitals 06 UNC 2406 Elkins 06/15/07

Kim N. Holman v. UNC Hospitals 07 UNC 0313 Lassiter 07/06/07

Edward Kyle Robbins v. UNC Hospitals 07 UNC 0447 Gray 07/03/07